

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Causing, Engaging in or Maintaining a  
Condition or Activity which presents an Imminent Danger  
To the Health or Welfare of the People of New York State or  
Which is Likely to Result in Irreversible or Irreparable  
Damage to Natural Resources of the State by

**SUMMARY  
ABATEMENT  
ORDER AND  
HEARING NOTICE**  
R9-20160809-69

MORGAN MATERIALS INC. (previously known as Morgan Chemicals, Inc.),  
MORGAN CHEMICAL, INC. (aka Morgan Chemical, Inc. and Morgan Chemicals,  
Inc.),  
MORGAN GLOBEX, INC.,  
NORTH SEA MINING & MINERALS, LTD.,  
DONALD SADKIN, AS CHIEF EXECUTIVE OFFICER of MORGAN MATERIALS  
INC., MORGAN CHEMICALS, INC., MORGAN GLOBEX, INC. and NORTH SEA  
MINING & MINERALS, LTD.  
and  
DONALD SADKIN, INDIVIDUALLY,

Respondents.

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WHEREAS:

1. Pursuant to Section 71-0301 of the New York State Environmental Conservation Law ("ECL"), the Commissioner of the Department of Environmental Conservation (the "Department") has the authority to issue, without prior hearing, a summary abatement order, requiring any person to immediately discontinue, abate or alleviate any conditions or activity caused, engaged in or maintained by such person which presents an imminent danger to the health or welfare of the people of the State of New York (the "State") or which is likely to result in irreversible or irreparable damage to natural resources of the State.

2. 6 NYCRR Part 620 provides the procedures for issuance of a summary abatement order and the scheduling of a hearing not to exceed 15 days from the date when the summary abatement order is issued.

3. The Department is an executive department of the State of New York with jurisdiction over the environmental laws and policy of this State, pursuant to ECL 3-0301.

4. I am issuing this summary abatement order to Respondents Morgan Materials Inc., Morgan Chemical (*sic*), Inc., Morgan Globex, Inc., North Sea Mining & Minerals, Ltd., Donald Sadkin as the Chief Executive Officer, and Donald Sadkin, Individually of the above-referenced corporations ("Respondents").

### **BACKGROUND**

5. This summary abatement order incorporates by reference the affidavits, and affirmations with exhibits of the following individuals:

A. Juzer Rasani, Environmental Engineer, with the New York State Department of Environmental Conservation.

B. Peter Reuben, Environmental Chemist, with the New York State Department of Environmental Conservation.

C. Gerard Burke, Section Chief and Environmental Engineer, with the New York State Department of Environmental Conservation.

D. Jennifer Dougherty, Esq., Department Staff Attorney, with the New York State Department of Environmental Conservation.

### **RESPONDENTS and RESPONDENTS' FACILITIES**

6. Respondents are person(s) as defined in ECL 1-0303(18), 6 NYCRR 360-1.2(b)(117) and 6 NYCRR 370.2(b)(141). Pursuant to ECL 1-0303(18), 6 NYCRR 360-1.2(b)(117) and 6 NYCRR 370.2(b)(141), a "person" is any individual, public or private corporation, political subdivision, government agency, authority, department or bureau of the State, municipality, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.

7. Respondent Morgan Materials Inc. ("Morgan Materials"), is a New York State Domestic Business Corporation, authorized to do business in the State of New York, which is engaged in the business and/or commercial operations, which consists of the purchasing, processing, sale and/or resale of chemical substances and chemical materials.

8. Upon information and belief, Respondent Morgan Globex, Inc., is a New York State Domestic Business Corporation authorized to do business in the State of



New York, which is engaged in the business and/or commercial operations consisting of the purchasing, processing, sale and/or resale of chemical substances and chemical materials.

9. Respondent Morgan Chemical, Inc., is a New York State Domestic Business Corporation, authorized to do business in the State of New York, which is engaged in the business and/or commercial operations consisting of the purchasing, processing, sale and/or resale of chemical substances and chemical materials.

