

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

by

545 Sackett LLC

ORDER ON CONSENT

Index No.

CO 2-20230307-68

Site No. 224051

Respondent.

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WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the “Department”) is responsible for the administration and enforcement of law and regulation related to the State Superfund Program, pursuant to Article 27, Title 13, of the New York State Environmental Conservation Law (“ECL”) and water resources, pursuant to Article 15, Title 15 of the ECL.
2. The Department is authorized to administer the State Superfund program (“SSF”) as set forth in ECL Article 27 and 6 NYCRR Part 375 and may issue orders under it.
3. This Order on Consent (the “Order”) is issued in accordance with the Department’s enforcement authority pursuant to ECL Articles 3 and 71.

PARTIES

4. Respondent 545 Sackett LLC is the owner of the of the property located at 545 Sackett Street (Block 426, Lot 1) (the “Site”), which is a portion of the K-Fulton Works site, an inactive hazardous waste disposal site (DEC Site No. 224051) being remediated by Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, KeySpan Gas East Corporation d/b/a

KeySpan Energy Delivery Long Island pursuant to an Order on Consent dated February 22, 2007, and modified on August 10, 2007, bearing the index number A2-0552-0606 (the "Consent Order").

PROVISIONS OF LAW

5. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste site remedial programs pursuant to Article 27, Title 13 of the ECL and 6 NYCRR Part 375 and may issue orders consistent with the authority granted to the Commissioner of the Department by such statute.
6. The Department is responsible for the water resources of the State and administers a permitting program under ECL §15-1501 and 6 NYCRR 602.1 for water withdrawal on Long Island.
7. This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL §3-0301.
8. The Department enacted 6 NYCRR Part 375 to provide for the orderly and efficient administration of inactive hazardous waste disposal sites, among other remedial programs. See 6 NYCRR 375-1.1 (a).
9. The regulations state that it is a violation to engage in any activity that will, or that is reasonably: (i) anticipated to prevent or interfere significantly with any proposed, ongoing, or completed remedial program at any site; or (ii) foreseeable to expose the public health or the environment to a significant increased threat of harm or damage at any site. See NYCRR 375-1.11(b)(2).
10. The regulations state that it is a violation to withdraw water from a property located on Long Island without a permit or permit equivalency issued by the Department. See 6 NYCRR 602.1.
11. Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by Article 27, Title 13 or any rule or regulation promulgated thereto, may be liable for penalties of up to \$37,500 per day per violation.
12. Pursuant to ECL §71-1127, any person who violates any of the provisions of, or who fails to perform any duty imposed by Title 15, Article 15 of the ECL or any rule or regulation promulgated thereto, may be liable for penalties of up to \$2,500 per day for such violation and an additional penalty of \$500 for each day such violation continues.

FACTS

13. The site is currently implementing an approved Remedial Action Work Plan under the Consent Order. Excavation of contamination above the groundwater interface has started and a revised Long Island Well Permit Application for the withdrawal of 200 gallons per minute (gpm) was submitted on March 8, 2023, for DEC review. A response letter with comments was issued to the Responsible Party on March 9, 2023.
14. On June 15, 2022, Respondent submitted an application for a Long Island Well Permit equivalent to the Department.
15. On January 6, 2023, Respondent requested to proceed with a pumping test as part of the Long Island Well permit equivalency application.
16. The pumping test parameters were outlined in a “WTS Pump Test Work Plan” which outlined pumping from single well (DW7) for a maximum duration of 72 hours at a pumping test rate of 200 gallons per minute.
17. On January 17, 2023, the Department approved implementation of the WTS Pump Test Work Plan via email to Respondent.
18. On January 25, 2023, the Department was notified that the pump test commenced.
19. On March 1, 2023 the Department conducted a site inspection at the 545 Sacket Street portion of the Site. At that time, the Department was informed that Respondent had continued pump testing without a permit at various times from February 27, 2023 through March 7, 2023 beyond the duration approved in the WTS Pump Test Work Plan and using additional pumping wells beyond DW7 and without a permit or approval from the Department.
20. Transport of contaminants due to dewatering systems must be mitigated and monitored.
21. Dewatering without a permit for the period noted above resulted in the withdrawal of 2,592,000 gallons of water.

VIOLATIONS

22. Respondent is alleged to have violated 6 NYCRR 375-1.11(b)(2)(i) by engaging in an activity that will or is reasonably anticipated to interfere significantly with an ongoing remedial program (“Violation 1”).

23. Respondent is alleged to have violated 6 NYCRR 602.1 by continuing dewatering activities at the Site beyond the Department's pump test approval without a permit or permit equivalency issued by the Department ("Violation 2").

