

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 and Title 6, Part
375 of the Official Compilation of Codes, Rules, and
Regulations of the State of New York,

ORDER ON CONSENT

by

CO 2-20260122-18
Site No. C224211

18 Division Place Corp.

Respondent.
----- X

WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the “Department” or “DEC”) 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 18 Division Place Corp. (“18 Division” or “Applicant”) is a corporation with a principal place of business at 18 Division Place, Brooklyn, NY and is the owner of properties located at 14, 18, and 18A Division Place, Brooklyn, NY (Block 2849, Lot 10); 275 Richardson Street, Brooklyn, NY (Block 2849, Lot 24); and 283 Richardson Street, Brooklyn, NY (Block 2849, Lot 21) (collectively, the “Site”).

PROVISIONS OF LAW

4. The Department is responsible for remedial programs pursuant to Article 27, Titles 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 (“Commissioner”) by such statutes.

5. The Department adopted regulations under 6 NYCRR Part 375 pursuant to Titles 13 and 14 of ECL Article 27 to provide for the orderly and efficient administration of inactive hazardous waste disposal sites and brownfield sites, including sites in the New York State Superfund Program and the Brownfield Cleanup Program (sometimes, “BCP”). See 6 NYCRR 375-1.1(a).
6. The regulations state that “[a]ll work undertaken as part of a remedial program for a site shall be detailed in a work plan, unless determined otherwise by the Department.” 6 NYCRR 375-1.6(a).
7. The regulations state that “[a] proposed work plan shall be submitted for [D]epartment review and approval, as set forth in subdivision (d) of this section, and shall include, at a minimum, a schedule for performance of anticipated activities with sufficient detail to allow the department to evaluate that work plan.” 6 NYCRR 375-1.6(a)(2). In return, “The Department shall approve, modify, or reject a proposed work plan or report submitted pursuant to an order, agreement or State assistance contract.”
8. The regulations further state that “[t]he [D]epartment shall be notified at least seven days in advance of, and be allowed to attend, any field activities to be conducted under a [D]epartment approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting[.]” 6 NYCRR 375-1.6(a)(4).
9. The regulations state that “[i]t 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.” 6 NYCRR 375-1.11(b)(2)(ii).
10. Pursuant to ECL § 71-2705 (prior to the statute’s amendment effective May 9, 2025), any person who violates any of the provisions of, or who fails to perform any duty imposed by ECL Article 27, Title 13 or “any rule or regulation promulgated thereto” (including 6 NYCRR Part 375) may be liable for penalties of up to \$37,500 “for each day during which such violation continues” in the case of a first violation, and, for all subsequent violations, penalties of up to \$75,000 per day.

FACTS

11. In November 2021, DEC admitted 18 Division into the Brownfield Cleanup Program as a Volunteer, before 18 Division had taken ownership of the Site. The Brownfield Cleanup Agreement (sometimes, “BCA”) between the Department and 18 Division was effective as of February 4, 2022. 18 Division acquired the Site in January 2022, and the BCA was amended to reflect 18 Division’s ownership of the Site.
12. The BCA required 18 Division to undertake, among other things, remedial efforts at the Site in accordance with DEC-approved work plans, and to provide monthly reports to DEC describing the progress of the remedial efforts.