10. Respondents Morgan Materials Inc., Morgan Globex, Inc., Morgan Chemical, Inc., Donald Sadkin as Chief Executive Officer of Morgan Materials Inc., Morgan Chemicals, Inc., Morgan Globex, Inc., and Donald Sadkin individually (hereinafter "Operating Respondents,") currently operate and store solid and hazardous waste, chemicals and materials at various locations.

11. Operating Respondents conduct business activities at the street address of 380 Vulcan Street, Tonawanda, New York. This street address consists of various buildings located on four separate tax parcels including 380 Vulcan, 400 Vulcan, 408 Vulcan and 416 Vulcan Street, Tonawanda, New York (collectively the "Facility" for the purposes of this Order).

12. Respondent North Sea Mining & Minerals, Ltd. is a Domestic Business Corporation authorized to do business in the State of New York that owns the real property at 380 and 416 Vulcan Street where Operating Respondents operate.

13. Respondent Morgan Materials Inc. owns the real property at 408 Vulcan Street where Operating Respondents operate.

14. Respondent Donald Sadkin is the Chief Executive Officer of Morgan Materials Inc., Morgan Globex, Inc., Morgan Chemical, Inc. and North Sea Mining & Minerals, Ltd..

15. Upon information and belief, Respondent Donald Sadkin is the sole shareholder of Morgan Materials Inc., Morgan Globex, Inc., Morgan Chemical, Inc. and North Sea Mining & Minerals, Ltd..

16. Collectively, the Respondents have accumulated an estimated eighteen (18) million pounds of chemicals, which includes a substantial quantity of hazardous and non-hazardous waste at the Facility. This waste includes approximately 2,000 drums as well as additional larger bulk containers filled with flammable material.

17. Respondents' approximately 2,000 drums and additional containers of flammable materials and other chemicals and waste at the Facility, as presently stored,

presents an imminent danger to the health or welfare of the People of the State and is likely to result in irreversible or irreparable damage to the natural resources of the State.<sup>1</sup>

18. Respondents failed to make waste determinations on many of these containers, which included flammables as well as other waste. Respondents also failed to properly manage and dispose of the waste from the Facility. In some instances, these failures have gone on for in excess of a decade.

19. Respondents improperly stored many drums of flammable waste outside in the elements for years, causing the drums and containers to deteriorate. Instead of properly disposing of the waste, Respondents took some of the deteriorating drums of flammable waste inside buildings at the Facility, where they are still being stored without secondary containment or fire suppression. The rest of the deteriorating drums remain outside of the buildings, exposed to the elements without meeting proper storage or secondary containment requirements.

20. As set forth in the affidavits of Peter Reuben and Juzer Rasani, even when Respondents did make waste determinations, they failed to properly handle, manage, test and dispose of the waste in violation of numerous provisions of the ECL.

#### **RESPONDENT DONALD SADKIN'S PERSONAL ACTIVITIES**

21. Under Donald Sadkin's personal oversight and on three separate occasions, entities for which Donald Sadkin was the sole shareholder and Chief Executive Officer, amassed millions of pounds of hazardous and non-hazardous materials and waste handled in violation of the ECL. On two prior occasions in the late 1990s, the United States Environmental Protection Agency ("EPA") was required to do an emergency removal action to address the hazardous conditions created by Donald Sadkin. See Reuben Affidavit.

22. A Consent Order, with an effective date of January 31, 2005 ("2005 Consent Order"), between Morgan Materials Inc. and the Department, was signed by Donald Sadkin as President of Morgan Materials Inc. Under this Consent Order, Morgan Materials Inc. was required to institute best management practices and create a management system plan.

23. The Management System Plan was designed by Morgan Materials Inc. in 2005 ("2005 MSP") pursuant to the 2005 Consent Order and it sets out the best management practices for the Facility.

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<sup>1</sup> ECL § 71-0301 requires either the presence of an imminent danger to the health or welfare of the People of New York State or the likelihood of irreversible or irreparable damage to the natural resources of the State. In this case, the record proves that both conditions exist.



24. The 2005 MSP requires that, "Morgan Materials will not accept a new material for purchase...unless a known market exists as determined by the President of Morgan Materials (Donald Sadkin)."

25. On information and belief, all purchasing decisions for materials by Respondent Morgan Materials are made by Donald Sadkin.

