

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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IN THE MATTER OF THE :  
GOWANUS CANAL SUPERFUND SITE :  
:  
Brooklyn Union Gas Co. d/b/a :  
National Grid New York, : Index No. CERCLA-02-2017-2007  
:  
Respondent, :  
:  
Proceeding under Section 106 of the :  
Comprehensive Environmental Response, :  
Compensation, and Liability Act, as amended, :  
42 U.S.C. § 9606. :  
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ADMINISTRATIVE ORDER

## I. JURISDICTION AND GENERAL PROVISIONS

1. This administrative order (“Order”) is issued to the Brooklyn Union Gas Co. d/b/a National Grid New York (hereinafter, “Respondent”) by the United States Environmental Protection Agency (“EPA”), Region 2, and requires Respondent to conduct the design for a bulkhead barrier wall in connection with the Gowanus Canal Superfund Site (“Site”), Brooklyn, New York.
2. This Order is issued to Respondent by EPA pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the Director of the Emergency and Remedial Response Division in Region 2 by Regional Delegation R-1200, dated November 23, 2004.
3. EPA has notified the New York State Department of Environmental Conservation (“NYSDEC”) of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## II. PARTIES BOUND

4. This Order shall apply to and be binding upon Respondent and its employees, agents, successors and assigns. No change in the status or control of Respondent shall alter Respondent’s responsibilities under this Order.
5. Until EPA notifies Respondent under Paragraph 78 that the Work has been completed, Respondent shall provide a copy of this Order to any successors before a controlling interest in Respondent’s assets or property rights are transferred to the successor.

## III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto, or incorporated by reference into this Order, the following definitions shall apply:
  - a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

- b. “Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- c. “Effective Date” means the date specified in Paragraph 79.
- d. “Former Fulton Manufactured Gas Plant State Superfund Site” or “Fulton MGP Site” shall mean the eight state-designated parcels of the former Brooklyn Union Gas Co. facility located between the Gowanus Canal and Third Avenue and Douglass and President Streets, consisting of former MGP parcels and non-MGP parcels impacted by contaminant migration, for which the New York State Department of Environmental Conservation (“NYSDEC”) issued a Record of Decision under state law on July 31, 2015 (the “Fulton ROD”), attached hereto as Appendix C. The parcels addressed by the Fulton ROD are: Parcel I (270 Nevins Street), Parcel II (Thomas Greene Park), Parcel III (537 Sackett Street); Parcel IV (560 Degraw Street), Parcel VI (242 Nevins Street), and Parcel VII (234 Butler Street), as well as a utility corridor within Nevins and Degraw Streets.
- e. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral.
- f. “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on September 27, 2013 by the Director of the Emergency Remedial Response Division, EPA Region 2, including all attachments thereto, attached as Appendix A.
- g. “Respondent” shall mean the Brooklyn Union Gas Co. d/b/a National Grid New York.
- h. “Site” shall mean the Gowanus Canal Superfund Site, an approximately 100-foot wide, 1.8-mile-long canal located in the New York City borough of Brooklyn, Kings County, New York, and also includes any areas which are sources of contamination to the Canal, including the Fulton MGP Site, any areas where contamination has migrated from the Canal, and/or suitable areas in very close proximity to the contamination which are necessary for implementation of the Work.
- i. “United States” shall mean the United States of America.
- j. “Waste Material” shall mean (i) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any “pollutant or contaminant” under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any “solid waste” under Section 1004(27) of the Solid Waste Disposal Act, as

amended, 42 U.S.C. § 6903(27).

- k. “Work” shall mean all activities Respondent is required to perform under this Order, except those required by Section XV (Records Retention).