13. In November 2022, after several rounds of comments by the Department and the New York State Department of Health (“DOH”) on drafts prepared by 18 Division’s consultant, DEC approved a Remedial Investigation Work Plan (“RIWP”) for the Site.
14. In December 2022, after multiple rounds of comments from the Department and DOH, the Department approved the Interim Remedial Measures Work Plan – Vapor Mitigation (“IRM Work Plan”) prepared by 18 Division’s consultant.
15. The IRM Work Plan required pilot testing to determine subsurface conditions at the Site and to inform the design of a sub-slab depressurization system (“SSDS”).
16. The IRM Work Plan required the design of the SSDS for the Site to be reviewed and approved by the Department with input from DOH. Specifically, it required that “[f]ollowing the review and results of the pilot study,” 18 Division’s consultants “will prepare a Sub Slab Depressurization Design Report and engineering drawings” for the Department’s review. The IRM Work Plan states that “[f]ull design details will be provided in the design report, including equipment specifications, installation details, and code requirements.”
17. On January 11, 2023, 18 Division’s consultant wrote an e-mail to the Department’s Project Manager, which stated that the consultant was in the process of compiling SSDS pilot testing data, and that the consultant had begun installation of components of the SSDS at the Site. The e-mail included the following statement: “On a side note, I am compiling the pilot study data and I will send some preliminary data and reports for your review. The owner has been actively working to install SSD points as well. Three points have been installed to date at the main 18 Division Place building with the fans being installed this week. On the 2 story house, the owner completed install of retro coat and an active ventilation fan from the basement to the roof. I will provide more details and pictures once I compile my field notes.” The Department did not respond to this portion of the consultant’s January 11, 2023 e-mail.
18. Without disclosing the results of the pilot testing or providing a complete Sub Slab Depressurization System (“SSDS”) Design Report for Department review and comment, in or around March 2023, consultants for 18 Division completed installation of several components of the SSDS at the Site, including one active ventilation system at a residential structure, enabling ventilation of the basement to the roof line. 18 Division also installed three SSDS pits with risers to the roof at the commercial building at the Site.
19. On May 2, 2023, 18 Division submitted to the Department an initial “Vapor Mitigation Pilot and Installation Report.” The IRM Work Plan did not contemplate a combined pilot report together with a post-installation report. As discussed above, the IRM Work Plan stated that “[f]ollowing the review and results of the pilot study,” 18 Division’s consultants “will prepare a Sub Slab Depressurization Design Report and engineering drawings” for the Department’s review, prior to installation of the SSDS based on the design approved by the Department.

20. On June 16, 2023, the Department issued an “Opportunity to Cure” letter stating that the Vapor Mitigation Pilot and Installation Report did not meet minimum requirements for the Department to approve an SSDS Design Report; stating that the Department “object[ed] to the pace and progress of the Remedial Program at the Site[;]” and conditioning continued participation in the BCP on 18 Division submitting a revised SSDS Design Report that met the requirements. The letter also stated that 18 Division was tardy with respect to monthly progress reports and required 18 Division to submit delinquent reports and, in the future, submit timely reports.
21. On July 17, 2023, 18 Division’s consultant submitted to the Department two documents prepared by Obar Systems, Inc. The first document, dated July 5, 2023, was a “Diagnostic Report & Vapor Intrusions Mitigation System Design Plan.” The second document, dated July 11, 2023, was an “Operations, Maintenance, and Monitoring Plan.”
22. On July 20, 2023, the Department acknowledged receipt of 18 Division’s July 17, 2023 submissions (see ¶ 21).
23. On August 14, 2023, with 18 Division’s consent, an EPA representative visited the Site and reported to the assigned DEC Project Manager that soil cuttings derived from the remedial investigation were seen stored on the public sidewalk adjacent to the Site. The Department contends that the soil cuttings were hazardous waste and were uncovered, unattended, and accessible to the public. The EPA representative sent the DEC Project Manager a photograph of the hazardous waste on the public sidewalk outside the Site.
24. On the same day, 18 Division’s consultant emailed the DEC Project Manager, advising that the soil was present on the sidewalk for the purpose of “pictures and logging” and was then “immediately cleaned up and containerized.”
25. On September 19, 2023, the DEC Project Manager conducted a Site visit and observed drums of hazardous investigation-derived waste improperly stored and labeled, in violation of the DEC-approved RIWP, which required that all investigation-derived waste be containerized and stored appropriately to protect public health and safety.
26. On April 22, 2024, the Department informed 18 Division in writing that the BCA was terminated, effective as of the date of the notice. The notice stated that the BCA was terminated for three reasons. First, because 18 Division: “routinely missed schedule dates through-out its participation in the BCP.” Second, because 18 Division “fail[ed] to submit an approvable SSDS Design Report and required Monthly Reports.” And, third, because 18 Division violated the Department regulations when it: installed the three SSDS pits (see ¶ 18) without the Department’s pre-construction review and approval; stored investigation derived waste (i.e., soil cuttings) on the public sidewalk adjacent to the Site; failed to properly store, contain, and label other investigation derived waste relative to 2 drums stored outside at 283 Richardson Street, 22 drums stored inside the building at 18 Division Place, and 6 drums located in the yard west of 14 Division Place; and accumulated quantities of investigation derived waste without offsite disposal.

