

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 ("ECL")

ORDER ON CONSENT

by

Index No. R2-20220112-3
Site No. C224177

135 Kent LLC & 135 Kent Avenue Management Corp.,

Respondents

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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 Brownfield Cleanup Program, pursuant to Article 27, Titles 13 and 14, of the New York State Environmental Conservation Law ("ECL").
2. The Department is authorized to administer the Brownfield Cleanup Program ("BCP") 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

5. Respondent 135 Kent LLC owns Site No. C224177, known as the Former Cleaners Sales & Equipment Corp. site (the "Site"), and is a BCP applicant for the Site.
6. Respondent 135 Kent Avenue Management Corp. is the former owner of the Site, and also a BCP applicant for the Site.
7. Respondents are BCP applicants at the Site.

PROVISIONS OF LAW

8. The New York Legislature declared that to advance the policy of the state of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution to enhance the health, safety, and welfare of the people of the New York

and their overall economic and social well-being, it was appropriate to adopt the Brownfield Cleanup Program. ECL Section 27-1403.

9. The Legislature found that all remedies under the Brownfield Cleanup Program shall be fully protective of public health and the environment. *See* ECL Section 27-1403.

10. The Department enacted 6 NYCRR Part 375 to provide for the orderly and efficient administration” of the Brownfield Cleanup Program, among other remedial programs. *See* 6 NYCRR 375-1.1 (a).

11. Under 6 NYCRR Part 375:

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 significantly increased threat of harm or damage at any site.

6 NYCRR 375-1.11(b)(2).

12. At least 60 days before making a change of use at a site the person proposing to make such change of use shall provide written notification to the Department. 6 NYCRR 375-1.11 (d).

13. “Change of use” means, among other things, any activity that is likely to disrupt or expose contamination or to increase direct human exposure, or any other conduct that will or may tend to significantly interfere with an ongoing or completed remedial program at a site and the continued ability to implement the engineering and institutional controls associated with such site. 6 NYCRR 375-3.2 (d).

14. Pursuant to ECL Section 71-2705(1), a person who violates ECL Article 27, Titles 9 and 13, is subject to a penalty of up to \$37,500 per day for each violation, and subject to criminal liability.

FACTS

15. On October 12, 2021, the Department received a notification from a tenant at the Site regarding unauthorized slab work at the Site. Respondents did not provide the Department with notification for this work.

16. On October 13, 2021, and October 25, 2021, the Respondents confirmed that their contractor partially removed the building slab to repair drainage piping associated with a bathroom in the commercial tenant space, thus potentially exposing occupants in the building to increased levels of contamination through soil vapor intrusion.

17. Respondents failed to protect vacuum monitoring point PV-2R, which was

destroyed, thus disrupting the operation, maintenance, and monitoring of the Sub-slab Depressurization System (SSDS).

VIOLATIONS

18. Respondents violated 6 NYCRR 375-1.11 (d) by failing to timely notify and obtain proper approval from the Department before performing the slab work.

19. Respondents violated 6 NYCRR 375-1.11 (b) (2) by failing to have a Qualified Environmental Professional on-site to ensure the work complied with applicable environmental regulations.

20. Respondents violated 6 NYCRR 375-1.11 (b) (2) by engaging in activity that interfered with an ongoing remedial program at the Site and was reasonably foreseeable to expose public health to an increased threat of harm, by disturbing the slab and failing to protect the on-site engineering control (i.e., the SSDS).

21. In settlement of Respondents' liability for the aforesaid violations, Respondents admit the violations set forth herein, waive their right to a hearing as provided by law, and consent to the issuing and entering of this Order on Consent pursuant to the provisions of ECL Articles 27 and 71, and agree to be bound by the provisions, terms, and conditions herein. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agree 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

Respondents shall be liable, jointly and severally, for a total civil penalty in the amount of **FIFTY-FIVE THOUSAND DOLLARS (\$55,000)** for the violation stated herein. Of that amount, \$40,000 shall be suspended but become payable by any of the above Respondents should DEC find that any of the Respondents violated another ECL provision at the Site before issuance of a certificate of completion. The remainder of **FIFTEEN THOUSAND (\$15,000)** 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 "R2-20220112-3" 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.

II. CORRECTIVE ACTION

Within 30 days of the Effective Date, Respondents shall submit a summary report, signed and stamped by a professional engineer, certifying that all damage to the SSDS and slab cover system caused by the violations described above has been corrected and that the SSDS is fully functional.

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

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: Long Island City, New York
~~MARCH 2~~, 2022

BASIL SEGGOS
Commissioner, NYSDEC

By: 
PATRICK E. FOSTER
Regional Director
NYSDEC - Region 2

CONSENT BY 135 Kent LLC

Respondent 135 Kent 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: Michael Weitzman

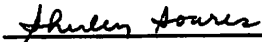
Title: Managing Member

Date: 2/10/22

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

On this 16th day of February, 2022, before me personally came MICHAEL WEITZMAN, who being properly identified and who being by me duly sworn did depose and say that s/he is MANAGING MEMBER of 135 Kent LLC, and did execute this Order on Consent on behalf of and as authorized by 135 Kent LLC.


Notary Public

SHIRLEY SOARES
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SO6144667
Qualified in Bronx County
My Commission Expires 04-24-2022

CONSENT BY 135 KENT AVENUE MANAGEMENT CORP.

Respondent 135 Kent Avenue Management Corp. 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):

Jeffry Cohen

Print Name: Jeffry Cohen

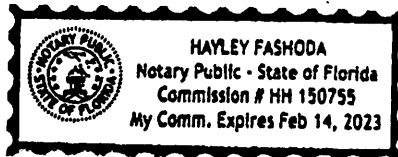
Title: President

Date: 2/16/22

ACKNOWLEDGMENT

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

On this 16th day of February, 2022, before me personally came Jeffry Cohen, who being properly identified and who being by me duly sworn did depose and say that s/he is President of 135 Kent Avenue Management Corp., and did execute this Order on Consent on behalf of and as authorized by 135 Kent Avenue Management Corp.



Hayley Fashoda
Notary Public