

SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY

PEOPLE OF THE STATE OF NEW YORK, SEAN MAHAR, Interim Commissioner of the New York State Department of Environmental Conservation, and the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CONSENT JUDGMENT


Index No. 717005/2022

Hon. Karina E. Alomar

Plaintiffs,

v.

LSM AUTO PARTS & RECYCLING INC.; LIBERTY SCRAP METAL INC.; BGN REAL ESTATE LLC; and THREE SONS REAL ESTATE GROUP LLC,

FILED & RECORDED
6/28/2024
3:24 p.m.
COUNTY CLERK
QUEENS COUNTY 

Defendants.

WHEREAS plaintiffs commenced this action on August 15, 2022 by filing a Summons and Verified Complaint (the “Complaint,” Dkt. 1). Plaintiffs duly served the Complaint on August 16, 2022 on each of the defendants (Dkt. 4-7).

WHEREAS the Complaint seeks relief that includes payment of civil penalties to the New York State Department of Environmental Conservation (“DEC”), and injunctive relief requiring that defendants (1) investigate and remediate subsurface contamination at 155-11 Liberty Avenue in Jamaica, New York, also known as 95-49 Tuckerton Street (the “Salvage Yard”) under DEC oversight, and (2) remove all petroleum bulk storage tanks at the Salvage Yard, or properly register such tanks with DEC.

WHEREAS the first cause of action in the Complaint seeks judgment: (1) finding defendants liable for violating the Oil Spill Law, codified at Navigation Law

§§ 173, 175 and 176(1)) and DEC implementing regulations at 17 NYCRR §§ 32.3 and 32.5; (2) enjoining defendants, jointly and severally, to (a) submit to DEC, within 60 days of service of the judgment, a work plan that (i) details the methodologies for investigating and remediating a series of petroleum spills at the Salvage Yard documented as open and unremediated in DEC's spills database (the "Spills"), (ii) includes a schedule of compliance with milestone dates for completing the investigatory phase and then Salvage Yard remediation, and (iii) includes submission of a final report documenting completion of Spill remediation in accordance with the approved work plan, and (b) after approval of the work plan by DEC, implement the work plan in accordance with the schedule in the approved plan; and (3) assessing a penalty against them, jointly and severally in the amount of up to \$25,000 per day for prior and ongoing violations of the Navigation Law and DEC regulations associated with each of the Spills, plus interest and other charges under applicable law.

WHEREAS the second cause of action seeks judgment: (1) finding defendants liable for violating the Vehicle Dismantling Law, codified at Environmental Conservation Law (ECL) § 27-2303 and DEC implementing regulations at 6 NYCRR §§ 360-13.1, 360.19(k)(3), 361-7.5(b), 371.1, and 372-2 in connection with improper handling of hazardous and toxic automobile fluids, including engine oil, transmission fluid, transaxle fluid, front and rear axle fluid, brake fluid, power steering fluid, antifreeze/coolant, and fuel, most commonly gasoline ("Automobile Fluids"); (2) enjoining defendants, jointly and severally to (a)

immediately cease discharging or otherwise releasing Automobile Fluids onto the ground or into the waters of the State, or into a drain or storm sewer; (b) immediately cease dismantling automobiles or other motor vehicles without employing measures to capture and contain all Automobile Fluids removed or discharged from all components of the vehicles; and (c) within 60 days of service of the judgment, submit to DEC the required annual reports under ECL § 27-2303(1) and 6 NYCRR §§ 360.19(k)(3), 361-7.5(b) for calendar years 2019, 2020 and 2021 on the appropriate DEC form; and (3) assessing a civil penalty of up to \$1,000 per day for each violation for as long as it continues or continued.

WHEREAS the third cause of action in the Complaint seeks judgment: (1) finding defendants liable, jointly and severally, for violating DEC's petroleum bulk storage regulations codified at 6 NYCRR §§ 613-1.9, 613.3, 613-4.1, 613-4.2, and 613-4.3; (2) enjoining defendants, jointly and severally, within 60 days of service of the judgment, to (a) remove or register all petroleum bulk storage tanks at the Salvage Yard, (b) properly register any new tanks with DEC, and (c) submit evidence of corrective action to DEC Region 2's Bulk Storage Unit; and (3) assessing civil penalties for each petroleum bulk storage violation of up to \$37,500 per day.