DISPUTE RESOLUTION PROCEEDING, RESCISSION, AND REINITIATION

27. On May 1, 2024, 18 Division formally initiated dispute resolution pursuant to 6 NYCRR § 375-1.5(b)(2)(i) to contest the Department's termination of the Brownfield Cleanup Agreement. The letter initiating dispute resolution contested that there were any substantive violations of the BCA and the related law including the Department's regulations, and it stated that the Department had never commented substantively on 18 Division's July 17, 2023 submissions identified in ¶ 21 above, and that these submissions represented an updated IRM Work Plan with SSDS Design Report. With respect to the soil cuttings, the letter stated that, on August 15, 2023 (i.e., the day following the EPA's notice), 18 Division sent the Department photographs demonstrating that the soil had been properly containerized. With respect to the drums of investigation derived waste, the letter stated that "Applicant informed [the Department] that all drums had been properly secured and labeled" and were removed from the Site on January 18, 2024.
28. On June 26, 2024, the Department rescinded the April 22, 2024 termination of the BCA. That same day, the Division of Environmental Remediation Director sent a 30-day "Notice of Opportunity to Cure" letter to 18 Division. The notice set forth the following.
 - a. With respect to the SSDS installation, the notice stated that the SSDS installation occurred before the submission of the report and without Department approval and that 18 Division failed to provide documentation demonstrating how soil removed during the installation was handled or disposed.
 - b. With respect to the SSDS Design Report dated July 17, 2023—for the first time—the Department responded substantively. Specifically, the notice advised 18 Division that it was rejected and disapproved because: "it was not provided in an acceptable format[;]" it was not submitted by a licensed engineering firm; it failed to identify certain required permits; it did not satisfy the Guidance on Air Emissions of VOCs at DER Remediation Sites; parts of it contained "No site-specific information or reporting requirements[;]" it did not contain information relative to the soil removed to install the SSDS installation and backfilling the same; it did not contain a Health and Safety Plan, a Community Air Monitoring Plan, an adequate Construction Completion Report, "a schedule as required by 6 NYCRR § 375-1.6(a)(2) and 6 NYCRR § 375-3.6(a)[;]" and was missing drawings from three SSD systems that were installed.
 - c. With respect to the drums containing investigation derived waste, the notice stated that the drums "exceeded the maximum accumulation time of 90 days for a LQG facility. Furthermore, the Applicant failed to account for the disparity between the number of drums observed by the DEC Project Manager on 9/19/23 and the number of drums disposed in January 2024."

- d. With respect to monthly progress reports, the notice acknowledged that delinquent reports were provided on June 23, 2023 for the months spanning February 2022 – May 2023, but stated that the reports for October 2023 – January 2024 Monthly Progress Reports were submitted late and contained errors. As to the soil samplings, the notice repeated the claims in the April 22, 2024 termination letter but did not acknowledge 18 Division’s consultant’s email stating that the issue was resolved the same day it was observed.
- e. Finally, the notice stated that 18 Division violated the Department’s regulations by failing to submit responses to the Department’s disapprovals and that “The draft Remedial Investigation Report (RIR) was submitted … over 6 months after completion of the RI field work.”

29. On July 18, 2024, counsel for 18 Division sent a letter to the Department that disagreed with the Department’s June 26, 2024 “Notice of Opportunity to Cure.” The letter denied that “that there has been any violation of the [BCA] or any applicable laws, regulations, or guidance[,]” and it provided an alternative timeline that, according to 18 Division, refuted the Department’s allegations in the notice. 18 Division further disagreed that it is a Large Quantity Generator under RCRA and that all soil on the Site was considered “hazardous waste.” Regarding the drums, the letter stated that “they were permanently removed from the Site on February 5, 2024. With respect to the RIR, the letter stated that the Department had been advised that the delay was caused by a vendor’s delay in providing critical and related data. Importantly, the letter also advised the Department that: “Applicant is diligently working to revise the SSDS Design Report to address [the Department’s] comments, received as part of the June 26th Opportunity to Cure, nearly a year from the revised report’s submission. Applicant hereby provides written notice that it will submit a revised SSDS Design Report pursuant to 6 NYCRR 375-1.6(d)(3) by July 26, 2024, within the applicable timeframe.”