26. The 2005 MSP requires that the President, Donald Sadkin, perform an annual check of the purchase date of all material in the inventory.

27. The 2005 MSP continues, "If the President determines that these materials will not likely be sold within the 12-month timeframe for hazardous materials or the 18-month timeframe for non-hazardous materials, he will notify NYSDEC in writing."

28. The 2005 MSP makes it clear that Donald Sadkin, individually, makes the decisions for the Respondents.

29. Donald Sadkin has failed to comply with the conditions set forth in the 2005 MSP and has been completely derelict in his personal duty to complete annual checks and make waste determinations as evidence by the fact that in 2015 (10 years after the 2005 MSP) he supplied information to the Department showing that he has had material at the Facility for over 20 years without notifying the Department as required by the 2005 MSP.

30. Respondents' subsequent monthly reports and related inventories are wildly inaccurate. See Reuben Affidavit. This means that neither Respondents nor the Department are aware of what chemicals, materials or waste are located at the Facility, or how long they have been there.

31. In fact, when Department Staff visited the Facility on December 3, 2015, on-site representatives were unable to locate 5.5 million pounds of waste that just 3 days before had been identified in an inventory submitted to the Department, which was prepared by Donald Sadkin. See Reuben Affidavit.

32. On July 26, 2016, Peter Reuben asked to see the 156,291 lbs. of ink/varnish that the Respondents listed in the July 15, 2016 Monthly Report. No one at the Facility was able to locate any of the 156,291 lbs or approximately seventy-eight (78) tons of ink/varnish identified in the July 15, 2016 Monthly Report.

33. The monthly report submissions, which included inventory records, to the Department, rather than constituting factual records, were likely made for the sole purpose of attempting to show that Respondents were in compliance with the ECL and the 2005 Consent Order, when they were not.

34. These submissions are the responsibility of all of the Respondents, including the individual responsibility of Donald Sadkin, who individually, or through his representatives, submitted either false or inaccurate documents to the Department for the purposes of proving compliance with the ECL and the 2005 Consent Order.

35. Donald Sadkin, individually, instead of properly disposing of waste as required by law, utilized those funds for purchase of additional chemicals, despite Respondents' continued illegal storage of hazardous waste at the Facility.

36. In addition, based on financial information provided by Respondents, Donald Sadkin has borrowed over \$400,000 dollars from Morgan Materials Inc., leaving Morgan Materials Inc. without those funds for utilization for compliance activities.

#### **CONDITION OF THE FACILITIES**

37. Operating Respondents purchased off-specification chemicals and raw materials from various entities over several decades. Operating Respondents then failed to timely sell these off-specification chemicals and raw materials, or dispose of them after they had become waste.

38. Operating Respondents are currently storing an estimated eighteen (18) million pounds of chemicals and waste, including hazardous waste. The majority of these chemicals and waste are at the Facility. The chemicals and waste at the Facility present an imminent danger to the health or welfare of the people of the State and are likely to result in irreversible or irreparable damage to natural resources of the State.

39. The inventory records that Respondents have submitted to the Department document that some of the chemicals and hazardous waste have been stored at the Facility in excess of 20 years. See Reuben Affidavit.

40. Based on a request by Department Staff for an inventory, which included documentation of Respondents' marketable material, specific markets for the material, and waste determinations, Respondents submitted the November 30, 2015 Monthly Report which designated numerous items as "no good," or "hard." These items are considered waste under ECL Article 27, including Title 9 and 6 NYCRR Parts 370-374. See Reuben Affidavit.



41. Despite this designation of “no good” and “hard” items, Respondents failed to handle, manage or dispose of this waste as required by the law, exacerbating the dangerous conditions present at the Facility.

42. Operating Respondents have admitted that they are storing chemicals and waste together at their Facility without evaluating the compatibility to other chemicals and waste stored in the same area. In addition, Respondents have admitted they are storing flammable chemicals without adequate fire suppression. See Rasani Affidavit.

43. Storing incompatible chemicals together creates a risk of chemical reactions, including fire, explosion, a release to the environment, or potentially a release of a noxious gas that could require a substantial evacuation of the area. See Rasani Affidavit.