WHEREAS defendants filed a Verified Answer on October 20, 2022 (Dkt. 11).

WHEREAS the parties have engaged in settlement discussions regarding a consent judgment that would resolve plaintiffs' claims through defendants' implementation of a subsurface investigation followed by appropriate remedial

actions, as approved by DEC, at the Salvage Yard, and payment of monetary penalties.

WHEREAS defendants retained Galli Engineering, P.C. (“Galli”) to perform a subsurface investigation of contamination at the Salvage Yard under DEC oversight and to advise defendants on removal or proper registration of petroleum bulk storage tanks and removal of an automobile scale at the Salvage Yard.

WHEREAS on December 22, 2022, DEC approved an initial remedial investigation work plan submitted to DEC by Galli, and Galli submitted an initial Sampling Report to DEC in April 2023.

WHEREAS on August 2, 2023, Galli informed DEC that defendants had authorized Galli to oversee proper removal of a 1,500 gallon above-ground storage tank (the “Aboveground Storage Tank”) and an automobile scale (the “Scale”) from the Salvage Yard.

WHEREAS following additional communications with DEC Galli submitted a supplemental remedial investigation work plan to DEC on August 21, 2023, which DEC approved on August 25, 2023 (annexed hereto as Exhibit A);

WHEREAS on October 20, 2023, the parties submitted an Interim Stipulation (Dkt. 12) which, among other things, set December 5, 2023 as the target date for Galli’s submission of the Supplemental Remedial Investigation Report to DEC and stayed discovery through January 31, 2024, and plaintiffs submitted a Request for Judicial Intervention to request that the Court so-order the Interim Stipulation;

WHEREAS on December 11, 2023, the parties submitted a Revised Interim Stipulation and Order (Dkt. 17) which, among other things, set March 4, 2024 as the extended target date for Galli's submission of the Supplemental Remedial Investigation Report to DEC and stayed discovery through March 29, 2024, and whereas the Court (Alomar, J.) so-ordered that Revised Interim Stipulation on December 12, 2023 (Dkt. 20).

WHEREAS Galli provided three interim progress reports to DEC required under the Revised Interim Stipulation and Order, on December 22, 2023, January 22, 2024, and February 22, 2024.

WHEREAS DEC confirmed on January 24, 2024 that the Aboveground Storage Tank had been removed.

WHEREAS DEC communicated to Galli on March 4, 2024 that defendants needed to immediately implement interim remedial measures to address free petroleum product documented by Galli at the Site, pending agreement on a final remedial plan, and on March 11, 2024 DEC communicated the need for an investigation of potential soil vapor intrusion affecting the indoor air of the building at the Site.

WHEREAS on April 15, 2024, the parties filed a stipulation amending the case caption to reflect the substitution of Sean Mahar as Interim Commissioner of DEC effective April 15, 2024, in place of former DEC Commissioner Basil Seggos (Dkt. 25).

WHEREAS on June 12, 2024, Galli submitted to DEC the Supplemental Remedial Investigation Report and a proposed work plan for interim remedial measures to address free petroleum product at the Salvage Yard.

WHEREAS on June 12, 2024, a proposed work plan for investigating soil vapor intrusion at the Site was submitted to DEC.

WHEREAS plaintiffs and defendants wish to resolve this matter according to the following terms, without further litigation, and plaintiffs and the State of New York have concluded that entry of this Consent Judgment is in the public interest.

WHEREAS defendants have ceased vehicle dismantling operations at the Salvage Yard and do not intend to resume vehicle dismantling operations at the Salvage Yard.

WHEREAS defendants waive any jurisdictional defenses and consent to the jurisdiction of this Court for the purposes of entering and enforcing this Consent Judgment.