30. On July 22, 2024, the Division of Environmental Remediation Director designated Bureau Director Sarah Saucier as the “designated individual” under 6 NYCRR § 375-1.5(b)(2)(iv)(A) to decide the dispute. 18 Division immediately disagreed that dispute resolution under 6 NYCRR § 375-1.5(b)(2)(i) was ongoing given the Department’s June 26, 2024 rescission of the BCA termination.

31. On July 26, 2024, 18 Division submitted a revised SSDS Design Report and IRM Workplan to the Department that was prepared by the company’s new environmental consultant, P.W. Grosser Consulting, Inc. The revised reports were submitted within the thirty days provided by the Department’s June 26, 2024 30-day “Notice of Opportunity to Cure” letter.

32. On August 23, 2024, the Department submitted a dispute resolution position statement. It restated the Department’s allegations in its June 26, 2024 30-day “Notice of Opportunity to Cure” letter and rebutted 18 Division’s responses thereto. It did not address or acknowledge 18 Division’s submission of a revised SSDS Design Report and IRM Work plan on July 26, 2024 . 18 Division did not and was not invited to submit a position statement.

33. In response to various communications from 18 Division's counsel, on August 30, 2024, the Department stated that it, "considered 18 Division's July 18, 2024 letter initiation of dispute resolution." 18 Division contested this position because its July 18, 2024 letter responded directly to the Division Director's June 26, 2024 30-day "Notice of Opportunity to Cure" letter, and it stated that a revised SSDS Design Report and IRM Workplan would be timely submitted (which happened).
34. On October 1, 2024, via email, Bureau Director Saucier issued a dispute resolution decision finding that the BCA termination must be upheld and that the Site was no longer in the Brownfield Cleanup Program. The decision was based upon the allegations in the record up to 18 Division's July 18, 2024 letter. It did not consider the July 26, 2024 revised SSDS Design Report and IRM Workplan. The decision also newly asserted, for the first time, that "the Applicant was not forthcoming with Department Staff regarding the residential use of a portion of the site."
35. 18 Division did not pursue an administrative appeal of Bureau Director Saucier's October 1, 2024 decision (as provided for in 6 NYCRR § 375-1.5(b)(2)(i)).

ARTICLE 78 PROCEEDING

36. On January 28, 2025, 18 Division challenged the October 1, 2024 decision of Bureau Director Saucier through a Verified Petition pursuant to Civil Practice Law and Rules Article 78 ("Article 78 Petition"), in a proceeding commenced in the Supreme Court of the State of New York, New York County and later transferred to Albany County Supreme Court and assigned index number 904189-25. Specifically, the Article 78 Petition requested that the Court: 1) annul the October 1, 2024 decision, 2) direct the Department to include the site in the BCP, 3) declare that the Department's determination was unconstitutional as applied to 18 Division, and 4) issue other relief "as the Court may deem just and proper."
37. The Article 78 Petition alleged, in sum, that the Department: failed to timely respond or object to notice of 18 Division's remedial activities and reporting; failed to consider 18 Division's notice of the Site's residential use; willfully ignored or unreasonably delayed (for nearly a year) responding to 18 Division's reports; violated 18 Division's fundamental constitutional rights by unilaterally initiating dispute resolution and not allowing 18 Division to defend itself before issuing an adverse decision; and violated 18 Division's right to equal protection.
38. On July 21, 2025, DEC cross-moved to dismiss the Article 78 Petition. 18 Division opposed DEC's cross-motion to dismiss. Neither the Article 78 Petition nor DEC's cross-motion to dismiss has been argued before the Court or decided by the Court.

VIOLATIONS

39. 18 Division violated 6 NYCRR 375-1.6(a)(2) by failing to submit to the Department a Sub Slab Depressurization Design Report and engineering drawings for the Department's review and approval prior to the installation of the SSDS in or around March 2023.