44. Chemicals and waste are stored in unlabeled drums, resulting in an increased potential that incompatible chemicals and waste are stored together. See Rasani Affidavit.

45. Respondents are storing and stacking waste and chemicals in an unstable and hazardous manner. Many drums and containers have leaked or are leaking. Many of the drums and other containers are in very poor condition. This substantially increases the potential for spills and chemical reactions including fires and explosions. See Rasani Affidavit.

46. Based on the July 26, 2016 inspection, Juzer Rasani determined that the Facility is an illegal treatment, storage and disposal facility (“TSDF”), which by its illegal operations, has and is creating an imminent danger to the health or welfare of the people of the State and which is likely to result in irreversible or irreparable damage to natural resources of the State. See Rasani Affidavit.

47. Respondents’ failure to comply with regulatory requirements including the improper storage and gross mismanagement of the chemicals and waste at the Facility creates a condition that will require extreme measures to rectify. These extreme measures include securing the site, separation and characterization of each container/drum, secondary containment and proper disposal of all waste material. See Burke Affidavit.

## **VIOLATIONS**

48. As set forth in the affidavit of Juzer Rasani, violations identified in his affidavit include:

- a. 6 NYCRR Part 372.2(a)(2) – Failure to make a determination as to whether or not solid waste is a hazardous waste.
- b. 6 NYCRR Part 373-3.3(f) – Failure to have an aisle space in the storage area.
- c. 6 NYCRR Part 373-3.9(g)(3) – Failure to separate containers of incompatible waste.
- d. 6 NYCRR Part 373-1.1(d)(1)(iv)(f)/373-2.9(f)(1)(i) – Failure to provide secondary containment for the storage areas.
- e. 6 NYCRR Part 373-3.2(h)(1) – Failure to place no “No Smoking” signs wherever there is hazardous from ignitable or reactive waste.
- f. 6 NYCRR Part 373-3.3(c)(1) – Failure to have an internal communication or alarm system capable of providing immediate emergency instruction ( voice or signal) to facility personnel.
- g. 6 NYCRR Part 373-3.3(c)(2) – Failure to have device such as telephone or a hand-held, two way radio capable of summoning emergency assistance from local police departments, fire departments or emergency response team
- h. 6 NYCRR Part 372.2(a)(8)(ii) – Failure to ship hazardous waste off-site within 90 days without obtaining Part 373 permit.
- i. 6 NYCRR Part 372.2(a)(8)(ii)/373-1.1(d)(1)(ii)(c)(2) – No accumulation date on containers in the hazardous waste storage area.
- j. 6 NYCRR Part 373-3.9(b) – Containers are not in good condition.
- k. 6 NYCRR Part 373-3.9(d)(1) – Failure to close the containers in the hazardous waste storage area.
- l. 6 NYCRR Part 373-3.9(d)(3) – Failure to have a hazardous waste label on containers.
- m. 6 NYCRR Part 373-3.9(e) – Failure to inspect hazardous waste storage area weekly.
- n. 6 NYCRR Part 373-3.2(g) – Failure to have a Personnel Training program.
- o. 6 NYCRR Part 373-3.3(b) - Failure to maintain and operate the facility to minimize the possibility of a fire or explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.
- p. 6 NYCRR Part 373-3.4 – Failure to have a contingency plan.
- q. 6 NYCRR Part 373-3.4(g) – Failure to activate emergency procedures immediately.
- r. 6 NYCRR Part 376.1(g)(1)(viii) – Failure to have Land Disposal Notices.
- s. 6 NYCRR Part 374-3.2(e)(1) – Failure to mark batteries as “Universal Waste Batteries” or “Used Batteries”.
- t. 6 NYCRR Part 374-3.2(d)(1)(i) – Failure to store universal waste batteries in container.



- u. In addition Respondents have failed to report the multiple spills that were clearly present and failed to timely address and remediate the spills.

As described in detail above, the hazardous waste at the Facility is not labeled and is not stored in compliance with the law. Mr. Rasani is "certain that a full inspection would identify a significant number of additional violations." See Rasani Affidavit.

