

EXHIBIT F

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Alleged Violations of Article 27 of the
New York State Environmental Conservation Law and Title 6
of the Official Compilation of Codes, Rules and Regulations
of the State of New York,

- by -

20 REWE STREET LTD.,

**AFFIDAVIT OF
MICHAEL HAGGERTY
IN SUPPORT OF
MOTION FOR ORDER
WITHOUT HEARING**

**NYSDEC File No.
R2-20210416-52**

Respondent.

-----X
STATE OF NEW YORK)
 ss:
COUNTY OF ALBANY)

MICHAEL HAGGERTY, being duly sworn, deposes and says:

1. My name is Michael Haggerty, and I am a project manager in the Division of Environmental Remediation in the central office of the New York State Department of Environmental Conservation ("NYSDEC" or the "Department"). I have been employed by the Department since 2006. I received my Qualified Environmental Professional® (QEP) credential from the Institute of Professional Environmental Practice® in 2016.
2. I submit this affidavit in support of the Department's Motion for Order Without Hearing in the above-captioned enforcement action.
3. As part of my regular duties at the Department, I manage projects in various remedial programs, including the remediation of inactive hazardous waste

disposal sites.

4. This Site (the "Site") is a 0.46-acre parcel located at 171 Lombardy Street, Brooklyn, NY 11222. It is listed in the Registry of Inactive Hazardous Waste Disposal Sites as NYSDEC Site Number 224182. The Site is designated as Class 2; a significant threat to the environment and public health. See Exhibit A (Site Classification Report 171 Lombardy Street, January 13, 2014).

5. I have worked as the project manager for this Site since 2018.

6. NYSDEC listed the Site as Class 2 in 2014 based on data collected from adjacent sidewalks as a part of the Meeker Avenue Plume area-wide investigation to identify sources of groundwater contamination. The Department identified the Site as a source of tetrachloroethene (PCE). See Exhibit A. The Site was listed because it poses a significant environmental threat due to the presence of PCE in soil and groundwater. *Id.* Additionally, the Site is a threat to public health due to the associated soil vapor and the proximity of occupied structures.

7. The Department notified Respondent of this classification in July 2014. See Exhibit B (PRP Letter – 20 Rewe Street Ltd., July 8, 2014). This letter explained that the Site is a significant threat to the environment and public health, and advised Respondent to enter into an administrative Order on Consent with the Department for cleanup of the Site. *Id.*

8. On March 27, 2015, the Department requested access to the Site to perform a Remedial Investigation (an "RI"), but Respondent never granted the Department access. See Exhibit C (2015 Access Letter from Jessica Albin, March 27, 2015).

9. On January 30, 2018, the Department again requested access to the Site to perform an RI, but Respondent never granted the Department access. See Exhibit D (2018 Access Letter from Michael Murphy, January 30, 2018).

10. On March 28, 2018, I received an email from Respondent's environmental consultant, Edward "Ted" Sailer of Sailer Environmental, Inc, (later acquired by Fuss and O'Neill Consulting Engineers, PC), with various attachments documenting previous, unauthorized investigations that Respondent had conducted. This submittal showed that Respondent installed soil borings in 2015 and the associated data was not reported to the Department. See Exhibit E (Email from Ted Sailer to Michael Haggerty, March 28, 2018).

11. Respondent conducted a subsurface investigation at the Site from October 29 to November 3, 2015. See Exhibit F (Environmental Site Investigation Report from Sailer Environmental, Inc. (the "Sailer Report"), December 21, 2015). As part of this investigation, Respondent's consultant, Sailer Environmental, Inc. advanced soil borings both inside the on-site building and on the adjacent sidewalk to characterize subsurface soil and collect samples for analysis. Per the Sailer Report:

"The soil samples were collected by various methods dependent on the location and accessibility of the sampling locations. The soil borings were advanced with a direct-push hydraulic GeoProbe® drill rig ("GeoProbe"), via a hand auger or by a soil core sampler advanced by a hand operated slam bar. Most of the soil borings that were advanced with the GeoProbe were initially excavated to a depth of five (5) feet below grade with a hand auger to avoid damaging any potential utility lines. Once past the five (5)

foot depth, the borings were advanced with the GeoProbe drill rig. to approximately 20 ft below grade.” See Exhibit F at p. 4.

12. The Sailer Report documents an investigation at an Inactive Hazardous Waste Disposal Site conducted without Department oversight or involvement. Soil impacted with hazardous materials were disturbed and these actions may have exposed the public and/or environment to an increased threat of harm or damage. Without oversight, Department has no means to determine if these activities were conducted properly.

13. Activities associated with the subsurface investigation constitute a change of use at the Site, which requires notification to the Department. Respondent never notified the Department of any change in use at the Site.

14. On April 5, 2018, I emailed Ted Sailer and informed him that the data his firm had gathered up until that point only confirmed the presence of hazardous waste at the site. See Exhibit I (Email from Michael Haggerty to Ted Sailer, April 5, 2018). I again recommended that his client sign a consent order with the Department. *Id.*

15. On April 17, 2018, the Department conducted a RCRA inspection of the Site to determine if any hazardous materials were being use at the property and establish whether any hazardous waste generated at the site was properly disposed. Based on prior sampling of a cesspool associated with the Site, the Department suspected hazardous materials were being use either by the Respondent or its tenants. At that time, the Site had two active tenants, Milgo Bufkin and Sunco Building Supply. Hazardous materials were not in use at the time to the inspection and the tenants were not interacting with or contributing to the previously detected liquid hazardous waste in

the cesspool. The prior detection of liquid waste in the cesspool exceeding Toxicity Characteristic Leaching Procedure (TCLP) criteria was likely due to residual waste from the site's former operation. See Exhibit J (RCRA Letter from Michael Haggerty to Mark Buller, May 4, 2018).