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. The Gowanus Canal (“Canal”) is a brackish, tidal arm of the New York–New Jersey Harbor Estuary, extending for approximately 1.8 miles through Brooklyn, New York. The approximately 100–foot–wide canal runs southwest from Butler Street to Gowanus Bay and Upper New York Bay. The adjacent waterfront is primarily commercial and industrial, currently including concrete plants, warehouses, and parking lots, and the Site is near several residential neighborhoods.
8. The Canal was constructed by bulkheading and dredging a tidal creek and wetland. After its completion in the 1860s, the Canal quickly became one of the nation’s busiest industrial waterways, home to heavy industry including gas works (*i.e.*, manufactured gas plants), coal yards, cement makers, soap makers, tanneries, paint and ink factories, machine shops, chemical plants and oil refineries.
9. Hazardous substances, pollutants and contaminants have entered the Canal via several transport pathways or mechanisms, including spillage during product shipping and handling, direct disposal or discharge, contaminated groundwater discharge, surface water runoff, storm water discharge (including combined sewer overflow) and contaminated soil erosion. As a result of decades of direct and indirect discharges of hazardous substances generated by industrial and other activity, the Canal became a repository for untreated industrial wastes, raw sewage, and runoff, causing it to become one of New York’s most polluted waterways.
10. Much of the heavy industrial activity along the Canal has ceased, although many upland areas adjacent to the Canal remained zoned as manufacturing districts. Land uses along and near certain portions of the Canal are in the process of transitioning from heavy industrial to light industrial, commercial, and residential uses. The Canal is currently used by some for recreational purposes such as boating, diving, and catching fish for consumption. The Canal and New York City harbor are subject to New York State fishing advisories.
11. The Site was placed on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on March 2, 2010.
12. In April 2010, EPA entered into administrative consent orders with the City and Respondent to perform work in support of EPA’s remedial investigation/feasibility study

(“RI/FS”). An RI report was completed in January 2011 and an FS report was completed in December 2011. An FS addendum report was completed in December 2012.

13. Sampling results from the RI/FS document the presence of a wide range of hazardous substances in the groundwater, soil, and Canal sediments at the Site. These include polycyclic aromatic hydrocarbons (“PAHs”), polychlorinated biphenyls (“PCBs”), pesticides (such as methoxychlor and DDT), metals (such as barium, cadmium, copper, lead, mercury, nickel and silver), as well as volatile organic compounds (“VOCs”) (such as benzene, toluene, ethylbenzene, and xylene). The contamination in the sediments extends the entire length of the Canal. The contamination is present in both the sediment that has accumulated above the native sediments (referred to as “soft sediments”) and in the native sediment. Some of the hazardous substances are present at high levels. The soft sediment layer ranges in thickness from approximately 1 foot to greater than 20 feet, with an average thickness of about 10 feet. For example, total PAH concentrations in surface sediment (defined as the top 6 inches of the soft sediments, where potential exposure is more likely to occur) range up to 8,001,000 micrograms per kilogram ( $\mu\text{g}/\text{kg}$ ). PCBs in surface sediment were detected up to 3,400  $\mu\text{g}/\text{kg}$ . In the subsurface (*i.e.*, deeper than 6 inches), total PAH concentrations in the soft sediment ranged up to 45,000,000  $\mu\text{g}/\text{kg}$ . Total PAH concentrations in the native sediment were detected up to 47,500,000  $\mu\text{g}/\text{kg}$ . In the subsurface, total PCB concentrations in the soft sediment were detected up to 50,700  $\mu\text{g}/\text{kg}$ . In the native sediments, total PCBs were detected up to 2,610  $\mu\text{g}/\text{kg}$ .

14. Based on the results of the RI/FS, chemical contamination in the Canal sediments present an unacceptable ecological and human health risk, primarily due to exposure to PAHs, PCBs, and metals (barium, cadmium, copper, lead, mercury, nickel and silver).

15. PCBs and PAHs have been demonstrated to cause a variety of adverse health effects. PCBs have been shown to cause cancer in test animals. PCBs have also been shown to cause a number of serious non-cancer health effects in animals, including effects on the immune system, reproductive system, nervous system, endocrine system and other health effects. Studies in humans provide supportive evidence for potential carcinogenic and non-carcinogenic effects of PCBs. The toxicity of PAHs can vary from being nontoxic to extremely toxic. EPA has classified seven PAH compounds as probable human carcinogens: benz[a]anthracene; benzo[a]pyrene; benzo[b]fluoranthene; benzo[k]fluoranthene; chrysene; dibenz(a,h)anthracene; and indeno(1,2,3-cd)pyrene. PAHs known for their carcinogenic, mutagenic, and teratogenic properties are benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[j]fluoranthene, benzo[k]fluoranthene, benzo[a]pyrene, benzo[ghi]perylene, coronene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and ovalene. High prenatal exposure to PAHs is associated with lower IQ and childhood asthma. The Center for Children’s Environmental Health reports that studies demonstrate that exposure to PAHs during pregnancy is related to adverse birth outcomes including low birth weight, premature delivery, and heart malformations. Cord blood in cases of prenatal exposure shows DNA damage that has been linked to cancer. Follow-up studies show

