

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations of Article 12 of the New York State Navigation Law and Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York (17 NYCRR),

**ORDER**

DEC File No.  
R2-20141222-586

- by -

**GLEN MEYERS and ROBERT MEYERS,**

Respondents.

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This administrative enforcement proceeding addresses allegations of staff of the New York State Department of Environmental Conservation (Department or DEC) that respondents Glen Meyers and Robert Meyers violated the New York State Navigation Law and its implementing regulations with respect to the discharge of petroleum at 526 Tompkins Avenue, Staten Island, New York (site). At the time that the discharge was discovered, respondents were owners of the site. The discharge of petroleum at the site has been designated as DEC Spill No. 0102484.

Department staff served respondents with a notice of motion for order without hearing in lieu of complaint dated August 15, 2016. In its motion, Department staff alleged that respondents:

- (1) violated Navigation Law § 173, by discharging petroleum at the site, which discharge was reported to the Department by Handex Practical Environmental Solutions on June 5, 2001, and which discharge remains uncorrected as of the date of the motion; and
- (2) violated Navigation Law § 176 and 17 NYCRR 32.5, by failing to clean up the discharge as of the date of the motion.

Staff seeks an order: (1) finding that respondents Glen Meyers and Robert Meyers violated Navigation Law §§ 173 and 176, and 17 NYCRR 32.5; (2) imposing a civil penalty in the amount of twenty-five thousand dollars (\$25,000) pursuant to Navigation Law § 192; (3) directing respondents to fully investigate and remediate the spill and to submit an investigation work plan within fifteen (15) days of the order; and (4) granting such other and further relief as appropriate.

Respondents failed to respond to Department staff's motion. The matter was assigned to Administrative Law Judge (ALJ) Lisa A. Wilkinson, who prepared the attached summary report. I adopt the summary report as my decision in this matter, subject to my comments below.

### **Liability**

Navigation Law § 173(1) prohibits the discharge of petroleum. In the event of a discharge, Navigation Law § 176 (1) requires that the person discharging petroleum "shall immediately undertake to contain such discharge" (see also 17 NYCRR 32.5).

I concur with the ALJ that Department staff has submitted evidence sufficient as a matter of law to establish its entitlement to summary judgment on the violations alleged in staff's motion. Staff has established that respondents owned the site at the time (June 5, 2001) when the discharge of petroleum was discovered (see Summary Report, at 2 [Findings of Fact Nos. 1 and 2]). As a result of the discharge of petroleum, soil and groundwater at the site were contaminated (see id., Finding of Fact No. 2; Affidavit of Raphael Ketani sworn to August 15, 2016 [Ketani Aff.] ¶ 5 ["significant petroleum contamination"]).

Staff further established that respondents have failed to conduct a prompt and appropriate investigation to determine the full extent of the petroleum discharge and have not cleaned up the discharge (see Summary Report, at 3 [Finding of Fact No. 13]; see also Ketani Aff. ¶¶ 13, 15, and 18).

Accordingly, staff has established that respondents are liable for the violations alleged.

### **Penalty**

Department staff has requested, and the ALJ has recommended, that I impose a civil penalty in the amount of twenty-five thousand dollars (\$25,000).

In support of the requested penalty, Department staff considered the following: (a) Navigation Law § 192, which provides for the imposition of a penalty of up to twenty-five thousand dollars (\$25,000) per day on any person who violates any provision of, or who fails to perform any duty imposed by, Navigation Law article 12 or its implementing regulations; (b) the Department's Civil Penalty Policy (DEE-1); (c) the Department's Bulk Storage and Spill Response Enforcement Policy (DEE-4); (d) the Department's Petroleum Bulk Storage Inspection Enforcement Policy (DEE-22); and (e) the efforts of staff to have respondents investigate and remediate the petroleum discharge at the site.

Based on the record before me, a civil penalty of twenty-five thousand dollars (\$25,000) is authorized and is hereby assessed, jointly and severally, upon respondents Glen Meyers and Robert Meyers.