24. In settlement of Respondent's liability for the aforesaid alleged violations, Respondent denies Violation 1 and admits Violation 2 set forth herein, waives its right to a hearing as provided by law, and consents to the issuing and entering of this Order on Consent pursuant to the provisions of ECL Articles 15, 27 and 71, and agrees to be bound by the provisions, terms, and conditions herein. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees not to contest the validity of this Order or its terms.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. PENALTY

A. Respondent shall be liable for a total civil penalty in the amount of \$44,000.00 for the violations stated in this Consent Order to be paid as follows:

1. **Payable Penalty:** Respondent will pay \$22,000.00 of the penalty upon the execution of this Consent Order. Payment shall be paid within 30 days of the Department's execution of this Order by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and Index Number "CO 2-20230307-68" written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.
2. **Suspended Penalty:** Notwithstanding the Payable Penalty above, \$22,000.00 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order. In the event that Respondent fails to make the submissions the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for the violations by Respondent.

B. This Order on Consent, along with any applicable submissions, shall be sent to:

Department of Environmental Conservation
Office of General Counsel
Attention: Jennifer Andaloro, Remediation Bureau Chief
625 Broadway, 14th Floor
Albany, NY 12233-1500

II. CORRECTIVE ACTION

A Long Island Well Equivalency Permit Application was submitted on April 3, 2023 and a Sentinel Well Work and Monitoring Plan was submitted on April 12, 2023 and both were approved by the Department on May 9, 2023.

III. ENTIRETY OF ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondents, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the modification provisions of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondents shall be construed as relieving the Respondents of their obligations to obtain such formal approvals as may be required by this Order.

IV. RELEASE

This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondents, their trustees, officers, employees, successors and assigns for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur after the effective date of this Order.

V. RESERVATION OF RIGHTS

The Department reserves the right to require that the Respondents undertake any additional measures required to protect human health or the environment and shall reserve the Department's rights to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law. This Order does not bar, diminish, adjudicate, or in any way affect the Department's rights or authorities, except as set forth in this Order, including but not limited to, exercising summary abatement powers.

VI. BINDING EFFECT

The provisions, terms and conditions of this Order shall be deemed to bind Respondents and the Respondents' heirs, legal representatives, receivers, trustees in bankruptcy, successors, and assigns, employees, and all persons, firms, and business entities acting under or for them.

VII. FAILURE, DEFAULT, AND VIOLATION OF ORDER

Respondents' failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to the Respondents by the Department.

VIII. DEFAULT OF PAYMENT

The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the terms of this Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order on Consent will constitute a debt owed to the State of New York when and if such penalty becomes due.

IX. MODIFICATION

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 the Respondents, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to the Respondents. The Respondents shall have the burden of proving entitlement to any modification requested.

X. INDEMNIFICATION

The Respondents shall indemnify and hold the Department, 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 the Respondents, 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 Order by the Respondents or its employees, servants, agents, successors, or assigns.

XI. NOT A PERMIT

This Order is not a permit, or a modification of a permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondents' compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein. The Department does not warrant or aver that the

Respondents' compliance with this Order will result in compliance with any laws, regulations or permits.

XII. FORCE MAJEURE

If Respondents cannot comply with a deadline or requirement of this Order, because of natural disaster, pandemic, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of Respondents and which could not have been avoided by Respondents through the exercise of due care, Respondents shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondents shall include in such application the measures taken by Respondents to prevent and/or minimize any delays. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order pursuant to this Article.

XIII. EFFECTIVE DATE AND TERMINATION

This Order shall take effect when it is signed by the Commissioner of the Department of Environmental Conservation or his designee. This Order shall terminate when all requirements imposed by this Order are completed to the Department's satisfaction.

DATED: Albany, New York
June 16, 2023

BASIL SEGGOS
Commissioner, NYSDEC

By: Andrew Guglielmi
Andrew Guglielmi, Division Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent 545 Sackett LLC hereby consents to the issuing and entering of this Order on Consent without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order on Consent.

By (Signature):



Print Name: Chris Papamichael

Title: Authorized Signatory

Date: 6/13/2023

ACKNOWLEDGMENT

LOUISIANA
STATE OF NEW YORK))
PARISH ss:
COUNTY OF ORLEANS)

On this 13th day of June, 2023, before me personally came Chris Papamichael, who being properly identified and who being by me duly sworn did depose and say that s/he is Authorized Signatory of 545 Sackett LLC, and did execute this Order on Consent on behalf of and as authorized by 545 Sackett LLC.



Notary Public



DEBORAH DAIGLE DAVIS

NOTARY PUBLIC

State of Louisiana, Bar Roll # 26009

My Commission is for life.