increased developmental delays at age three, and lower scores on IQ tests and increased behavioral problems at ages six and eight.

16. EPA's ecological risk assessment of the Site determined that PAHs, PCBs, and metals in the sediment are toxic to benthic organisms. PAHs were detected in sediment at the highest concentrations relative to their ecological screening benchmarks and represent the greatest site-related risk to the benthic community. PCBs and seven metals (barium, cadmium, copper, lead, mercury, nickel, and silver) were also detected at concentrations above their ecological screening benchmarks and at concentrations significantly higher than those detected in reference area sediments and also represent a potential site-related risk to the benthic community. PAHs were found to be a potential risk to aquatic herbivores (represented by the black duck) and mercury was found to be a potential risk to avian omnivores (represented by the heron).

17. On September 27, 2013, EPA issued a ROD for the Site that selected the following response actions: 1) Dredging of the entire column of hazardous substance-contaminated sediments which have accumulated above the native sediments in the upper and mid-reaches of the Canal (referred to as "soft sediments"); 2) in-situ stabilization ("ISS") of those native sediments in select areas in the upper and mid-reaches of the canal contaminated with high levels of nonaqueous phase liquid ("NAPL"); 3) construction of a multilayered cap in the upper and mid-reaches of the Canal to isolate and prevent the migration of PAHs and residual NAPL from native sediments; 4) dredging of the entire soft sediment column in the lower reach of the Canal; 5) construction of a multilayer cap to isolate and prevent the migration of PAHs from native sediments in the lower reach of the Canal; 6) off-Site treatment of the NAPL-impacted sediments dredged from the upper and mid-reaches of the Canal with thermal desorption, followed by beneficial reuse off-Site (*e.g.*, landfill daily cover) if possible; 7) off-Site stabilization of the less contaminated sediments dredged from the lower reach of the Canal and the sediments in the other reaches not impacted by NAPL, followed by beneficial reuse off-Site; 8) excavation and restoration of approximately 475 feet of the filled-in former 1st Street turning basin; 9) excavation and restoration of the portion of the 5<sup>th</sup> Street turning basin beginning underneath the 3<sup>rd</sup> Avenue bridge and extending approximately 25 feet to the east and the installation of a barrier or interception system at the eastern boundary of the excavation; 10) implementation of institutional controls incorporating the existing fish consumption advisories (modified, as needed), as well as other controls to protect the integrity of the cap; 11) periodic maintenance of the cap and long-term monitoring to insure that the remedy continues to function effectively; and 12) Combined Sewer Overflow ("CSO") controls to significantly reduce overall contaminated solid discharges to the Canal, which include a) construction of two retention tanks to retain discharges from outfalls RH-034 and OH-007; and b) implementation of appropriate engineering controls to ensure that hazardous substances and solids from separated stormwater, including from future upland development projects, are not discharged to the Canal.

18. On March 21, 2014, EPA issued an administrative order for remedial design ("RD"), Index Number CERCLA-02-2014-2001 (the "Dredging RD UAO"), to Respondent and 30 other

parties requiring the performance of the RD and various pre-RD investigations and analyses, to produce a set of biddable plans and specifications for the implementation of the remedy selected in EPA's September 27, 2013 ROD for the Site, other than the CSO controls and the cleanup and restoration of the former 1<sup>st</sup> Street turning basin. The work required by the Dredging RD UAO is currently being conducted.