## **Remediation**

Department staff, in addition, requests that I direct respondents to “fully investigate and remediate the . . . spill” and to “submit an investigation workplan to Department staff within 15 days” (see Affirmation of John K. Urda, Esq., dated August 15, 2016, at 7). The ALJ recommends that I grant this request but extend the time period for the submission of the work plan from fifteen (15) days to thirty (30) days of the service of this order upon respondents. I concur with the ALJ’s recommendation regarding extending the time to develop the work plan, and encourage respondents during this thirty (30) day period to review and discuss elements of the work plan with Department staff. The work plan that respondents submit must be in a form approvable by Department staff with only minimal revision, if any.

Any work plan that respondents submit must, among other things, describe the methodologies to be used in the investigation and cleanup of the site, set forth milestone dates for the commencement and completion of investigation and cleanup activities, and provide for a final report that documents the activities that were undertaken to remediate DEC Spill No. 0102484 in accordance with the approved work plan. With respect to any disposal of material off-site, respondents must include documentation in their final report indicating the amount of material disposed and the locations where the materials were disposed. Any such location must be authorized to receive those materials.

Following approval of the work plan by Department staff, I hereby direct respondents to investigate and remediate the site in accordance with the milestone dates in the work plan.

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

- I. Department staff’s motion for order without hearing pursuant to 6 NYCRR 622.12 is granted.
- II. Respondents Glen Meyers and Robert Meyers are adjudged to have violated Navigation Law §§ 173 and 176, and 17 NYCRR 32.5 by:
  - A. discharging petroleum at 526 Tompkins Avenue, Staten Island, New York as reported to the Department on June 5, 2001; and
  - B. failing to clean up the petroleum discharge (designated as DEC Spill No. 0102484) following the discovery of the discharge.

- III. Within thirty (30) days of service of this order upon respondents Glen Meyers and Robert Meyers, respondents shall submit a work plan to investigate and remediate DEC Spill No. 0102484 to Department staff for staff's review and approval. The work plan must be in a form approvable by Department staff with only minimal revision, and shall:
- A. detail the methodologies by which respondents will be investigating and remediating DEC Spill No. 0102484;
  - B. include a schedule of compliance with milestone dates for completing the investigatory phase and site remediation; and
  - C. include a requirement for a final report that will document the activities undertaken to remediate DEC Spill No. 0102484 in accordance with the approved work plan.

Following approval of the work plan, respondents shall investigate and remediate the site in accordance with the milestone dates set forth in the work plan.

- IV. I hereby assess a civil penalty of twenty-five thousand dollars (\$25,000), jointly and severally, on respondents Glen Meyers and Robert Meyers, which penalty shall be paid within thirty (30) days of the service of this order upon respondents. Payment shall be made in the form of a certified check, cashier's check, or money order payable to the New York State Department of Environmental Conservation. The payment shall be mailed or otherwise delivered to the following address:

John K. Urda, Esq.  
Assistant Regional Attorney  
NYS Department of Environmental Conservation, Region 2  
One Hunter's Point Plaza  
47-40 21<sup>st</sup> Street  
Long Island City, New York 11101-5401.

- V. All questions and correspondence regarding this order shall be addressed to John K. Urda, Esq., at the address referenced in paragraph IV of this order.

VI. The provisions, terms and conditions of this order shall bind respondents Glen Meyers and Robert Meyers, and their agents, successors and assigns, in any and all capacities.

For the New York State Department of  
Environmental Conservation

By: \_\_\_\_\_/s/\_\_\_\_\_  
Basil Seggos  
Commissioner

Dated: Albany, New York  
July 10, 2017

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations of Article 12 of the Navigation Law and Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York (17 NYCRR),

**SUMMARY REPORT ON  
MOTION FOR ORDER  
WITHOUT HEARING**

- by -

DEC File No. R2-  
20141222-586

**GLEN MEYERS and ROBERT MEYERS,**

Respondents.

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Appearances of Counsel:

-- Thomas S. Berkman, Deputy Commissioner and General Counsel (John K. Urda of counsel), for staff of the Department of Environmental Conservation.

-- No appearance for respondents.

