

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of the General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

www.dec.ny.gov

August 9, 2016

SENT VIA FIRST CLASS MAIL and  
ELECTRONIC MAIL

Mr. Jason L. Shaw, Esq.  
Whiteman Osterman & Hanna, LLP  
One Commerce Plaza  
Albany, NY 12260  
[jshaw@woh.com](mailto:jshaw@woh.com)

RE: Order on Consent and Administrative Settlement  
Site Name: American Valve  
Site No.: 420002  
Index No.: CO 4-20160617-115

Dear Mr. Shaw:

To complete your files, enclosed is the fully executed Order on Consent and Administrative Settlement referencing the American Valve site located at 170 Mansion Street, Coxsackie, New York and the Village of Coxsackie.

If you have any further questions or concerns relating to this matter, please contact attorney, Dolores Tuohy at 518-402-9510.

Sincerely,



Maria Mastroianni  
Legal Secretary  
Remediation Bureau  
Office of General Counsel

Enclosure

ec: Mark Evans, Mayor and  
Nikki Berezna, Village Clerk  
Village of Coxsackie  
119 Mansion Street  
Coxsackie, NY 12051-4018



Department of  
Environmental  
Conservation

D. Tuohy, Esq., NYSDEC  
R. Cozzy, NYSDEC  
W. Welling, NYSDEC

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Development and Implementation  
of a Remedial Program for an  
Inactive Hazardous Waste Disposal  
Site under Article 27, Title 13  
of the Environmental Conservation Law  
by

**ORDER ON CONSENT  
and  
ADMINISTRATIVE  
SETTLEMENT**

Index #CO 4-20160617-115

**Village of Coxsackie**

Respondent.

American Valve  
Manufacturing Site  
Site # 420002

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**WHEREAS,**

1. A. The New York State ("State") Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the State's policy to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order on Consent and Administrative Settlement ("Order") is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5) and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9600 et seq.

2. The Site (shown on Appendix "A"), is currently defined as a 15.635-acre area located at 170 Mansion Street in the Village of Coxsackie, Greene County. It is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 420002 with a Classification "4" pursuant to ECL 27-1305, indicating that a site is properly closed, but needs continued management.

3. The Department intends to modify the boundaries of the Site such that the 5.796-acre area ("Delist Area") shown on Appendix "A" is no longer defined as part of the Site.

4. The Village of Coxsackie (“Respondent”) is a municipal corporation formed for the purpose of exercising such powers and discharging such duties of local government and administration of public affairs as may be imposed or conferred upon it by law.

5. Respondent intends to acquire title to the part of the Site identified as the Delist Area.

6. This goal of this Order is to provide Respondent with a liability release for the Delist Area and to ensure the Department’s continued access, through the Delist area if necessary, to Site fencing.

7. Respondent consents to the issuance of this Order, waives any right to a hearing, and agrees to be bound by the Order’s terms without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

**NOW**, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Purpose of Order

The purpose of this Order is to resolve, in accordance with the provisions of Paragraph VII, all liability pursuant to CERCLA and any other federal or state laws, including but not limited to the ECL, which could be made by the Department against Respondent for response costs incurred or to be incurred by the State, to provide contribution protection with regard to the Site pursuant to 6 NYCRR 375-1.5(b)(5) and Section 113(f)(2) of CERCLA, and, based upon the circumstances unique to this matter, to provide for the other consideration set forth below.

II. Disclaimer of Admissions

Nothing in this Order shall constitute, or be construed as, any admission or adjudication of liability or any issue of law or fact.

III. Parties Bound

This Order shall apply to and be binding on the Department and Respondent. The signatory represents that he or she is fully and legally authorized to enter into this Order.

IV. Site Access

Respondent shall grant the Department and its authorized agents access to the Delist Area as may be needed to inspect and maintain any Site fencing located on or adjacent to the Delist Area.

V. Site Management Plan

Since the Delist Area is anticipated to no longer be part of the Site, there will be no Site Management Plan obligations associated with the Delist Area.