19. On May 28, 2014, EPA issued an administrative order for RD, Index Number CERCLA-02-2014-2019 (the "City RD UAO"), to the City of New York ("City") requiring the RD of the two CSO retention tanks and of the cleanup and restoration of the former 1<sup>st</sup> Street turning basin, as well as the City's coordination and participation in the Dredging RD UAO.

20. On June 9, 2016, EPA issued an Administrative Settlement Agreement and Order for Remedial Design, Removal Action and Cost Recovery, Index Number CERCLA-02-2016-2003 (the "RH-034 Tank AOC"), to the City, attached hereto as Appendix B. The RH-034 Tank AOC requires the City to, among other things, complete the RD for the RH-034 Tank, the larger of two retention tanks selected as a component of the ROD remedy. The RH-034 Tank AOC also provides the City with the opportunity to acquire through purchase or eminent domain, two privately owned parcels located at 242 Nevins Street and 234 Butler Street (hereinafter, the "Canal-side Property") for the purpose of siting the RH-034 Tank on those parcels, subject to certain conditions. In the event that the City fails to timely acquire the Canal-side Property, the RH-034 Tank will be sited on the City-owned Thomas Greene Park property (hereinafter, "Park Property").

21. The Canal-side Property and Park Property are among the eight state-designated parcels that are part of the Fulton MGP Site.

22. The Fulton MGP operated from approximately 1879 until 1929. The operations led to contamination of subsurface soil and groundwater by coal tar, a byproduct of the gas manufacturing process. MGP-related contamination at the Fulton MGP Site contains CERCLA hazardous substances, including but not limited to, PAHs, benzene, toluene, ethylbenzene and xylenes. The specific MGP operations and structures located on the parcels relevant to this Order include:

a. Parcel I: formerly contained MGP production facilities including an oil/naphtha collection tank, generator/retort house, condenser/blower house, coal shed, engine house, gasoline house and generators.

b. Parcel II (the Park Property): formerly contained production facilities including 3 oil tanks, one relief holder/hydrogen tank and six gas oil naphtha tanks. During World War I, a U.S. government toluol plant was located on the northern part of the parcel. Parcel II is among the most significant sources of contamination to the upper Canal, with

MGP-related contamination present from just below the concrete-covered park surface to depths of more than 100 feet.

c. Parcel VI (comprising a portion of the Canal-Side Property): contained no MGP structures; the parcel is impacted by the migration of contamination from other Fulton MGP parcels toward the Canal.

d. Parcel VII (comprising the remainder of the Canal-Side Property): contained no MGP structures; the parcel is impacted by the migration of contamination from other Fulton MGP parcels toward the Canal and by non-MGP-related contamination.

23. The Fulton ROD requires, among other things, the construction of a bulkhead barrier wall along the eastern side of the Canal adjacent to Parcels I, VI and VII, the installation of coal tar extraction wells, the removal of MGP-related contamination within a utility corridor along Nevins and Degraw Streets, and the excavation or stabilization of MGP-related contamination on Parcels I, II, III, IV, VI, and VII at such time as each of these parcels are accessible for remediation work. Pursuant to a March 4, 2007 NYSDEC multi-site MGP cleanup order, as modified, Respondent is required to implement the cleanup set forth in the Fulton ROD.

24. Timely and effective control of major ongoing sources of contamination is necessary for the protectiveness of the ROD remedy for the Site. EPA has determined that a response action is necessary involving the design and construction of the bulkhead barrier wall, consistent with the remedial goals of the Fulton ROD, but extending beyond the boundary specified in the Fulton ROD (one block further south to the Union Street Bridge). This response action is necessary for reasons which include, but are not limited to, the following: a) to eliminate coal tar releases to the Canal, b) to provide structural support in order for remedial dredging to timely start at the head of the Canal; 3) to ensure that the assessment and design for control of contaminated groundwater is properly coordinated and integrated into the ISS and cap design being prepared under the Dredging RD UAO; and 4) to ensure that the design of the bulkhead barrier wall is properly coordinated and integrated with the design of the CSO retention tank at the Canal-Side Property under the RH-034 Tank AOC, including but not limited to, the location and design of CSO outfalls, as well as current and planned wall openings which may impact the effectiveness of the bulkhead barrier wall.