**PROCEEDINGS**

By notice of motion for an order without a hearing in lieu of complaint, staff of the New York State Department of Environmental Conservation (Department) commenced this administrative enforcement proceeding against respondents Glen Meyers and Robert Meyers (respondents) alleging that respondents violated the Navigation Law and its implementing regulations. Staff served the notice of motion with supporting papers on respondents by certified mail at their respective home addresses located at 50 Marianne Street, Staten Island, New York, 10302-2505 (Glen Meyers), and 203 Oakwood Avenue, Staten Island, New York 10301-3409 (Robert Meyers).

The notice was dated August 15, 2016 and mailed on August 31, 2016. The United States Postal Service confirmed that Glen Meyers received the motion on September 2, 2016 and Robert Meyers received the motion on September 7, 2016 (see Urda Affirmation of Service). Neither respondent has replied to Department staff's motion.

In two causes of action, Department staff alleges that respondents (1) violated Navigation Law § 173 by discharging petroleum at property they owned at 526 Tompkins Avenue, Staten Island, New York (Site), and (2) violated Navigation Law § 176 and 17 NYCRR 32.5 by failing to clean up the discharge. Staff requests that the Commissioner issue an order (1) finding that respondents violated Navigation Law §§ 173 and 176, and 17 NYCRR 32.5; (2) imposing a civil

penalty in the amount of \$25,000; (3) directing respondents to fully investigate and remediate the subject spill and submit an investigation workplan within 15 days; and (4) granting such other and further relief as may be deemed just, proper, and equitable under the circumstances (see Urda Affirmation in Support of Motion [Urda Affirm], at 6-7 [Wherefore Clause]).

## **FINDINGS OF FACT**

The findings of fact determinable as a matter of law on this motion for order without hearing are as follows.

1. Respondents acquired ownership of the Site by deed dated December 9, 1999 and held it until March 20, 2002, when it was sold to Glenn Cecala (Urda Affirm ¶ 3, Exh A). During their ownership, respondents operated the Site as the Tompkins Service Center, Inc., an auto repair shop (Affidavit of Raphael Ketani sworn to August 15, 2016 [Ketani Aff], Exh A, at 1 [reference to Tompkins Service Center a/k/a Preferred Autobody], Exh B [letter referring to Tompkins Service Center]).
2. On June 5, 2001, as a result of a subsurface investigation on May 7, 2001, Handex Practical Environmental Solutions, an environmental contractor, discovered gasoline contaminated soil and groundwater in the area of six abandoned 550 gallon underground storage tanks (USTs) at the Site (Ketani Aff ¶ 4, Exh A at 1 and Exh B). Handex reported the finding to the NYSDEC spills hotline. The spill was recorded in the Department's database as Spill No. 0102484 (Spill) (Ketani Aff ¶ 4, Exh A at 1 [NYSDEC Spill Report Form]).
3. In a letter dated June 8, 2001, the representative for Handex stated that "[a]dditional soil and groundwater sampling is required to fully delineate both the lateral and vertical extent of petroleum hydrocarbon impacts to the subsurface" (Ketani Aff, Exh B at 2).
4. On July 9, 2001, approximately 3,000 gallons of oily water were transported from the Site to Clean Water of New York, a permitted disposal facility, in the process of UST tank excavation and removal. Respondent Glen Meyers signed the waste manifest and a receipt from Clean Water of New York as the representative of the generator, Tompkins Service Center, Inc. (Ketani Aff ¶ 6, Exh C)<sup>1</sup>.

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<sup>1</sup> Exhibit C to Mr. Ketani's affidavit was prepared by Clean Water of New York and refers to Tompkin Auto Repairs on Tompkins Avenue, Staten Island, New York. Exhibit A of Mr. Ketani's affidavit, the Department's spill report, refers to Tompkins Service Center, Inc. at 526 Tompkins Avenue, Staten Island, New York. The Department's spill report is consistent with the New York State Department of State's records for Tompkins Service Center, Inc. (*see* New York State Department of State Division of Corporations, DOS Id. No. 1655465).