VI. Penalties

The failure of Respondent to comply with any term of this Order constitutes a violation of this Order and of the ECL.

VII. Release and Covenant Not to Sue by the Department

A. Based upon the consideration described in this Order, upon the effective date of this Order, Respondent shall not be liable to the Department pursuant to CERCLA or any other federal or state laws, including, but not limited to the ECL, for Past Response Costs or Future Response Costs incurred or to be incurred by the State at or related to Existing Contamination, including Existing Contamination that has migrated off-site. For purposes of this Order, "Past Response Costs" shall include, but not be limited to, those costs related to response activities, as defined by Section 101(25) of CERCLA, incurred by the State at or related to the Site prior to the effective date of this Order, including any interest, and "Future Response Costs" shall include, but not be limited to, those costs related to response activities, as defined by Section 101(25) of CERCLA, to be incurred by the State at or related to the Site subsequent to the effective date of this Order, including any future oversight and operation and maintenance.

B. For purposes of this Order, "Existing Contamination" shall be defined as any hazardous waste, as that term is defined in ECL § 27-1301, either (i) present at or existing on or under the Site as of the effective date of this Order, or (ii) removed from the Site during remedial activities previously undertaken by the Department.

C. This release and covenant not to sue shall be null and void, *ab initio*, in

the event of fraud relating to the execution or implementation of this Order or in the event of a failure by Respondent to materially comply with any provision of this Order.

D. Nothing contained in this release and covenant not to sue shall prejudice any rights of the Department to take any action it deems necessary if contamination other than Existing Contamination is encountered at the Site.

E. Nothing contained in this release and covenant not to sue shall be construed as affecting the liability of any person other than Respondent.

#### VIII. Covenant by Respondent

In consideration of the release and covenant not to sue of the Department, Respondent covenants not to sue and agrees not to assert any claims or causes of action pursuant to CERCLA or any other federal or state laws, including but not limited to the ECL, against the State, its agencies, funds, officers, or representatives, for costs related to response activities, as defined by Section 101(25) of CERCLA, at or related to the Site, or for contribution or indemnification with respect to claims for such costs.

#### IX. Contribution Protection

The matters addressed in this Order are Past and Future Response Costs. Respondent shall be entitled, as of the effective date of this Order, to receive contribution protection to the extent authorized by CERCLA, the ECL, and 6 NYCRR 375-1.5(b)(5).

#### X. Effect on Liability of Other Parties

Except as provided in Paragraph VII, nothing in this Order is intended as a release of, or covenant not to sue with respect to, any entity not a signatory hereto, and the Department expressly reserves the State's rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, firm, corporation, or other entity not a signatory to this Order. Except as provided in Paragraph VII, nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order.

#### XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to:

Dolores A. Tuohy, Esq.  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway  
Albany, New York 12233-1500  
dolores.tuohy@dec.ny.gov

William Welling, Project Manager  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, New York 12233-7017  
william.welling@dec.ny.gov

2. Communication from Department to Respondent shall be sent to:

Mayor Mark Evans  
Village of Coxsackie  
119 Mansion Street  
Coxsackie, New York 12051-4018  
[mevans@statetel.com](mailto:mevans@statetel.com)

Village Clerk Nikki Berezna  
Village of Coxsackie  
119 Mansion Street  
Coxsackie, New York 12051  
[nberezna@villageofcoxsackie.com](mailto:nberezna@villageofcoxsackie.com)

B. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses in this Paragraph XI.