IT IS HEREBY STIPULATED, ORDERED, AND DECREED, as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to provisions of the New York State Oil Spill Act (Navigation Law Article 12, particularly §§ 173, 176, 192, 193 and 200(1)) and ECL §§ 71-1929(3), 71-1931, and 71-2727(2), as well as Judiciary Law § 140-b. Defendants waive all objections

and defenses they may have to the jurisdiction of the Court or to venue in this County. The Court shall have continuing jurisdiction to enforce the terms of this Consent Judgment and to resolve any disputes that may arise hereunder.

II. APPLICABILITY

2. The obligations of this Consent Judgment apply to and are binding upon plaintiffs and defendants, and their respective agents, heirs, successors, and assigns.

3. No transfer of ownership of the Site (defined in Section III below) or any portion thereof shall relieve defendants of their obligations to ensure that the terms of the Consent Judgment are implemented.

III. DEFINITIONS

4. Whenever the terms set forth below are used in this Consent Judgment, the following definitions shall apply:

- a. "DEC" shall mean the New York State Department of Environmental Conservation.
- b. "DEC-Approved Supplemental Remedial Investigation Work Plan" shall mean the plan appended to this Consent Judgment as Exhibit A.
- c. "Site" or "Salvage Yard" shall mean 155-11 Liberty Avenue in Jamaica, New York 11433 also known as 95-49 Tuckerton Street 11433, designated as Queens County Tax Block 10108, Lots 312, 314 and 319.
- d. "Defendants" or "defendants" shall mean LSM Auto Parts & Recycling Inc.; Liberty Scrap Metal Inc.; BGN Real Estate LLC; and Three Sons

Real Estate Group LLC.

IV. DEC REVIEW OF PROPOSED INTERIM REMEDIAL MEASURES AND SOIL VAPOR INTRUSION INVESTIGATION PROPOSAL

5. Defendants have submitted to DEC a proposed work plan for Interim Remedial Measures to address free petroleum product at the Site (“IRM Work Plan”). DEC shall provide written notification either that it approves the IRM Work Plan, or that DEC finds it deficient and declines to approve it. Should DEC find the IRM Work Plan deficient and decline to approve it, DEC shall provide a written explanation of the basis or bases for its disapproval. Defendants shall submit to DEC a revised IRM Work Plan addressing DEC’s grounds for disapproval within 14 days of DEC’s disapproval. If DEC concludes that the re-submitted IRM Work Plan is still not approvable, defendants shall continue to revise the proposed Plan as directed by DEC to make it approvable. However, defendants shall be in violation of the requirement to submit an approvable IRM Work Plan as of the 14th day to re-submit.

6. Defendants have submitted to DEC a proposed work plan for a soil vapor intrusion investigation (“SVI Investigation Work Plan”) at the Site. DEC shall provide written notification either that it approves the SVI Investigation Work Plan, or that DEC finds it deficient and declines to approve it. Should DEC find the SVI Investigation Work Plan deficient and decline to approve it, DEC shall provide a written explanation of the basis or bases for its disapproval. Defendants shall submit to DEC a revised SVI Investigation Work Plan addressing DEC’s grounds for disapproval within 14 days of DEC’s disapproval. If DEC concludes that the re-

submitted SVI Investigation Work Plan is still not approvable, defendants shall continue to revise the Plan as directed by DEC to make it approvable. However, defendants shall be in violation of the requirement to submit an approvable revised SVI Investigation Work Plan as of the 14th day to re-submit.

V. DEFENDANTS' REGISTRATION OF THE REMOVED ABOVEGROUND STORAGE TANK, REMEDIATION OF THE SCALE, AND IMPLEMENTATION OF INTERIM REMEDIAL MEASURES AND SOIL VAPOR INTRUSION INVESTIGATION

7. Defendants shall remediate the Scale in accordance with the DEC-approved Remedial Action Work Plan (as discussed below) and submit proof to DEC that the Scale has been remediated in the Remedial Action Report (as discussed below). Defendants shall submit to DEC signed and completed registration documents for the Aboveground Storage Tank removed from the Salvage Yard in accordance with 6 NYCRR § 613-1.9 within 30 days of the Effective Date (as defined in paragraph 42 below) by mail to the following address:

Attn: PBS Registration
NYSDEC
Division of Environmental Remediation
625 Broadway
Albany, NY 12233

8. Defendants shall implement the Interim Remedial Measures that address free petroleum product at the Site within 14 days of DEC's approval of an IRM Work Plan, or by July 15, 2024, whichever is later.