40. 18 Division violated 6 NYCRR 375-1.6(a)(4) by failing to notify the Department at least seven days in advance of, and offering the Department's representative the ability to attend, installation of the SSDS's components in or around March 2023.
41. 18 Division violated 6 NYCRR 375-1.11 (b)(2)(ii) by engaging in an activity that exposed the public health or the environment to a significantly increased threat of harm or damage at the Site when 18 Division's consultant temporarily stored soil cuttings derived from the remedial investigation (investigation-derived waste) on the public sidewalk adjacent to the Site.
42. These foregoing violations alleged in ¶¶ 39-41 are referred to herein as the "Violations."

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

A. SETTLEMENT

43. In settlement of 18 Division's liability for the Violations and the allegations, statements, and comments made by the Department as identified in this Order, and solely for the limited purposes of this Order and any proceeding by the Department to enforce this Order, and without prejudice to 18 Division's positions in any other context, 18 Division admits to the Violations, waives its right to a hearing as provided by law, consents to the issuing and entering of this Order pursuant to ECL Articles 27 and 71, and agrees to be bound by the provisions, terms, and conditions herein.
44. 18 Division 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.
45. These limited admissions shall not be construed or used as admissions of liability, fault, wrongdoing, or violations of law in any other forum or proceeding and shall not give rise to any presumption in favor of any person or entity other than the Department in connection with enforcement of this Order.

B. PENALTY

46. **Civil Penalty:** 18 Division shall be liable for a total civil penalty in the amount of One Hundred and Twenty Thousand Dollars (\$120,000.00) for the Violations stated in this Consent Order to be paid as follows ("Civil Penalty"):
 - a. **Payable Penalty:** 18 Division will pay Forty Thousand Dollars (\$40,000.00) ("Payable Penalty") of the penalty upon the execution of this Consent Order. Payment shall be paid within 14 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 2-20260122-18" written in the "memo" section of the check, which shall be mailed to the Department, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.

b. **Suspended Penalty:** Notwithstanding the Payable Penalty, Eighty Thousand Dollars (\$80,000.00) of the assessed civil penalty against 18 Division has been suspended (the “Suspended Penalty”), provided 18 Division complies with all the terms of this Order and the applicable regulations at 6 NYCRR Part 375. If 18 Division violates the terms of this Order or of its duties under the applicable regulations at 6 NYCRR Part 375, the Suspended Penalty shall become due and payable upon written notice to 18 Division without prejudicing the Department seeking further appropriate penalties for the Violations by 18 Division. Notwithstanding anything to the contrary herein, and consistent with ¶ 52, the Suspended Penalty shall be assessed exclusively for an act or omission of 18 Division that occurs after executing this Order.

C. 18 DIVISION’S STATUS IN THE BROWNFIELD CLEANUP PROGRAM

47. 18 Division shall be reinstated to the Brownfield Cleanup Program as a Volunteer within the meaning of ECL § 27-1405(1)(b) and 6 NYCRR § 375-3.2(c)(2). The BCA between 18 Division and the Department is hereby reinstated nunc pro tunc to April 21, 2024, which is the date that precedes the Department’s initial April 22, 2024 BCA termination notice, and the BCA is binding on the parties as of the effective date of this Order.

48. The Parties agree that:

- a. 18 Division’s status under the BCA is preserved without change;
- b. 18 Division’s eligibility for, and ability to obtain, all benefits and protections available under the BCP, including without limitation, liability limitations and tax credit eligibility determinations available under applicable law and guidance, shall not be adversely affected, limited, impaired, or forfeited by reason of the Violations and the allegations, statements, and comments made by the Department as identified in this Order and 18 Division’s responses thereto including the Article 78 proceeding;
- c. no presumption, waiver, estoppel, or adverse inference shall arise against 18 Division or the Department in any forum from the fact of the stipulated discontinuance of the Article 78 proceeding;
- d. all BCA schedules and deadlines that would have run during the period between April 21, 2024 and the effective date of this Order are tolled and shall be extended day-for-day for the duration of that period, or adjusted to a mutually agreed revised schedule approved by 18 Division and the Department;
- e. nothing in this provision creates rights in any third party; provided, however, that the Department shall recognize the 18 Division’s continuous BCP participation for purposes of any administrative determinations concerning program benefits and shall not assert the Violations nor the allegations, statements, and comments made by the Department as identified in this Order and 18 Division’s responses thereto including the Article 78 proceeding;