XII. Miscellaneous

A. The paragraph headings in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

B. Respondent's obligations under this Order shall not be deemed to constitute any type of fine or penalty.

C. The effective date of this Order is the 10<sup>th</sup> day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

**AUG 05 2016**

COMMISSIONER OF THE  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:



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Robert W. Schick, Director  
Division of Environmental Remediation



CONSENT BY RESPONDENT  
VILLAGE OF COXSACKIE

The Village of Coxsackie hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: *Mark A. Evans*  
Authorized Signatory

Title: *Mayor*

STATE OF NEW YORK )  
                                                          ) s.s.:  
COUNTY OF GREENE )

On the 1<sup>st</sup> day of August, in the year 2016, before me, the undersigned, personally appeared MARK EVANS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

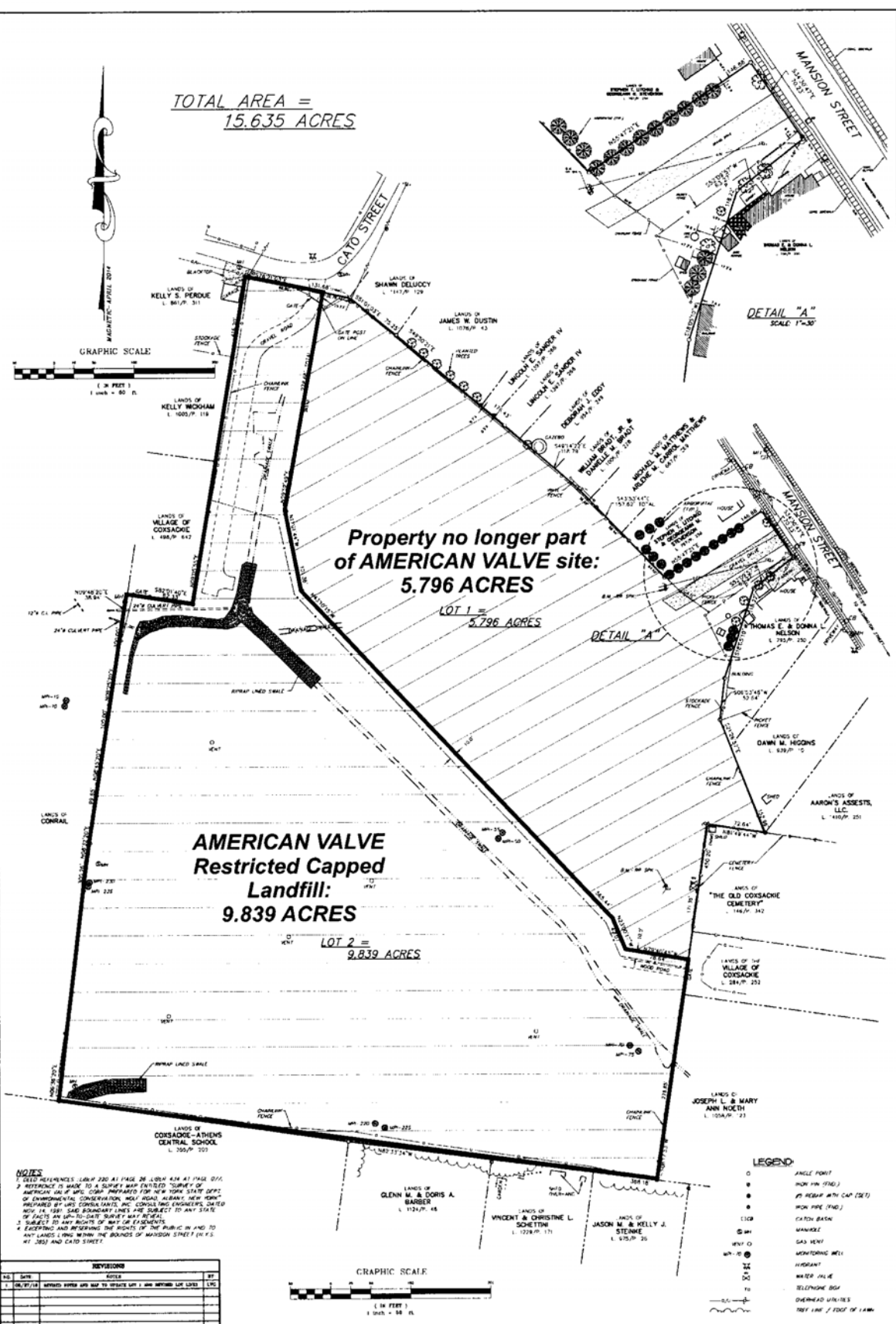
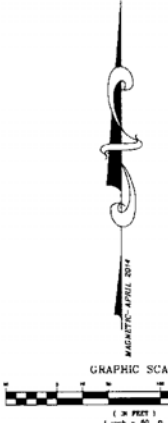
*Nikki M. Berezna*  
Signature and Office of individual  
taking acknowledgment