### **RESPONDENTS CLAIM THEY ARE HAVING ECONOMIC ISSUES**

49. In a narrative attached to the June 15, 2016 Monthly Report submitted to the Department, Respondents' representative stated that "[r]ight now we are struggling to stay afloat amid this long-term downturn in worldwide trade and manufacturing." See Rueben Affidavit.

50. Respondents' representative also stated that their "ability to dispose of hazardous materials is hamstrung as a result of their financial situation and smaller work force." See Rueben Affidavit.

51. A report from Morgan Materials, Inc. also states "cash flow is at dire levels which is severely limiting our ability to operate, let alone assign manpower to take inventory and take care of tasks which the DEC (and OSHA) is requiring of us." See Rueben Affidavit.

52. Respondents have laid off the majority of their workforce. See Reuben Affidavit.

53. On August 16, 2016 and August 23, 2016, Respondents and Respondents' representatives met with Department Staff, including attorneys from the Office of General Counsel, to discuss the unmitigated dangerous conditions at the Facility. See Rasani Affidavit.

54. On September 18, 2016, Respondents notified the Department that an investor group might be interested in taking over their operations and bringing the facility into full compliance. After full review of the Facility by the investor group, the investor group notified the Department on October 6, 2016 that they would not be investing in the Facility.

55. Between August 23, 2016 and October 6, 2016, Respondents and Dow Chemical reached an agreement to allow Dow to remove as waste, materials that it had previously sold to Respondents as product that were still at the Facility many years after it was sold to the Respondents.

56. In addition, between September 18, 2016, and October 6, 2016, Respondents, MPM and Hexion reached an agreement, which is attached to the affidavit of Juzer Rasani as exhibit 6. This agreement requires that MPM and Hexion pay for the removal as waste, of materials that they had previously sold to Respondents that are still at the Facility. Under the agreement, Respondent Morgan Materials, Inc. must "undertake the segregation and staging of the former MPM and Hexion material and assist Clean Harbors Inc. in placing the materials on trucks."

57. Based on the meetings with Respondents and the review by the investor group, it is clear that Respondents are either unable or are refusing to bring the Facility into compliance.

58. Respondents reneged on their agreement with MPM and Hexion causing a delay in the removal of an excess of 1,500 drums of flammable waste. See Dougherty Affirmation.

59. Respondents have refused to enter into a consent order and alleviate the conditions, therefore necessitating the issuance of this Summary Abatement Order to bring the Facility into compliance.

**THE CONDITIONS AT THE FACILITY AS SET FORTH HEREIN WARRANTS THE  
ISSUANCE OF THIS SUMMARY ABATEMENT ORDER**

60. As described herein, Department Staff has identified numerous significant violations of the ECL and the regulations at 6 NYCRR 360, 370-374 and 376.

61. For the reasons set forth herein, and supporting Affidavits and Affirmation, the conditions at the Facility, which the Respondents created, give rise to the potential for additional spills, chemical reactions, fire and/or explosions.

62. Firefighting activities to combat a fire, explosion or other accident at the Facility would generate a large amount of fire suppression water, and chemical run-off that would enter the ground, groundwater or the storm sewers and wash directly into the Niagara River that would create irreversible and irreparable damage to the natural resources of the State. See Reuben Affidavit.

63. Department Staffs' concerns about the risks at the Facility are increased by the findings in the report issued by Mark Mallick, Deputy Chief, Office of Fire Prevention, DHSES, which is attached to Peter Reuben's Affidavit. In his report, Mr. Mallick identifies the following substantial concerns;

- a. A substantial lack of timely fire response is available in case of a fire;



- b. Access around the building is limited and obstructed;
- c. Potential for contamination from firefighting water is great;
- d. Older buildings have no fire suppression systems and there are limited fire alarms, with no way to detect smoke, heat or flame in many of the buildings;
- e. Flammable liquids are stored in close proximity to a natural gas furnace; and
- f. The greatest threat, at the present time, is the unknown materials and quantities of those materials that are improperly stored in close proximity to each other.