5. On July 13, 2001, six USTs were removed from the Site (Ketani Aff ¶ 7, Exh D [July 13, 2001 Action Remediation Inc., tank removal affidavit and Site map]).
6. The USTs were not registered with the Department at the time of their discovery or at the time of their removal (Ketani Aff ¶ 7).
7. On February 13, 2002, Department staff issued a notice of violation to respondent Glen Meyers and directed him to submit a registration application for the removed USTs, tank test results, if any, and investigation results within seven days (Ketani Aff ¶ 8, Exh A at 1).
8. On or about February 21, 2002, Department staff received the tank closure report and a PBS application to register the removed USTs (id. ¶ 9).
9. The PBS application lists the facility as Tompkins Service Center, Inc., Glen Meyers as the facility owner, and Robert Meyers as operator, and is signed by respondent Robert Meyers (see Urda Affirm, Exh B).
10. On March 11, 2002, Department staff issued PBS facility No. 2-607486 for the Site (Ketani Aff ¶ 10).
11. Further limited investigation of the Site in 2013 by the current owner revealed continued petroleum impacts to soil and groundwater at the Site (see Ketani Aff ¶ 14, Exh A at 9).
12. On October 3, 2014, staff sent a stipulation agreement to respondent Glen Meyers, currently operating Meyers Brothers Automotive, 2890 Richmond Terrace, Staten Island (Ketani Aff ¶ 15, Exh A at 11). Respondent did not sign the stipulation agreement (id. ¶ 16).
13. The extent and area of the petroleum contamination at the Site has not been fully delineated and characterized. The Site remains contaminated and the Spill remains open in the NYSDEC spills database. (See id. ¶ 18.)

## **DISCUSSION**

### Liability

A motion for order without hearing is the Department's equivalent to summary judgment, and is governed by the same standards as are applicable to motions for summary judgment under the CPLR (see 6 NYCRR 622.12[d] and CPLR 3212). On an unopposed motion for order without hearing, the issue is whether Department staff is entitled to summary judgment on the

violations alleged in the motion. (See Matter of Edelstein, Order of the Commissioner, July 18, 2014, at 2; see also Matter of Hunt, Decision and Order of the Commissioner, July 25, 2006, at 7 n2.)

Department staff must produce evidence sufficient to demonstrate the absence of any material issue of fact with respect to each element of the causes of action that are the subject of the motion (see id.). Because hearsay is admissible in administrative hearings, staff may support its motion with hearsay evidence, provided that the evidence is sufficiently relevant, reliable, and probative (see Matter of Tractor Supply Co., Decision and Order of the Commissioner, Aug. 8, 2008, at 2-3).

Staff's motion includes two causes of action. The first cause of action alleges that respondents violated Navigation Law § 173 by discharging petroleum at the Site, commencing on the date of discovery of the Spill on June 5, 2001, when it was reported to the Department and continuing to August 15, 2016. The second cause of action alleges that respondents violated Navigation Law § 176 and 17 NYCRR 32.5 by failing to clean up the petroleum discharge at the Site, also commencing on the date of discovery of the Spill on June 5, 2001, and continuing to August 15, 2016.

Under the Navigation Law, "any person who has discharged petroleum shall be strictly liable, without regard to fault" for the costs of remediation (Navigation Law § 181[1] [emphasis added]). A "discharge" is defined as "any intentional or unintentional action or omission resulting in" the spilling of petroleum (id. § 172[8]). An owner of contaminated property who has control over activities occurring on the property and reason to believe that petroleum products are stored there may be liable as a discharger (see State of New York v Green, 96 NY2d 403, 407 [2001]). Proof of fault is not a predicate to liability and more than one discharger may exist under the Navigation Law (see id.).

Staff's papers demonstrate that respondents are liable under the Navigation Law for Spill No. 0102484. On June 5, 2001, an environmental contractor conducting an investigation discovered gasoline contaminated soil and groundwater in the area of six abandoned USTs, each with a capacity of 550 gallons, located on the Site and reported a spill to the Department's spills hotline. Respondents owned and operated the Site as of the date the discharge was discovered (see Urda Affirm ¶¶ 3-5, Exh A). By letter dated June 8, 2001, the contractor stated that "[a]dditional soil and groundwater sampling is required to fully delineate both the lateral and vertical extent of the petroleum hydrocarbon impacts to the subsurface" (Kentai Aff, Exh B at 2).