25. The Site includes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. The contamination found at the Site, as identified in the Findings of Fact above, includes hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

27. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from a facility as defined by Section 101(22) of CERCLA, 42

U.S.C. § 9601(22). Such releases include, but are not limited to, PAHs, PCBs, pesticides, metals, and volatile organic compounds that were discharged into the soil, surface water, groundwater and sediments at the Site.

28. Respondent is a New York corporation and is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

29. Respondent is a responsible party with respect to the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### V. DETERMINATIONS

30. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”). These factors include, but are not limited to, actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants.

31. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

32. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the NCP.

#### VI. ORDER

33. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, the administrative record for the Work required herein, and other information available to EPA, it is hereby ordered that Respondent conduct the Work set forth in Section VIII. All activities specified below shall be initiated and completed as soon as possible, even though maximum time periods for their completion are specified herein. With regard to the Work contemplated by this Order, Respondent shall not implement any other work in the aforementioned area of the bulkhead barrier wall unless approved by EPA. Construction of the bulkhead barrier wall design will be conducted pursuant to a future administrative order to be issued by EPA.

#### VII. DESIGNATED EPA PROJECT MANAGER AND RESPONDENT’S PROJECT COORDINATOR

34. Within five (5) days after the Effective Date of this Order, Respondent shall select a coordinator, to be known as the Designated Project Coordinator, and submit the name, address, qualifications and telephone number of the Designated Project Coordinator to EPA. The Designated Project Coordinator shall be responsible on behalf of Respondent for oversight of the

implementation of this Order. The Designated Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Order. The Designated Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Order.

35. Selection of the Designated Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Designated Project Coordinator, Respondent shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within five (5) days following EPA's disapproval. Respondent may change its Designated Project Coordinator provided that EPA has received written notice at least five (5) days prior to the desired change. All changes of the Designated Project Coordinator shall be subject to EPA approval.

36. EPA correspondence related to this Order will be sent to the Project Coordinator. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondent for all matters relating to the Work under this Order and shall be effective upon receipt. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days. Respondent shall retain a Project Coordinator at all times until EPA issues a Termination and Satisfaction in accordance with Paragraph 78.

37. Respondent has retained GZA GeoEnvironmental, Inc. as its Supervising Contractor to perform the Work and EPA has approved of this contractor as the Supervising Contractor. Respondent shall notify EPA of the name and qualifications of any change to the Supervising Contractor as well as any other contractor or subcontractor proposed to perform Work under this Order, at least ten (10) days prior to commencement of such Work by such entity.

38. All activities required of Respondent under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, State, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards. All plans and specifications shall be prepared under the supervision of, and signed/certified by, a licensed New York professional engineer.

39. EPA retains the right to disapprove any or all of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves in writing any of Respondent's proposed contractors, Respondent shall propose a different contractor within seven (7) days of receipt of EPA's disapproval.

40. Respondent shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the Work required by this Order. Respondent shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating

that such contractors or subcontractors, including its agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondent shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

41. EPA has designated Christos Tsiamis of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region 2, as its Remedial Project Manager (“RPM”). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the RPM via e-mail at [tsiamis.christos@epa.gov](mailto:tsiamis.christos@epa.gov) and by regular mail, at U.S. EPA, Region 2, 290 Broadway, 20<sup>th</sup> Floor, New York, NY 10007.

42. EPA’s RPM shall have the authority lawfully vested in an RPM by the NCP. In addition, EPA’s RPM shall have the authority, consistent with the NCP, to halt any Work required by this Order and to take any necessary response action when the RPM determines that conditions at the Site may present an immediate endangerment to public health, welfare, or the environment. The absence of the RPM from the area under study pursuant to this Order shall not be cause for the stoppage or delay of Work.

