

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
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,

ORDER ON CONSENT

Index No. CO2-20230821-208
Site No. C224350

by

Gowanus 300 Nevins Street LLC,

Respondent.

-----X
WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the administration and enforcement of law and regulations pursuant to Article 27, Titles 13 and 14, of the New York State Environmental Conservation Law ("ECL") and 6 NYCRR Part 375 and may issue orders thereunder.
2. This Order on Consent (the "Order") is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.

PARTIES

3. Respondent Gowanus 300 Nevins Street LLC is a limited liability company with a principal place of business at 19 West 24th Street, 12th Floor, New York, NY 10010, and is the owner of the property located at 498 Union Street, Brooklyn, NY (Block 439, Lot 1) and 417 Carroll Street, Brooklyn, NY (Block 439, Lot 10) (collectively, the Site) and is a party to a Brownfield Cleanup Agreement dated April 29, 2022 (Index No. C224350-03-22).

PROVISIONS OF LAW

4. The New York State Department of Environmental Conservation ("Department") is responsible for remedial programs pursuant to Article 27, Title 13 and 14 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.

5. The Department enacted 6 NYCRR Part 375 pursuant to Titles 13 and 14 of Article 27 of the ECL to provide for the orderly and efficient administration of inactive hazardous waste disposal sites, including sites in the State Superfund and Brownfield Cleanup Programs. *See* 6 NYCRR 375-1.1(a).
6. A person proposing to change the use of a site is required to provide a notification to the Department in advance that includes an explanation of how such change may affect the site's proposed or ongoing remedial program. *See* ECL §27-1425 and Part 375-1.11(d)(1) & (2).
7. The statute and regulations state that it is a violation to engage in any activity that will, or that is reasonably foreseeable to expose the public health or the environment to a significantly increased threat of harm or damage at any site. *See* ECL §27-1425(2) and 6 NYCRR 375-1.11(b)(2)(ii).
8. 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, and may also be enjoined from conducting such activity.

FACTS

9. The Site is in the Brownfield Cleanup Program pursuant to a Brownfield Cleanup Agreement dated April 29, 2022 (Index No. C224350-03-22). The Site was deemed a significant threat due to non-aqueous phase liquid (NAPL) contamination. Additionally, semi-volatile organic compounds (SVOCs) and metals contamination exceeding restricted residential use soil clean-up objective criteria have been documented on site ranging from the shallow surface soil to 21 feet below grade surface.
10. At the time the violations occurred, the site was in the remedial investigation phase of remediation and is subject to the specifications in a Change of Use that was authorized by the Department on March 24, 2023, to perform foundation pile installation.
11. On March 2, 2023, Respondent submitted the Change of Use notification to the Department. The Change of Use notification included an excavation work plan, a soil management plan, and a community air monitoring plan (CAMP) would be implemented, equipment and vehicles would be decontaminated prior to leaving the site and dust suppression measures would be implemented to monitor and prevent human health exposures to contamination while work was being performed.
12. At the time of violation, the Site was completing work under a Change of Use under the Remedial Investigation Work Plan. Based on the representations of Respondent, the Department authorized the Change of Use on March 24, 2023, and allowed the proposed work to proceed. The Remedial Investigation Report was subsequently approved on October 12, 2023.
13. Based upon the representations of the Respondent, the Department authorized the Change of

Use and allowed the proposed work to proceed under the Change of Use and Remedial Investigation Work Plan.

14. Respondent entered an Order on Consent (Index No. CO2-20220811-307) dated August 18, 2023, addressing violations on the Site including engaging in activities that were reasonably anticipated to prevent or interfere significantly with any proposed or ongoing remedial program and submitting multiple Daily Field Reports containing false information to the Department.
15. Three days thereafter, on August 21, 2023, Department inspectors inspected the Site and observed a vehicle leaving the Site without being decontaminated, that the photoionization detector (PID) components of the CAMP stations were not installed correctly and therefore not monitoring site conditions, and a dust plume leaving the Site. Respondent was directed by the Department to immediately stop all work at the Site.
16. On September 7, 2023, Department inspectors inspected the Site and observed the photoionization detector (PID) in 2 CAMP stations to be non-operational. Respondent was directed immediately to rectify the issue and ensure CAMP stations are operating.
17. The Daily Report filed by Respondent with the Department for August 21, 2023 and September 7, 2023 contained false information indicating that CAMP stations were functioning properly.

VIOLATIONS

18. Respondent violated 6 NYCRR 375-1.11(b)(2)(ii) by engaging in activities that were reasonably foreseeable to expose the public health or the environment to a significantly increased threat of harm or damage at any site. Respondent failed to implement CAMP, failed to properly suppress dust on site, failed to decontaminate a vehicle leaving the site, and filed a Daily Report containing false information.
19. In settlement of Respondents' liability for the aforesaid violations, Respondent admits the violations 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 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 \$112,500.00 for the violations stated in this Consent Order to be paid as follows:

1. **Payable Penalty:** Respondent will pay \$65,000.00 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 2-20230821-208" 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, \$47,500.00 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order and applicable provisions of law. In the event that Respondent fails comply with the terms of this Order and applicable provisions of law, 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

Respondent shall submit revised Daily Reports for August 21, 2023 and September 7, 2023, labeled as "REVISED and REISSUED on [Date]", to reflect that the PID components of the CAMP stations were not correctly installed and not monitoring site conditions on August 21, 2023 and September 7, 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. The Department expressly reserves the right to terminate the Brownfield Cleanup Agreement for any future violation of ECL and/or corresponding regulations, based on the repeated history of noncompliance at the Site by Respondent and Respondent's agents. 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 or seeking a claim for natural resource damages.

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 termination of Brownfield Cleanup Agreement, and 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
April 1, 2024

BASIL SEGGOS
Commissioner, NYSDEC

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

CONSENT BY RESPONDENT

Respondent Gowanus 300 Nevins Street 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: Nicholas Silvers

Title: Authorized Signatory


Date: 3/15/24

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF New York)

On this 15 day of March, 2024, before me personally came Nicholas Silvers, who being properly identified and who being by me duly sworn did depose and say that s/he is Authorized Signatory of Gowanus 300 Nevins Street LLC and did execute this Order on Consent on behalf of and as authorized by Gowanus 300 Nevins Street LLC.

SAMUEL R SPARKS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SP6319416
Qualified in New York County
My Commission Expires 08-15-2027



Notary Public