

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----  
In the Matter of Violations  
of Article 17 of the New York State  
Environmental Conservation Law

**MODIFICATION OF  
ORDER ON CONSENT**

- by -

File No. R4-2005-1213-127M1

10 New Karner Road Holdings, LLC  
Respondent

-----  
**WHEREAS:**

1. DEC is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, inter alia, ECL Section 3-0301. In particular, DEC has jurisdiction over the maintenance and enhancement of the purity of the waters of the State pursuant to Article 17 of the New York State Environmental Conservation Law (“ECL”).

2. Respondent is the current owner of Karner Plaza, located at 10 New Karner Road, Guilderland, New York (“site”). Respondent is a “person” as defined in Section 17-0105 of the ECL. Respondent obtained title to the site in or about September, 2007.

3. The Department executed Order on Consent R4-2005-1213-127 (effective date February 16, 2006) with KEM Cleaners, Inc. (“Order”), which contains a Schedule of Compliance.

4. Respondent is the successor in title to the site in accordance with the Binding Effect Provision, Paragraph VIII, in the Order and shall be bound by the provisions of the Order.

5. Respondent has requested a revision to the Order’s Schedule of Compliance to allow for further site investigation and the implementation of appropriate remedial activities at the site. The Department finds good cause for agreeing to this Modification.

6. Respondent has affirmatively waived their right to a hearing in the manner provided by law and has consented to the issuing of this Modification and has agreed to be bound by the terms, provisions, and conditions contained herein.

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

I. Respondent shall comply with the Modification's Schedule of Compliance which is incorporated and made part of the terms, provisions, and conditions of this Modification and which supercedes the Order's Schedule of Compliance.

II. The effective date of this Modification shall be the date it is signed by the Department.

III. All terms, provisions, and conditions of the Order remain in effect unless expressly modified in this Modification.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

Alexander B. Grannis  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4



## SCHEDULE OF COMPLIANCE

1. Within 30 days of the effective date of this Modification, Respondent shall submit to the Department for approval a remedial workplan to implement at the site. The workplan shall include a schedule for field work, reporting and recommendations for investigation/remediation activities at the site. Within 30 days of the Department's notice of approval of the remedial workplan, Respondent shall implement the approved plan.
2. Within 30 days of the effective date of this Modification, Respondent shall submit a Operation, Maintenance and Monitoring Plan for the existing Soil Vapor Extraction (SVE) system.
3. Respondent shall perform quarterly sampling of select monitoring wells utilizing EPA Method 8260 B and continue sampling until at least one year after demonstrating the groundwater at the site meets State groundwater standards in 6NYCRR Part 703.5, or an acceptable alternative as determined by the Department.
4. Respondent shall maintain and operate any approved remediation system and vapor intrusion mitigation system until the Department approves its suspension or termination.
5. Respondent shall submit quarterly reports containing quarterly monitoring well sampling data, system operation and maintenance data, a groundwater contour map, historical groundwater data in tabular form, mass removal calculations, conclusions drawn regarding the effectiveness of the remedial efforts, and recommendations regarding future activities.
6. To the extent that any measures undertaken pursuant to remediation plans require treatment and discharge of waste water to groundwaters or surface waters of New York State, or operation of an air point source, Respondent shall be authorized to undertake such treatment and discharge in accordance with the general conditions attached in Appendix A, and the applicable standards contained in Appendix B, notwithstanding any otherwise applicable requirements.
7. No discharge as part of remediation of this portion of the facility shall exceed the air and water effluent limits listed in Appendix B.

## APPENDIX A

### General Conditions Applicable to All Wastewater Discharges

1. Advance notice shall be given to the Department of any planned changes in the treatment facility or activity which may result in noncompliance with effluent limitations.
2. Any noncompliance which may endanger health or the environment must be reported orally within 24 hours from the time Respondent becomes aware of the circumstances. A written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if it has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent the noncompliance and its recurrence.
3. Bypasses which do not cause a violation of effluent limitations are allowable, but only of essential maintenance, repairs or replacement to assure efficient and proper operation. The Department must be given 5 days advanced written notice of any anticipated bypass. The Department shall be notified within 24 hours of any unanticipated bypass.

Bypass is prohibited, and the Department may take enforcement action, unless:

- the bypass was unavoidable to prevent loss of life, personal injury, public health hazard, or severe property damage;
- there were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities or retention of untreated wastes; and
- required notices were sent to the Department and, with the exception of emergency conditions, were accepted by the Department.

“Bypass” means the intentional or unintentional diversion of wastewater around any portion of a treatment facility for the purpose or effect of reducing the degree of treatment intended to be provided by the bypassed treatment facility.

“Severe property damage” means substantial damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which would not reasonably be expected to occur in the absence of a bypass.