#### VIII. WORK TO BE PERFORMED

43. Within the time frames set forth in the Work Schedule attached hereto as Appendix D, or as otherwise specified in EPA-approved plans, Respondent shall perform all actions necessary to complete the Work set forth below:

a. Design a bulkhead barrier wall along the eastern bank of the Gowanus Canal adjacent to Parcels I, VI, VII, beginning at Butler Street and extending south to the Union Street bridge, which design shall include minimization of total lateral encroachment to the Canal waterbody to three linear feet or less;

b. Design a permanent groundwater management system, as EPA may determine to be necessary, to control groundwater mounding behind the bulkhead barrier wall, and to treat contaminated groundwater entering the Canal.

c. Coordinate and cooperate with other Respondents to the Dredging RD UAO to ensure integration of the design of the barrier wall and any groundwater treatment/management system with the RD of the dredging, cap and ISS being performed pursuant to the Dredging RD UAO;

d. Coordinate and cooperate with the City regarding any MGP-related technical issues which pertain to the design and construction of the RH-034 Tank and the bulkhead barrier wall, including the location of current and future CSO outfalls, and the groundwater management design, if any.

44. Health and Safety Plan (HASP). Respondent shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at [https://www.epaosc.org/\\_HealthSafetyManual/manual-index.htm](https://www.epaosc.org/_HealthSafetyManual/manual-index.htm). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

45. Quality Assurance, Sampling, and Data Analysis. Respondent shall use Quality Assurance/Quality Control (“QA/QC”) and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines. Amended guidelines shall apply only to procedures conducted after such notification.

Prior to the commencement of any data collection or other monitoring under this Order, Respondent shall submit to EPA for approval a Quality Assurance Project Plan (“QAPP”) that is consistent with EPA-approved plans, the NCP, the Uniform Federal Policy for Implementing Quality Systems (“UFP-QS”), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans (“UFP-QAPP”), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer, and other guidance documents referenced in the aforementioned guidance documents as well as <http://www2.epa.gov/fedfac/assuring-quality-federal-cleanups>. Respondent shall ensure that EPA personnel and EPA’s authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Order. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with “EPA QA Field Activities Procedure” (<https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>). Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” (<http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf>) and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not

limited to, methods that are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/superfund/programs/clp/>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<http://www.epa.gov/ttnamti1/airtox.html>)," and any amendments made thereto during the course of the implementation of this Order. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), as long as (a) QA/QC criteria are contained in the method(s) and the method(s) are included in the QAPP, (b) the analytical method(s) are at least as stringent as the methods listed above, and (c) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ANSI/ASQC E-4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American National Standard, 2004, and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program, or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (<http://www.epa.gov/fem/accredit.htm>) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent shall notify EPA not less than seven days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Order.

45. Respondent shall assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain-of-custody procedures.

46. As appropriate during the course of implementation of the actions required of Respondent pursuant to this Order, Respondent or its consultants or contractors, acting through the

Designated Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date of this Order, the Designated Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved plans. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondent.

#### IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

47. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondent shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

48. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondent. Respondent shall implement any such item(s) as amended or developed by EPA.

49. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally.

50. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

#### X. SUBMISSION OF PLANS AND REPORTING REQUIREMENTS

51. Reporting.

a. Commencing on the thirtieth (30th) day after the Effective Date, unless there is field work at the Site, Respondent shall provide monthly, or as otherwise requested by EPA, progress reports. Whenever, during the implementation of this Order, Respondent is engaged in

active field work, Respondent shall provide EPA with written progress reports, including photo documentation, every seven (7) days during active field work. The first written progress report during active field work shall be submitted within seven (7) days of the commencement of field work. After active field work has been completed, Respondent shall resume monthly written progress reports, commencing thirty (30) days after the submission of the last weekly written progress report. All progress reports shall fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Order during the previous week; (b) include all results of sampling and tests and all other data received by Respondent after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next week; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

b. Respondent shall submit copies of all plans, reports, or other submissions required by this Order or any approved work plan as set forth below. Any electronic submissions must be in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. All deliverables shall be submitted to the following:

3 copies:  
(1 bound,  
1 unbound,  
1 electronic)

Remedial Project Manager - Gowanus Canal Site  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866  
[tsiamis.christos@epa.gov](mailto:tsiamis.christos@epa.gov)

1 copy:  
(via email  
or electronic)

Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: Gowanus Canal Superfund Site Attorney  
[carr.brian@epa.gov](mailto:carr.brian@epa.gov)

1 copy each:  
(via email)

N.Y.S. Department of Environmental Conservation  
[gardiner.cross@dec.ny.gov](mailto:gardiner.cross@dec.ny.gov)  
[henry.willems@dec.ny.gov](mailto:henry.willems@dec.ny.gov)  
[george.heizman@dec.ny.gov](mailto:george.heizman@dec.ny.gov)  
[karen.mintzer@dec.ny.gov](mailto:karen.mintzer@dec.ny.gov)

## XI. OVERSIGHT

52. During the implementation of the requirements of this Order, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent, including inspections at the Site and at laboratories where analytical work is being done hereunder.

53. Respondent and its employees, agents, contractor(s), and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Order.

## XII. COMMUNITY RELATIONS

54. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings that may be held or sponsored by EPA to explain activities at or concerning the Property; and provide a suitable location for public meetings, as needed.

## XIII. SITE ACCESS

55. EPA, NYSDEC and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondent shall at all times permit EPA, NYSDEC and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order. Respondent shall also provide the City with access to all such property which is necessary for the purposes of carrying out response actions at such property as required by the RH-034 Tank AOC.

56. In the event that action under this Order is to be performed in areas owned by or in possession of a person other than Respondent, Respondent shall use its best efforts to obtain access agreements from such persons within fourteen (14) Days of the Effective Date of this Order for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent within the time

period specified herein, Respondent shall immediately notify EPA of its failure to obtain access and shall include in that notification a summary of the steps Respondent has taken to attempt to obtain access. For purposes of this Paragraph, “best efforts” include the payment of reasonable sums of money in consideration of access. EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

57. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. All data, information and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on the Respondent’s behalf, in connection with the implementation of this Order.

58. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

#### XIV. ACCESS TO INFORMATION

59. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to Waste materials found on or released from the Site, for ten years after completion of the Work required by this Order. At the end of the ten-year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

60. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless claimed as privileged or confidential pursuant to applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondent conforms to applicable New York State law and regulations regarding confidentiality. Respondent shall not assert a

claim of privilege or confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the Work performed hereunder.

#### XV. COMPLIANCE WITH OTHER LAWS

61. Respondent shall undertake all action that this Order requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Order. The activities conducted pursuant to this Order, if approved by EPA, shall be considered consistent with the NCP.

62. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

63. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

#### XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

64. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center (telephone number (800) 424-8802), Respondent shall immediately orally notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656 of the incident or Site conditions. Respondent shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11004.

65. In the event of any action or occurrence during Respondent's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondent shall take such action in accordance with applicable provisions of this Order. In

the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

66. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

#### XVII. MODIFICATIONS

67. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order.

#### XVIII. DELAY IN PERFORMANCE

68. Any delay in performance of the Work under this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of the paragraph below, shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to perform all obligations fully under the terms and conditions of this Order.

69. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's Project Coordinator as soon as Respondent knows that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within two (2) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased cost or expense associated with the implementation of the activities called for in this Order is not a justification for any delay in performance.

#### XIX. ENFORCEMENT AND RESERVATION OF RIGHTS

89. Notwithstanding any other provision of this Order, failure of Respondent to comply with any provision of this Order may give rise to an allegation by EPA that Respondent may be subject to civil penalties of up to fifty-three thousand nine hundred seven dollars (\$53,907) per

violation per day, as provided in Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 74 Fed. Reg. 626 (81 Fed. Reg. 43091 (July 1, 2016))). EPA may also allege that Respondent may be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

## XX. OTHER CLAIMS

70. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

71. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order for any liability that Respondent or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding that Respondent is the only responsible party with respect to the release and threatened release of hazardous substances at and from the Site.

72. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

73. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 CFR § 300.700(d).