NIKKI M. BEREZNAK  
Notary Public, State of New York  
Commission No. 01BE6281552  
Qualified in Greene County  
Commission Expires: 5/13/17

Appendix "A"

Site Map

TOTAL AREA =  
15.635 ACRES



Property no longer part  
of AMERICAN VALVE site:  
5.796 ACRES

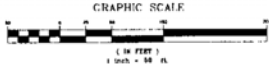
LOT 1 =  
5.796 ACRES

AMERICAN VALVE  
Restricted Capped  
Landfill:  
9.839 ACRES

LOT 2 =  
9.839 ACRES

**NOTES**  
1. OLD RECORDS, LOT 20 AT 1142.20, LOT 21 AT 1142.00, 21.1  
2. REFERENCE IS MADE TO A SURVEY MAP ENTITLED "SUBDIVISION OF AMERICAN VALVE CO. INC. COAST IMPROVED FOR NEW YORK STATE DEPT. OF ENVIRONMENTAL CONSERVATION, NEW YORK, ALBANY, NEW YORK, PREPARED BY W.S. COXSACKIE, INC. CONSULTING ENGINEERS, DATED NOV. 14, 1988. SAID BOUNDARY LINES ARE SUBJECT TO ANY STATE OF FACTS AN UNDISCOVERED SURVEY MAY REVEAL.  
3. SUBJECTS ARE SUBJECTS OF NEW YORK STATE DEPT. OF ENVIRONMENTAL CONSERVATION, NEW YORK, ALBANY, NEW YORK, DATED NOV. 14, 1988.  
4. EXCEPTING AND RESERVING THE RIGHTS OF THE PUBLIC IN AND TO ANY LANDS 1,000 FEET FROM THE BORDERS OF MANSION STREET (R.F.S. 41 385) AND CATO STREET.

NO.	DATE	REVISIONS	BY
1	05/17/14	REVISED PERMANENT AND SET TO VEHICLE LOT 1 AND REVISIONS LOT 2	ENG



- LEGEND**
- ANGLE POINT
  - IRON PIN (1/2")
  - IRON PIPE WITH CAP (2 1/2")
  - IRON PIPE (1/2")
  - IRON PIPE (1/2")
  - CATCH BASIN
  - MANHOLE
  - GAS VENT
  - MOUNTING WELL
  - HIGHWAY
  - WATER PILE
  - TELEPHONE BOX
  - OVERHEAD UTILITIES
  - TREE 1/2" / FOOT OF 1/4"

<p><b>SANTO ASSOCIATES</b> LAND SURVEYING AND ENGINEERING, P.C.</p> <p>CLIFTON PARK OFFICE 1 Baring Road, Clifton Park, NY 12018 Phone: (518) 352-8878 Fax: (518) 352-8888</p>		<p>SCALE: 1"=40'</p> <p>DATE: 04/28/14</p> <p>DRAWN BY: LUCY</p> <p>CHECKED BY: JPM</p>	<p>DWG NO: 021610</p>
		<p>ONLY COPIES FROM THE ORIGINAL OF THIS DRAWING SHOULD BE USED FOR CONSTRUCTION OF THE PROJECT. ANY CHANGES TO THIS DRAWING SHALL BE CONSIDERED TO BE VOID.</p>	<p>SUBDIVISION OF LANDS PREPARED FOR <b>VILLAGE OF COXSACKIE</b> (AMERICAN VALVE SITE)</p> <p>VILLAGE OF COXSACKIE COUNTY OF GREENE STATE OF NEW YORK</p>