

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violation of Environmental Conservation Law
Article 27, Title 13, and Part 375 of Title 6 of the Official
Compilation of Codes, Rules, and Regulations of the State of
New York by

**ORDER
ON
CONSENT**

Pittsford Canalside Properties, LLC

Index No. R8-20150916-126

Respondents.

WHEREAS:

1. The New York State Department of Environmental Conservation (“Department”) is responsible for inactive hazardous waste site and brownfield site remedial programs pursuant to Article 27, Titles 13 and 14 of the Environmental Conservation Law (“ECL”) and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”) and may issue orders consistent with the authority granted to the Commissioner of the Department by such statute.

2. The Department is responsible for carrying out the policy of the State of New York 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.

3. This consent order (the “Order”) is issued pursuant to the Department’s authority under, *inter alia*, ECL Article 27, Titles 13 and 14 and ECL § 3-0301.

4. 6 NYCRR subpart 375-1 sets forth general requirements that are common to the implementation of various types of remedial programs overseen by the Department, including brownfield site remedial programs. When provisions of Subpart 375-1 are violated, the Department has authority to impose civil penalties pursuant to ECL §71-2705 and to seek injunctive relief pursuant to ECL §71-2727(1) and (3)(a).

5. Pittsford Canalside Properties, LLC is a domestic limited liability company (“Respondent”), located at 301 Exchange Boulevard, Rochester, New York 14608.

6. Respondent has entered into the Brownfield Site Cleanup Agreement, Index # B8-0728-06-08, executed August 14, 2007, relative to property located at 75 Monroe Avenue in the Village and Town of Pittsford, County of Monroe (the “Site”).

7. The Site is identified in Department records as C828137 and referred to as the “Monoco Oil Site”.

8. The Department approved a Change of Use for the installation of permanent storm water management piping at the Site on March 30, 2015 (the "Change of Use"). The Change of Use, *inter alia*, prohibits Respondent from staging or stockpiling soil/fill material generated as part of the off-site excavation activities on the Site without Department approval.

9. On September 16 2015, Respondent notified the Department that petroleum impacted material was excavated from the off-site property and staged on the Site on September 15, 2015.

10. On September 16, 2015, Respondent reported the spill, which was assigned #1506383.

11. Under Section II. E, Paragraph 1 of the Agreement, all Department approved submittals shall be incorporated into and become an enforceable part of the Agreement. The Department may terminate the Agreement at any time in the event Respondent fails to substantially comply with the Agreement's terms and conditions.

12. In addition, by failing to comply with the Change of Use, Respondents violated 6 NYCRR subpart 375-1.11(b)(2) which states that it is a violation to engage in an activity that will, or that is reasonably anticipated to prevent or interfere significantly with any proposed, ongoing, or completed remedial program and/or is reasonably foreseeable to expose the public health or the environment to a significantly increased threat of harm or damage at any site.

13. The aforementioned violation is subject to the sanctions imposed by ECL Article 71, Title 27.

14. Respondents affirmatively waive their right to a hearing in this matter, consent to the issuance of this Order, and agree to be bound by its provisions, terms, and conditions.

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

I. Corrective Measures Plan. Upon Department approval of a Corrective Measures Plan appropriately addressing the above described violation, such Plan shall be incorporated into and become an enforceable part of this Order (the "CMP"). Within seven (7) days of the effective date of this Order or the approval of the CMP, whichever is later, Respondents must implement and comply with the CMP. Nothing contained in the CMP shall be interpreted as a modification of the Change of Use.

II. Civil Penalty. Relative to and in settlement of the violations described above, Respondents are hereby assessed a civil penalty in the amount of thirty thousand dollars (\$30,000) to be paid as follows:

a. Payable Penalty. (1) fifteen thousand dollars (\$15,000) shall be paid when Respondents sign this Order and return it to the Department. Payment must be made by certified check or money order (payable to the Department of Environmental Conservation) and submitted to the Department's Region 8 office located at 6274 East Avon-Lima Road, Avon, New York 14414.

b. Suspended Penalty. The remaining balance of fifteen thousand dollars (\$15,000) shall be suspended and not payable provided that Respondents fully comply with

requirements of this Order, the entire suspended portion of the penalty shall become due and payable upon written notice to Respondents without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondents.

III. Brownfield Cleanup Agreement. The circumstances described above that could lead to termination of the Agreement are resolved by this Order provided Respondents comply with its terms.

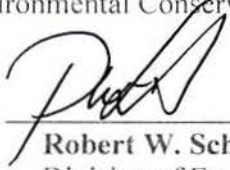
IV. Effect of Payment of Penalty. Assessment and payment of any civil penalty imposed under this Order shall not in any way alter Respondent's obligation to satisfactorily perform any action required by this Order or by any approval issued by the Department under this Order.

V. Effective Period of This Order. The effective date of this Order is the date the Order is signed by a representative of the Commissioner of the Department. The Order will remain in effect until Respondents have fulfilled all of the remedial requirements stated in this Order and paid all penalties assessed hereby.

VI. Standard Provisions. Respondents shall further comply with the standard provisions attached to this Order, which constitute material and integral terms and conditions of this Order and are hereby incorporated into this Order by reference.

Dated: DEC 08 2015

Basil Seggos,
Acting Commissioner
New York State Department of
Environmental Conservation

By: 
Robert W. Schick, Director
Division of Environmental
Remediation

Schedule A

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to the Regional Director of the Region 8 Office located at 6274 East Avon-Lima Road, Avon, New York 14414. Unpaid penalties imposed by this order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this order, any reports, submissions, and notices herein required shall be made to the Regional Director of the Region 8 office of the Department, located at 6274 East Avon-Lima Road, Avon, New York 14414.

Access. For the purpose of monitoring or determining compliance with this order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if Respondent cannot comply with any requirements of the provisions hereof because of an act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of Respondent was not foreseen or a proximate cause, provided, however, that the Respondent shall immediately notify the Department in writing, when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof; Respondent will adopt all reasonable measures to prevent or minimize any delay.

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives, employees, agents and contractors harmless for all claims, suits, actions, damages and costs of every nature and description arising out of resulting from the fulfillment or attempted fulfillment of this order by the Respondent, its employees, servants, agents, successors (including successors in title) and assigns.

Modifications. No change in this order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this order shall be construed as barring, diminishing, adjudicating or in any way affecting any right of the Department to directly perform, to engage others to perform on its behalf, or to direct others including Respondent to perform, any additional measures that are authorized by law to protect human health, safety or the environment, including the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this order, service of a duly executed copy of this order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents. If more than one Respondent is a signatory to this order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the order.