9. Within 45 days of DEC's approval of the SVI Investigation Work Plan, defendants shall complete implementation of the DEC-approved SVI Investigation Work Plan at the Site and submit to DEC an SVI Investigation Report with

laboratory results.

10. After review of the SVI Investigation Report, DEC or another agency of the State shall issue a letter to defendants identifying any recommended remedial or mitigative actions to address any SVI exposures affecting indoor air quality at the building at the Site.

11. To the extent the implementation of the SVI Investigation Work Plan is subject to approvals by other governmental agencies, defendants shall use best efforts to immediately obtain all such approvals to avoid delay.

12. Defendants authorize DEC, including agents and employees thereof, to access the Site to inspect and for any other purposes concerning implementation of the DEC-approved IRM Work Plan and the DEC-approved SVI Investigation Work Plan, during ordinary business hours.

VI. REVIEW OF THE SUPPLEMENTAL REMEDIAL INVESTIGATION REPORT BY DEC

13. Defendants have submitted the Supplemental Remedial Investigation Report to DEC. DEC shall provide written notification either that it approves the report's conclusion and recommendations, or that DEC finds the report deficient and declines to approve it.

14. Should DEC find the Supplemental Remedial Investigation Report deficient and decline to approve it, DEC shall provide a written explanation of the basis or bases for its disapproval. DEC may require that defendants undertake additional monitoring or other investigatory activities at the Site or near the Site in order to address DEC's concerns. Unless otherwise agreed with DEC, defendants

shall have 60 days from DEC's response to re-submit a revised report addressing DEC's concerns. If DEC concludes that the re-submitted report is still not approvable, defendants shall continue to revise the report as directed by DEC to make it approvable. However, defendants shall be in violation of the requirement to submit a Supplemental Remedial Investigation Report as of the 60th day to re-submit.

VII. DEVELOPMENT AND IMPLEMENTATION OF A REMEDIAL ACTION WORK PLAN UNDER DEC OVERSIGHT

15. After DEC notifies defendants that DEC has approved the Supplemental Remedial Investigation Report and after the State notifies defendants of any recommended remedial actions to address the findings of the SVI Investigation Report, unless otherwise agreed with DEC, defendants shall have 90 days from that date to submit to DEC a proposed remedial action work plan. The proposed remedial action work plan shall (i) describe the phases of remedial actions (including to mitigate any SVI exposures), (ii) include anticipated dates for the completion of each phase, (iii) include at least three periodic interim progress reports to DEC, with dates, and (iv) include a date for submission of a remedial action summary report to DEC.

16. After DEC approves a remedial action work plan (the "DEC-Approved Remedial Action Work Plan" or the "Plan"), defendants shall have 270 days, unless otherwise agreed with DEC, to implement all phases of the Plan and to submit a report summarizing the results (the "Remedial Action Report") to DEC.

17. To the extent the implementation of the DEC-Approved Remedial

Action Work Plan is subject to approvals by other governmental agencies, defendants shall use best efforts to immediately obtain all such approvals to avoid delay.

18. Defendants authorize DEC, including agents and employees thereof, to access the Site to inspect and for any other purposes concerning implementation of the DEC-Approved Remediation Work Plan, during ordinary business hours.

19. After defendants submit the Remedial Action Report to DEC, DEC shall provide written notification that it either approves the report's conclusion and confirming that defendants have completed their remedial obligations under this Consent Judgment, or that it finds the report deficient. Should DEC find the Remedial Action Report deficient and decline to approve it, DEC shall provide a written explanation of the basis or bases for its disapproval ("Determination of Disapproval"). DEC may require that defendants undertake additional monitoring or other remedial activities at the Site or with respect to off-Site contamination in order to address DEC's concerns. Unless otherwise agreed with DEC, defendants shall have 60 days from DEC's response to re-submit a revised report addressing DEC's concerns. If DEC concludes that the re-submitted report is still not approvable, defendants shall continue to revise the report as directed by DEC to make it approvable. However, defendants shall be in violation of the requirement to submit a Remedial Action Report as of the 60th day to re-submit.