On June 9, 2001, approximately 3,000 gallons of oily water were transported from the Site to a permitted disposal facility (Ketani Aff ¶ 6, Exh C). The record includes the waste

manifest document and a receipt from Clean Water of New York, both dated July 9, 2001, signed by respondent Glen Meyers as representative of the waste generator (see id.).

According to Department staff, and as borne out by staff's submissions, respondents operated the Site as an auto repair shop (see Ketani Aff ¶4; Exh B). The presence of six 550 gallon USTs supports staff's claim that the Site had been operated as a gas station (see id.). Given the nature of respondents' business, and the prior use of the property, respondents should have been aware that petroleum products were, or had been, stored at the property. When a subsurface soil investigation conducted on respondents' property found petroleum contaminated soil and groundwater, and led to the reporting of the Spill to the Department, respondents, as owners of the Site, became responsible parties within the meaning of the Navigation Law and incurred a legal obligation to investigate and remediate the Spill.

Limited investigatory work of the Site in 2013 indicates that petroleum contamination is still present at the Site (see Ketani Aff ¶ 14; Exh A at 9). Respondents have taken no action to fully investigate and remediate the on-going effects of the Spill (see Ketani Aff ¶¶ 16-18). Accordingly, Department staff has made a prima facie showing that respondents violated Navigation Law §§ 173 and 176, and 17 NYCRR 32.5 by failing to clean up the Spill at the Site.

#### Civil Penalty and Corrective Action

Navigation Law § 192 authorizes a civil penalty of up to twenty-five thousand dollars (\$25,000) per day for each violation of the Navigation Law and its implementing regulations (see also Matter of Gasco-Merrick Road Gas Corp., Decision and Order of the Commissioner, June 2, 2008, at 3-11).

In its motion for order without hearing, staff seeks a payable penalty of \$25,000, which staff points out constitutes "one-half of a single day of the combined statutory maximum penalty for the two causes of action" (Urda Affirm ¶ 23). In support, staff discusses several factors consistent with the Department's Civil Penalty Policy (DEE-1) and the Bulk Storage and Spill Response Enforcement Policy (DEE-4) and the efforts of staff to obtain respondents' cooperation (see Petroleum Bulk Storage Inspection Enforcement Policy [DEE-22]) (see Urda Affirm ¶¶ 22-38). Staff contends that the Spill's impacts to soil and groundwater are documented, even if a complete investigation has not yet been conducted, and occurred in a residential and commercial section of Staten Island (see id. ¶ 28). Staff further alleges that respondents have been uncooperative, failed to sign a stipulation seeking clean-up of the spill as a means to avoid enforcement, and failed to sign an order on consent.

I conclude that a civil penalty of \$25,000 is supported and appropriate. The State has a significant interest in ensuring that owners of property on which petroleum is stored promptly investigate and cleanup any spills to the environment. Respondents' failure for more than a

decade to investigate the Spill and remediate it is an aggravating factor in this case that justifies granting staff's penalty request (see id. ¶ 32).

Section 176 (2)(a) of the Navigation Law states:

Upon the occurrence of a discharge of petroleum, the department shall respond promptly and proceed to cleanup and remove the discharge in accordance with environmental priorities or may, at its discretion, direct the discharger to promptly cleanup and remove the discharge. . . . Implementation of cleanup and removal procedures after each discharge shall be conducted in accordance with environmental priorities and procedures established by the department.

Staff has requested that respondents be directed to investigate the site pursuant to an investigation workplan to be submitted to the Department. Staff's request is reasonable and consistent with the statutory language and, therefore, I recommend that it be granted. To ensure the investigation and cleanup of the Site proceeds in accordance with the Department's procedures, I further recommend that staff be authorized to review and approve the workplan and require revisions as may be necessary. The administrative record contains numerous references to staff's desire to review any workplan in discussions with the current Site owner and presumably staff would want to review respondents' workplan as well (see e.g. Ketani Aff, Exh B [entries dated May 12, 2010 at 4, August 25, 2010 at 5, and March 25, 2011 at 6]).