16. On April 19, 2019, the Department sent a letter to Respondent informing Respondent that the Department's oversight over the investigation was required, and the Respondent's independent investigation was unacceptable to the Department. See Exhibit K (Michael Murphy Letter to Mark Buller, April 19, 2019).

17. On August 29, 2019, Jim Holiber, in-house counsel for Respondent, Chris Carpentieri, outside counsel retained by Respondent, and Ted Sailer of Fuss and O'Neill Consulting Engineers, PC, Respondent's environmental consultant, attended a meeting at the Department's Region 2 headquarters at 47-40 21st Street, Long Island City, New York. I was also present at this meeting. See Exhibit L (Meeting Roster, August 29, 2019). During this meeting, the Department reiterated to Respondent the Site's Class 2 designation, and reiterated that the ongoing unauthorized investigation constitutes a violation of the Environmental Conservation Law.

18. Following this meeting, Chris Carpentieri emailed the Department and stated, "In accordance with our conversation today, 20 Rewe has ceased further investigative work at the site." See Exhibit M (Chris Carpentieri Email to Patrick Foster, August 29, 2019).

19. On February 4, 2021, I observed Associated Drilling Company at the Site. I spoke to the employees, who explained to me that they were working for and at the direction of Respondent's consultant, Fuss and O'Neill. I personally witnessed drilling

activities being conducted at the Site as part of a subsurface investigation.

20. On February 22, 2021, the Department issued a Cease and Desist Notice of Violation for the ongoing, unauthorized investigation that I had witnessed earlier that month.

21. On September 23, 2021, I attended a calendar call with Respondent, two attorneys from the Department, Patrick Foster and Jonathan Agosta, and Administrative Law Judge McBride.

22. On September 29, 2021, Ted Sailer sent the Department Fuss and O'Neill's Supplemental Subsurface Investigation Report. See Exhibit N, (the "Fuss and O'Neill Report," September 2021).¹ Per the Fuss and O'Neill Report, "The main objective of this report is to characterize the degree and extent of chlorinated solvents identified at the Site during previous environmental investigations and determine whether releases of chlorinated solvents at the Site have contributed to the greater Meeker Avenue Plume." *Id.* at p. 1. As part of this investigation, contractors installed 46 additional borings to characterize soil and collect samples. Boring depths varied, however, many extended to the groundwater interface at approximately 45 ft below grade. Two on-site groundwater monitoring wells were also installed to collect groundwater samples. Contractors utilized both hand tools (e.g., hand augur) and mechanical equipment (e.g., direct-push hydraulic GeoProbe® drill rig) to advance borings to the terminal depth. This report confirms the presence of hazardous contaminants, specifically PCE, in soil and groundwater at the Site. In addition, the report confirms additional, unauthorized investigations were conducted from 2019 to

¹ Given that the Fuss and O'Neill Report totals 5,936 pages in length, only referenced tables and figures are included after the References section ends on page 29.

2021 after the Respondent confirmed on-site work had ceased on August 21, 2019. *Id.*

23. The Fuss and O'Neill Report confirms at least 11 days during which Respondent conducted an unauthorized investigation. *Id.* These activities constitute a change of use at the Site, which requires notification to the Department. Respondent never notified the Department of any change in use at the Site.

24. It's clear that consultants and/or contractors mobilized to the Site to conduct at least one additional unauthorized investigation based on my review of the Fuss and O'Neill report. Soil analytical data is presented on Figure 4; however, the subsurface investigation to obtain some of the samples were not documented in either the 2015 Environmental Site Investigation from Sailer Environmental, Inc. or the 2021 Supplemental Subsurface Investigation Report from Fuss and O'Neill. Again, Respondent never notified the Department of the any investigation or submitted a change in use at the Site. *See id.*

25. The purpose of Department oversight in the investigation and remediation of hazardous waste cleanup sites is to ensure safe and timely cleanup of hazardous waste in accordance with all applicable laws and regulations.

26. Activities like soil boring and monitoring well installation risk the disturbance and spread of hazardous contaminants if not implemented properly. These disturbances also expose workers at the Site, and potentially the public, to hazardous contaminants.

27. Without a Department-approved work plan, a Health and Safety Plan (HASP) and Community Air Monitoring Plan (CAMP) were never reviewed by the NYS Department of Health (DOH) so appropriate safety measures may not have been

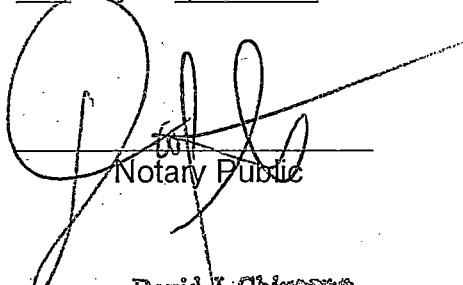
implemented. Grossly contaminated soil was known to be present in shallow soil based on the Department's investigation of the adjacent sidewalk so workers, and potentially the public, could have been exposed to volatile organic compounds (VOCs). The Department and DOH would have required measures to eliminate potential exposures. For example, requiring that workers be equipped with air purifying respirators, if needed, and that the sidewalks were closed to pedestrian traffic when necessary.

28. The Department also requires citizen participation for all Inactive Hazardous Waste Disposal Sites to facilitate public involvement in the remedial program. The public was denied that opportunity at this Site.

29. I make this affirmation upon my personal knowledge except as otherwise stated, and as to these matters, I have reason to believe them to be true.


MICHAEL HAGGERTY

Sworn to before me this
29 day of MARCH 2022


Notary Public
David J. Chisano
Notary Public, State of New York
No. 01CH5082146
Qualified in Schenectady County
Commission Expires August 22, 2024