VIII. MONETARY PENALTIES

20. Defendants shall pay DEC a civil penalty of Four Hundred and Ninety

Seven Thousand Dollars (\$497,000), of which Two Hundred and Eighty Seven Thousand Dollars (\$287,000) shall be suspended (the “Suspended Penalty”) for so long as defendants comply with the terms of this Judgment, including the remedial requirements described in Sections IV, V, VI, and VII above, and the requirement to pay the non-suspended \$210,000 portion in accordance with paragraphs 21 and 22 below. DEC acknowledges that defendants’ payment of the \$210,000 non-suspended portion of the penalty shall include the money due to satisfy the \$200 fee to DEC under 6 NYCRR § 613-1.9(c) for proper initial registration and renewal registration of the unregistered Aboveground Storage Tank that defendants removed from the Salvage Yard.

21. Within 30 days of the Effective Date (as defined in paragraph 42 below) of this Consent Judgment, defendants or their counsel shall mail a bank check in the amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000) made out to “NYS Department of Environmental Conservation” with the following in the “memo” line: “NYS Spill Compensation – 155-11 Liberty Ave, Jamaica, New York” to counsel for plaintiffs at the following address:

Max Shterngel
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005

22. Within 270 days of the Effective Date of this Consent Judgment, defendants or their counsel shall mail a second bank check in the amount of Eighty-Five Thousand Dollars (\$85,000) made out to “NYS Department of Environmental

Conservation” with the following in the “memo” line: “NYS Spill Compensation – 155-11 Liberty Ave, Jamaica, New York” to counsel for the State at the following address:

Max Shterngel
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005

23. If defendants fail to make any payment of the payable portion when due in accordance with paragraphs 21 and 22 above, the complete payable penalty of \$210,000 shall become immediately due and subject to entry of judgment, to the extent not already paid. The Clerk shall enter judgment in the amount of Two Hundred and Ten Thousand Dollars (\$210,000), minus any penalty amount already paid, against defendants, upon application by plaintiffs at any time after defendants fail to make such payments when due under paragraphs 21 and 22.

24. If defendants fail to timely comply with any requirement of this Consent Judgment, including failing to make a timely payment, then plaintiffs shall be entitled to make a written demand for any or all of the Suspended Penalty in accordance with paragraph 27 below. Once payment of the Suspended Penalty becomes due following such demand in accordance with paragraph 27, then the Clerk shall enter judgment in the amount of Two Hundred and Eighty-Seven Thousand Dollars (\$287,000), or such lesser amount as may have been demanded by plaintiffs, against defendants upon application by plaintiffs.

25. After defendants (a) satisfy the remedial requirements of this Consent

Judgment and (b) defendants have paid the \$210,000 non-suspended portion of the penalty and any portion of the Suspended Penalty that plaintiffs have assessed that defendants did not timely challenge or the Court has upheld after timely challenge, plaintiffs' counsel shall provide written confirmation that defendants have fulfilled all the requirements of this Consent Judgment ("Completion Confirmation Letter"). Such Completion Confirmation Letter shall be transmitted solely by Assistant Attorney General Max Shterngel or another Assistant Attorney General. To the extent any portion of the Suspended Penalty remains outstanding, such portion of the Suspended Penalty shall be extinguished upon defendants' receipt of the Completion Confirmation Letter.

26. The Suspended Penalty provided for in this Consent Judgment shall be in addition to any other rights, remedies, or sanctions available to the State of New York and/or DEC for defendants' violation of this Consent Judgment or applicable law.