## **CONCLUSIONS AND RECOMMENDATIONS**

As detailed above, I conclude that Department staff has met its burden to establish respondents' liability for the violations alleged in the complaint with respect to Spill No. 0102484. Specifically, staff established that respondents violated the Navigation Law § 173 by discharging petroleum at the Site, and Navigation Law § 176 and 17 NYCRR 32.5 by failing to adequately investigate and remediate the Spill when it was discovered in June 2001. Staff has provided adequate justification to support its requested civil penalty pursuant to Navigation Law § 192 with respect to these two violations.

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. granting Department staff's motion for order without hearing pursuant to 6 NYCRR 622.12;
2. holding that respondents violated:
  - a. Navigation Law § 173 for discharging petroleum at the Site;
  - b. Navigation Law § 176 and 17 NYCRR 32.5 by failing to adequately investigate and remediate the discharge in June 2001 when it was discovered;

3. imposing a civil penalty in the amount of \$25,000 pursuant to Navigation Law § 192;
4. directing respondents within thirty (30) days, of service of this order to submit a workplan to Department staff for its review and approval that includes:
  - a. a detailed explanation how respondents propose to investigate Spill No. 0102484;
  - b. a schedule of compliance with deliverable milestones for completing the investigation and remediation of Spill No. 0102484; and
  - c. a requirement to submit a corrective action report documenting the completion of the approved workplan;
5. providing that staff is authorized to require revisions to the workplan as may be necessary to effectuate an appropriate investigation and cleanup of the Site; and
6. directing that within thirty (30) days of the service of the order upon respondents, respondents shall pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000).

\_\_\_\_\_/s/\_\_\_\_\_  
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Lisa A. Wilkinson  
Administrative Law Judge

Dated: November 29, 2016  
Albany, NY

**APPENDIX A**  
***Matter of Glen Meyers and Robert Meyers***  
**DEC File No. R2-20141222-586**  
**Motion for Order Without Hearing**

1. Notice of motion for an order without hearing dated August 15, 2016.
2. Affirmation of John K. Urda in support of motion for an order without hearing dated August 15, 2016 with:
  - a. Exhibit A- Real Property Deeds dated December 9, 1999 between Hilda Orday and Antoinette Pecoraro as co-administratives of the Estate of Mary D'Elisa and Glen Meyers and Robert Meyers; and dated March 20, 2002 by Glen Meyers and Robert Meyers, both residing at 526 Tompkins Avenue, Staten Island, NY 10305, as tenants in common, and Glenn Cecala, residing at 62 Piavo Avenue, Staten Island, NY 10305.
  - b. Exhibit B - Petroleum Bulk Storage (PBS) Application received February 22, 2002 and processed March 11, 2002, and the PBS Program Facility Information Report, print date August 15, 2016.
  - c. Exhibit C - Letter dated June 23, 2016 from John K. Urda to Glen and Robert Meyers
3. Staff Affidavit of Raphael Ketani dated August 15, 2016 in support of motion with:
  - a. Exhibit A - NYSDEC Spill Report Form Spill Number 0102484 created on May 5, 2001, last updated August 11, 2016, print date August 15, 2016.
  - b. Exhibit B - Letter dated June 8, 2001 from Michael Sherwood, Project Hydrogeologist, Handex Practical Environmental Solutions to Eli Malka re: Geoprobe Investigation Tompkins Service Center, 526 Tompkins Avenue, Staten Island, New York, NYSDEC Case #01-02484.
  - c. Exhibit C - Non Hazardous Waste Manifest Tompkins Auto Repairs, 526 Tompkins Avenue, Staten Island, New York, to Clean Water of New York, 3249 Richmond Terrace, Staten Island, New York dated July 9, 2001.
  - d. Exhibit D - Letter dated July 23, 2001 from Kevin O'Connor, Project Manager, Action Remediation, Inc. to New York City Fire Department re: Tompkins Service Center, 526 Tompkins Avenue, Staten Island, New York.
  - e. Exhibit E - Letter dated October 3, 2014 from Raphael Ketani, Engineering Geologist II, to Glen Meyers, Meyers Brothers Automotive, 1890 Richmond Terrace, Staten Island, NY

10302 with proposed stipulation pursuant to section 17-0303 of the Environmental Conservation Law and section 176 of the Navigation Law, and corrective action plan.