64. The risks from the Facility are substantially increased by the collapsing of a portion of the roof at the end of last winter, and the potential for further roof collapse. The structural integrity of the roof, the lack of fire suppression, as well as the improper storage of chemicals within the Facility are also identified as significant issues in the violations issued by the Town of Tonawanda to Respondents, which are attached to Peter Reuben's Affidavit.

65. The Respondents have refused to bring the Facility into compliance. More specifically, Respondents have failed to dispose of the solid and hazardous waste currently located at the Facility and to mitigate the imminent danger the Facility is creating to the health or welfare of the people of the State. Respondents failures have or will likely result in irreversible and irreparable harm to the natural resources of the State. See Reuben Affidavit.

66. Additionally, the location of this Facility within close proximity to a residential neighborhood and two schools creates an even greater risk to the health or welfare of the people of the State because of the large number of people that would likely be impacted if there were a spill, fire or other catastrophic event at the Facility. See Rasani Affidavit.

67. Based on the conditions present and Respondents' refusal to provide appropriate security for the Facility, the Department has provided temporary security measures which are in place to secure the site 24 hours a day, 7 days a week. See Reuben Affidavit and Rasani Affidavit.

68. The circumstances and conditions described in this Summary Abatement Order prove that to delay action required under this summary abatement order until an opportunity for a hearing can be provided will be prejudicial to the people of the State. Such a delay will greatly increase the possibility of a fire, explosion or spill occurring at the Facility prior to a removal action. The consequences of the activities by the Respondents in this matter are addressable pursuant to the prevention and abatement powers granted to me by the ECL Section 71-0301.

**NOW, THEREFORE, I HEREBY ORDER THAT:**

- I. Respondents shall **immediately** cease purchasing, receiving or acquiring any chemicals or materials at the Facility. Respondents will conduct no further business or activities of any kind at the Facility pertaining to the handling, processing, and storage of any chemicals, materials or waste, except for activities required by this summary abatement order, until all compliance activities required by this summary abatement order are complete and until such time that Respondents document and certify to the Department's satisfaction that the Facility is in compliance with all applicable ECL provisions and applicable regulatory requirements.
- II. Respondents shall **immediately** secure the Facility and retain 24-hour surveillance and security services.
- III. Respondents shall **immediately** continue to cooperate with Dow Chemical in their removal activities at the Facility.
- IV. Respondents shall **immediately** commence and timely complete compliance with the agreement between Respondent Morgan Materials Inc., MPM and Hexion.
- V. Respondents shall **immediately** cooperate with any and all third party suppliers or product and wastes, which seek to voluntarily remove of wastes and products that they originally supplied.
- VI. Within 60 days of the effective date of this summary abatement order, Respondents shall install approved fire suppression and other appropriate safety related measures, as necessary.
- VII. Within 7 days of the effective date of this summary abatement order, Respondents shall provide a complete list of all storage locations where any of the Respondents store any waste, materials or chemicals.
- VIII. Respondents shall provide to the EPA, the Department and the Department of Health complete access to the Facility, and appropriate records to perform inspections and oversight of required work under this Summary Abatement Order.
- IX. Department Staff is hereby directed to take any and all appropriate actions to address the conditions at this Facility that have caused the issuance of this summary abatement order. If Respondents fail to immediately comply with the requirement of this summary abatement order, the Department is directed to ensure that security measures are maintained for the site until Department Staff



determines security is no longer necessary. Other actions shall include the initiation of appropriate emergency removal actions to be conducted by either the Department and/or its contractors or the EPA and/or its contractors.

- X. In the event either the Department or the EPA incurs any costs or expenses associated with this summary abatement order, the Department staff is further directed to take all necessary steps to recover such costs and expenses from Respondents, including but not limited to proceeding against Respondents as well as any other responsible parties under statutory and common law.
- XI. Based on the affidavits submitted, it is well documented that any removal action will require the removal of waste and other chemicals, which Respondents may try to argue, is saleable. However, given the nature and extent of the emergency situation that Respondents have caused, it is likely that the vast majority of chemicals within this Facility may have to be properly disposed of in order to deal with the emergency created by Respondents. If Respondents wanted to avoid the disposal of chemicals that they view as being saleable, they were provided that opportunity by Department Staff pursuant to a Consent Order to bring the Facility into compliance and alleviate the conditions described in this summary abatement order. The Respondents have refused to do so therefore necessitating the need for this summary abatement order and the removal actions described herein.