IX. VIOLATION NOTIFICATIONS AND CHALLENGES

27. Plaintiffs shall notify defendants of any violation of this Consent Judgment by issuing a notice of violation ("NOV"). If plaintiffs issue an NOV or a Determination of Disapproval pursuant to paragraph 19, defendants shall have 14 days from being served with such NOV or Determination of Disapproval to initiate a challenge as provided below. The Suspended Penalty shall be due and payable by defendants 45 days after their time to initiate a challenge expires or, if defendants initiate a challenge, within 45 days after a decision of the Court is entered which

upholds, in whole or in part, the challenged NOV or Determination of Disapproval.

28. Defendants shall have the right to challenge any NOV or Determination of Disapproval by motion on notice before this Court. In any such challenge, DEC's NOV or Determination of Disapproval shall be upheld unless defendants meet their burden of demonstrating that the NOV or Determination of Disapproval was arbitrary, capricious or contrary to law.

29. If defendants fail to commence a challenge within 14 days in accordance with paragraph 27, defendants waive their right to challenge the NOV or Determination of Disapproval and any associated assessment of penalties in this Court or any other forum.

30. In any motion brought pursuant to paragraph 28, service of the moving papers shall be made by electronic delivery to:

Max Shterngel
Assistant Attorney General
New York State Office of the Attorney General
Max.Shterngel@ag.ny.gov

and

Antonia Pereira
Regional Attorney, Region 2
New York State Department of Environmental Conservation
Antonia.Pereira@dec.ny.gov

X. SECURING ACCESS TO THE SITE IF IT IS LEASED

31. To the extent the Site becomes occupied by one or more tenants other than one of the defendants or an affiliate, defendants shall incorporate into any lease of the Site or of any portion of the Site the requirement that defendants and their consultants or contractors (including but not limited to Galli), and any DEC

employees or agents, be provided with access to the entire Site during ordinary business hours for the purpose of implementing any of the investigatory or remedial activities addressed in Sections IV, V, VI and VII of this Consent Judgment.

XI. POTENTIAL SALE OF THE SITE

32. In the event that defendants BGN Real Estate LLC and/or Three Sons Real Estate Group LLC, voluntarily or pursuant to court order, undertake to sell, transfer, or otherwise convey the Site (or any portion of the Site), or any interest therein, prior to receiving a Completion Confirmation Letter from DEC, defendants BGN Real Estate LLC and/or Three Sons Real Estate Group LLC shall, prior to executing any contract of sale or other written agreement concerning sale of the Site:

- a. to the extent the reports are available to defendants, provide the purchaser, successor in title, or assignee of the Site (or any portion of the Site) with a copy of: (i) the Sampling Report from Galli dated April 11, 2023; (ii) the Supplemental Remedial Investigation Report; (ii) the DEC-Approved IRM Work Plan; (iii) the DEC-Approved SVI Investigation Work Plan, or if such Plan has already been implemented, the SVI Investigation Report; (iv) the DEC-Approved Remedial Action Work Plan, or if such Plan has already been implemented, the Remedial Action Report; and (v) this Consent Judgment as approved by the Court, with Exhibit A thereto; and
- b. provide DEC with at least five business days written notice prior to executing a contract for such sale and shall provide DEC with a copy of any

such executed contract for sale, and if there is no such contract, provide DEC notice of such sale at least 30 business days prior to any closing for such a transaction, or auction for a compelled sale.

33. In any such sale, transfer, or conveyance, the contract of sale or another written agreement between defendants BGN Real Estate LLC and/or Three Sons Real Estate Group LLC and the purchaser, successor in title, or assignee shall provide that the purchaser, successor in title, or assignee shall be required to comply with the injunctive obligations of Sections IV, V, VI and VII set forth in this Consent Judgment and all other terms and conditions of this Consent Judgment (save for the penalty and Suspended Penalty provisions).

34. Failure to impose the obligations set forth in this Consent Judgment into a contract of sale of the Site (or any portion of the Site) does not release defendants or the purchaser(s) of the Site (or any portion of the Site), or of an interest therein, from the obligations herein.

35. Defendants and the successor(s) to BGN Real Estate LLC's and/or Three Sons Real Estate Group LLC's interest in the Site shall be jointly and severally liable for the implementation of all injunctive obligations set forth in this Consent Judgment even after any such sale, transfer or conveyance of the Site (or any portion of the Site).