#### XXI. INSURANCE

74. At least fourteen (14) days prior to commencing any on-site Work under this Order, Respondent shall secure, and shall maintain for the duration the Work being performed pursuant to this Order, comprehensive general liability insurance and automobile insurance with limits of \$5 million, combined single limit, naming EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and, if requested, a copy of each insurance policy. Respondent shall submit such certificates and, if requested, copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Work being performed pursuant to Order, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent needs provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### XXII. FINANCIAL ASSURANCE

75. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within fourteen (14) days of the Effective Date one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent has sufficient assets to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than \$500,000.00 which is EPA's current estimated cost of the Work to be performed by Respondent under this Order. If EPA determines that the financial assurances submitted by Respondent pursuant to this Paragraph are inadequate, Respondent shall, within fourteen (14) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Paragraph. In addition, if at any time, EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

### XXIII. INTEGRATION/APPENDICES

76. In the event of a conflict between any provision of this Order and the provisions of any document attached to this Order or submitted or approved pursuant to this Order, the provisions of this Order shall control.

77. The following documents are attached to and incorporated into this Order:

Appendix A is the ROD

Appendix B is the Fulton ROD

Appendix C is the RH-034 Tank AOC

Appendix D is the Work Schedule

### XXIV. TERMINATION AND SATISFACTION

78. Upon a determination by EPA that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondent in writing.

### XXV. OPPORTUNITY TO CONFER, EFFECTIVE DATE

79. This Order shall be effective five (5) days after receipt by Respondent, unless a conference is timely requested pursuant to Paragraph 80 below. If such a conference is timely requested, this Order shall become effective one (1) day following the date the conference is held, unless the Effective Date is modified by EPA. All times for performance of ordered activities shall be calculated from this Effective Date.

80. Respondent may, within three (3) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within five (5) days of Respondent's request for a conference. The conference may be held in person or by telephone or videoconference.

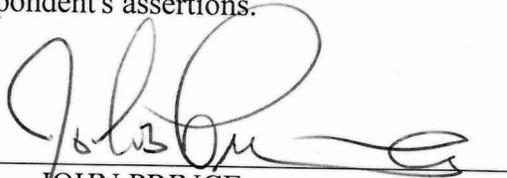
81. If a conference is held, Respondent may present any information, arguments, or comments regarding this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

82. A request for a conference must be made by telephone to Brian E. Carr, Assistant Regional Counsel, Office of Regional Counsel, EPA Region 2, telephone (212) 637-3170, followed by written confirmation emailed that day to Mr. Carr at [carr.brian@epa.gov](mailto:carr.brian@epa.gov).

XXVI. NOTICE OF INTENT TO COMPLY

83. Respondent shall provide, not later than three (3) days after the Effective Date, written notice to EPA stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the work required by this Order, EPA shall deem that Respondent has violated this Order and has failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA. Respondent's written notice shall be sent to Brian Carr, Assistant Regional Counsel, Office of Regional Counsel, EPA Region 2, 290 Broadway, 17th floor, New York, New York 10007-1866, or by email to [carr.brian@epa.gov](mailto:carr.brian@epa.gov). The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondent's assertions.

By:



JOHN PRINCE  
Acting Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region 2

MAY 11, 2017  
Date

Appendix A – September 2014 Gowanus Canal ROD (Electronic)

Appendix B – July 2015 NYSDCE Fulton ROD (Electronic)

Appendix C – June 2016 RH-034 Tank AOC (Electronic)

Appendix D – Work Schedule for Administrative Order CERCLA-02-2017-2007

1. Within 2 weeks of the Effective Date of the Order, Respondent shall participate in a Scoping Meeting with EPA to discuss the elements of the Work.
2. Within 2 weeks of the Scoping Meeting, Respondent shall submit to EPA a Preliminary Design and any plans required by EPA to perform this work (including but not limited to a Health and Safety Plan and Quality Assurance Project Plan).
3. Within 30 days of receipt of EPA's comments on the Preliminary Design, Respondent shall submit to EPA a 50% Design.
4. Within 60 days of receipt of EPA's comments on the 50% Design, Respondent shall submit to EPA a 95% Design, together with Preliminary Bid Documents.
5. Within 15 days of receipt of EPA's comments on the 95% Design and Preliminary Bid Documents, Respondent shall submit to EPA the 100% Design, finalize the Bid Documents and issue a Request for Proposal.