#### **NOTICE OF RIGHT TO A HEARING WITHIN FIFTEEN DAYS**

1. Take further notice that pursuant to the provisions of ECL § 71-0301 and 6 NYCRR 620.3, Respondents shall have the opportunity to be heard, and to present proof that the conditions set forth above do not exist, or that they do not present imminent danger to the health or welfare of the people of the State of New York.

2. **The Department will hold a hearing at:**  
270 Michigan Ave, Room 304  
Buffalo, New York 14203

**November 30 2016 at 1:00 PM**

3. **RESPONDENTS MAY POSTPONE OR WAIVE THIS HEARING by addressing their request for waiver in writing by U.S. mail or electronic mail to:**

**Jennifer Dougherty  
Assistant Regional Attorney  
New York State Department to Environmental Conservation  
Office of General Counsel – Region 9  
270 Michigan Avenue**

**Buffalo, New York 14203**

**or**

**jennifer.dougherty@dec.ny.gov**

4. TAKE FURTHER NOTICE that, should Respondents request a hearing and then fail to appear, such failure will result in a default and waiver of Respondents' right to a hearing.

5. TAKE FURTHER NOTICE that, Respondents may appear at the hearing, in person or by a representative, with or without counsel, and may introduce witnesses and relevant evidence on their behalf. All witnesses at the hearing shall testify under oath and be subject to cross-examination. A written record of the proceedings shall be made and this hearing shall be conducted in accordance with the provisions of 6 NYCRR Parts 620 and 622.

6. TAKE FURTHER NOTICE that, all communications to the Department pertaining to this summary abatement order shall be addressed to the attorney for Department staff:

Jennifer Dougherty  
Assistant Regional Attorney  
New York State Department of Environmental Conservation  
Office of General Counsel – Region 9  
270 Michigan Avenue  
Buffalo, New York 14203

7. TAKE NOTICE that in the event of Respondents' failure to initiate and diligently pursue compliance with the terms of this summary abatement order, Respondents shall be subject to the sanctions provided in Article 71 of the ECL and the Department will proceed further to enforce this summary abatement order.

8. TAKE FURTHER NOTICE, failure to address the requirements of this summary abatement order, shall be deemed an abandonment of the Facility and the waste contained therein.

9. The effective date of this summary abatement order shall be the date that a fully executed copy of this order is served upon Respondents in accordance with ECL § 71-0301 and 6 NYCRR 620.2(b).

10. TAKE NOTICE, if Respondents fail to comply with the terms of this summary abatement order, the Department or the EPA, or their agents, may cause the



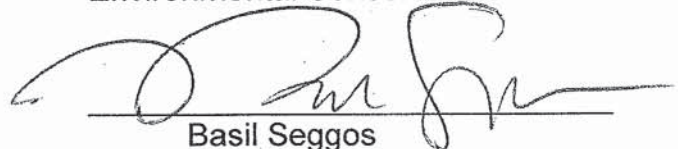
removal of the waste material from the site, using any available funds. Respondents shall be responsible for all costs incurred by the Department or EPA. Respondent shall fully cooperate with the Department or EPA, provide all necessary access, and refrain from any activities that interfere with the Department, EPA, their employees, contractors, or agents in the event that the Department or EPA should take over removal of waste at the facility.

11. Nothing contained in this summary abatement order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any further summary abatement powers) or authorities with respect to any party, including Respondents. The Department specifically reserves the right to address all non-compliance at the facility with respect to any solid and hazardous waste remaining at the facility following compliance with this summary abatement order.

12. The provisions, terms and conditions of this order shall bind Respondents, its agents, servants and employees and all person, firms and corporations acting under or for them.

DATED: November 17, 2016  
Albany, New York

New York State Department of  
Environmental Conservation

A handwritten signature in black ink, appearing to read 'Basil Seggos', is written over a horizontal line.

Basil Seggos  
Commissioner