XII. NOTICES

36. Defendants shall serve any communication pursuant to this Consent Judgment via email upon:

Max Shterngel
Assistant Attorney General
New York State Office of the Attorney General
Max.Shterngel@ag.ny.gov

and

Antonia Pereira
Regional Attorney, Region 2
New York State Department of Environmental Conservation
Antonia.Pereira@dec.ny.gov

and

Ryan Piper, P.G.
New York State Department of Environmental Conservation
Region 2
Ryan.Piper@dec.ny.gov

37. Plaintiffs shall serve any communication pursuant to this Consent

Judgment via First Class Mail upon:

Victoria Agnello
c/o Rigano LLC
538 Broad Hollow Road, Suite 301
Melville, NY 11747

with a courtesy email to James Rigano, Esq. at jrigano@riganollc.com and Alyse Delle Fave, Esq. at adellefave@riganollc.com.

XIII. MISCELLANEOUS

38. The provisions of this Consent Judgment shall be deemed to bind defendants, their successors and assigns, and, should they file for bankruptcy, their trustees in bankruptcy.

39. This Consent Judgment shall constitute the entire agreement of plaintiffs and defendants with respect to settlement of the three causes of action in

the Complaint. For the avoidance of doubt, this Consent Judgment does not settle any of defendants' liability to DEC or to the State of New York for any other violations not addressed in the Complaint.

40. If defendants cannot comply with a deadline or requirement of this Consent Judgment because of a war, strike, riot, or other condition which was not caused by the negligence or willful misconduct of defendants and which could not have been avoided by defendants through the exercise of due care, defendants shall apply in writing to plaintiffs as soon as practicable after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

41. Defendants shall indemnify and hold DEC, the State of New York and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of defendants, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Consent Judgment by defendants or their employees, servants, agents, successors or assigns.

42. The effective date of this Consent Judgment ("Effective Date") is the date the Court-approved Consent Judgment showing entry by the County Clerk is filed on the NYSCEF docket.

43. Nothing contained in this Consent Judgment shall be construed as a release or waiver by the State of New York or DEC of its rights to seek penalties and other relief for any violations of the Navigation Law, the ECL or other laws from defendants or any other party, except to the extent this Consent Judgment

resolves such violations. For purposes of clarity, by fully complying with this Consent Judgment defendants will resolve all of their violations arising from or otherwise concerning the allegations pled in the Complaint. If defendants agree to this Consent Judgment but fail to complete the remedial requirements of this Consent Judgment, they shall remain subject to DEC and/or State of New York claims for violation of the Navigation Law, ECL or other laws, except that defendants shall be absolved of monetary penalties for any violations that have accrued through the Effective Date other than the penalties provided by this Consent Judgment.

XIV. COMPLIANCE WITH FEDERAL TAX REPORTING REQUIREMENTS

44. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the Office of Attorney General of the State of New York (“OAG”) is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including consent judgments), that require a payor to pay an aggregate amount that OAG reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” OAG is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as

described below, may subject parties to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1.

45. In order to provide OAG with sufficient information to enable it to fulfill these reporting obligations to IRS, each defendant shall:

a. Complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

b. Within 30 days of the Effective Date of this Consent Judgment (as defined in paragraph 42 above), email its completed IRS Form W-9 to Assistant Attorney General Max Shterngel at max.shterngel@ag.ny.gov, or mail the completed IRS Form W-9 to the following address:

Max Shterngel
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005

c. In the event that a defendant has certified in its completed IRS Form W-9 that it has applied for a TIN and that the TIN has not been issued to a defendant within 30 days after the Effective Date of this Consent Judgment (as defined in paragraph 42 of this Consent Judgment), then that defendant shall further:

i. notify OAG by e-mailing Assistant Attorney General Max Shterngel at max.shterngel@ag.ny.gov of this fact within 45 days after the Effective Date of this Consent Judgment (as defined in paragraph 42 of this Consent Judgment); and

ii. within five days of that defendant’s receipt of its TIN, provide that defendant’s TIN via email to Assistant Attorney General Max Shterngel at

max.shterngel@ag.ny.gov or mail that defendant's TIN to the following address:

Max Shterngel
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005

XV. SIGNATORIES

46. The parties may execute this Consent Judgment in counterparts and by electronic signature. Copies of signatures, including copies transmitted electronically, shall be treated as originals.

XVI. ATTACHMENTS

47. The following attachments are attached to and incorporated into this Consent Judgment: "Exhibit A" is the DEC-Approved Supplemental Remedial Investigation Work Plan.

[The remainder of this page is blank.]

AGREED TO:

Date: 6/26/2024

RIGANO LLC

Attorneys for Defendants LSM Auto Parts & Recycling Inc.; Liberty Scrap Metal Inc.; BGN Real Estate LLC; and Three Sons Real Estate Group LLC

By: James P. Rigano

James P. Rigano, Esq.

Alyse Delle Fave, Esq.

Rigano LLC

538 Broad Hollow, Suite 301

Melville, New York 11747

(631) 921-2988

jrigano@riganollc.com

adellefave@riganollc.com

Date: 6/26/2024

**LSM AUTO PARTS & RECYLCING INC.;
LIBERTY SCRAP METAL INC.; BGN
REAL ESTATE LLC; THREE SONS
REAL ESTATE GROUP LLC**

Victoria Agnello

By: Victoria Agnello

Date: _____

LETITIA JAMES

*Attorney General of State of New York
Attorney for Plaintiffs People of the State of
New York, Sean Mahar, the Interim
Commissioner of the New York State
Department of Environmental Conservation,
and the New York State Department of
Environmental Conservation*

By: _____

Andrew J. Gershon

Max Shterngel

Assistant Attorneys General

Environmental Protection Bureau

28 Liberty Street

New York, NY 10005

(212) 416-6692

Andrew.Gershon@ag.ny.gov

Max.Shterngel@ag.ny.gov

AGREED TO:

Date: _____

RIGANO LLC

Attorneys for Defendants LSM Auto Parts & Recycling Inc.; Liberty Scrap Metal Inc.; BGN Real Estate LLC; and Three Sons Real Estate Group LLC

By: _____

James P. Rigano, Esq.
Alyse Delle Fave, Esq.
Rigano LLC
538 Broad Hollow, Suite 301
Melville, New York 11747
(631) 921-2988
jrigano@riganollc.com
adellefave@riganollc.com

Date: _____

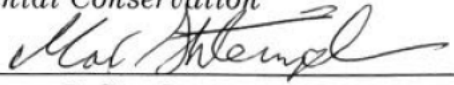
LSM AUTO PARTS & RECYLCING INC.;
LIBERTY SCRAP METAL INC.; **BGN**
REAL ESTATE LLC; **THREE SONS**
REAL ESTATE GROUP LLC

By: Victoria Agnello

Date: 6/26/2024

LETITIA JAMES

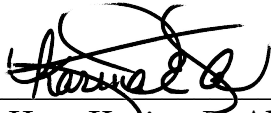
Attorney General of State of New York
Attorney for Plaintiffs People of the State of New York, Sean Mahar, the Interim Commissioner of the New York State Department of Environmental Conservation, and the New York State Department of Environmental Conservation


By:  _____

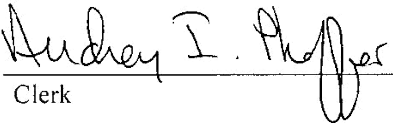
Andrew J. Gershon
Max Shterngel
Assistant Attorneys General
Environmental Protection Bureau
28 Liberty Street
New York, NY 10005
(212) 416-6692
Andrew.Gershon@ag.ny.gov
Max.Shterngel@ag.ny.gov

SO ORDERED AND ADJUDGED:

Date: June 27, 2024

By: 
Hon. Karina E. Alomar, J.S.C.
Index No.: 71005/2022

FILED & RECORDED
6/28/2024
3:24 p.m.
COUNTY CLERK
QUEENS COUNTY 


Clerk