- f. the Department shall substantively consider the July 26, 2024 revised SSDS Design Report and IRM Workplan as a part of 18 Division's compliance with the BCA, the Brownfield Cleanup Program, and all related laws and regulations, and the Department shall use best efforts to identify any deficiencies in these submissions to 18 Division within ninety days of the effective date of this Order.
- g. Nothing in this agreement grants 18 Division any rights against future termination of the Agreement based on future events or changes of circumstance, beyond those rights 18 Division possesses under the terms of the BCA, applicable statutes and regulations. To resolve doubt, the Department shall not seek a future termination unless it is based upon an event that occurs following 18 Division's execution of this Order.

D. ENTIRETY OF ORDER

- 49. The provisions of this Order constitute the complete and entire Order, concerning resolution of the Violations identified in this Order and the allegations, statements, and comments made by the Department as 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 18 Division shall be construed as relieving 18 Division of its obligations to obtain such formal approvals as may be required by this Order.

E. RELEASE

- 50. This Order shall be in full settlement of all claims including civil and administrative penalties that have been or could be asserted by the Department against 18 Division, its trustees, officers, employees, successors and assigns for the above-referenced Violations (collectively "Released Parties"). This Order fully and unconditionally releases and discharges each of the Released Parties from any and all claims, counterclaims, demands, damages, debts, suits, liabilities, actions, and causes of action of any nature whatsoever, direct or indirect, patent or latent, legal or equitable, whether now manifest or not, whether in tort, in contract, or under statute, that were asserted, could have been asserted, or arise out of or relate in any way to the Violations and the allegations, statements, and comments made by the Department as identified in this Order.
- 51. 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. However, the Department shall be deemed to have knowledge of all matters discussed and identified in this Order.

52. The Department shall not take any adverse action against 18 Division with respect to the Violations and the allegations, statements, and comments made by the Department as identified in this Order. However, the Department does not waive any adverse action against 18 Division, notwithstanding this Order, if the adverse action is based upon an act or omission of 18 Division that occurs following 18 Division's execution of this Order.

F. RESERVATION OF RIGHTS

53. The Department reserves the right to require that 18 Division undertake any additional measures required to protect human health and/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.

G. BINDING EFFECT

54. The provisions, terms and conditions of this Order shall be deemed to bind 18 Division and the 18 Division's heirs, legal representatives, receivers, trustees in bankruptcy, successors, and assigns, employees, and all persons, firms, and business entities acting under or for them.

H. FAILURE, DEFAULT, AND VIOLATION OF ORDER

55. 18 Division's 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 18 Division by the Department.

I. DEFAULT OF PAYMENT

56. The Payable Penalty assessed against 18 Division and the Suspended Penalty, if assessed against 18 Division, constitute a debt owed to the State of New York. Failure to pay 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 18 Division by the State of New York by the penalty amount.

J. MODIFICATION

57. No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner (or her designee), being made either upon written application of the 18 Division, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to 18 Division. The 18 Division shall have the burden of proving entitlement to any modification requested.

K. INDEMNIFICATION

58. 18 Division 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 18 Division, 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 18 Division or its employees, servants, agents, successors, or assigns.

L. NOT A PERMIT

59. 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, 18 Division is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. 18 Division's 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 18 Division's compliance with this Order will result in compliance with any laws, regulations or permits.

M. FORCE MAJEURE

60. If 18 Division 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 18 Division and which could not have been avoided by 18 Division through the exercise of due care, 18 Division 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. 18 Division shall include in such application the measures taken by 18 Division 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. 18 Division shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order pursuant to this provision.

N. EFFECTIVE DATE AND TERMINATION

61. This Order shall take effect when it is signed by the Commissioner of the Department of Environmental Conservation or her designee. This Order shall terminate when all requirements imposed by this Order are completed to the Department's satisfaction.

O. DISCONTINUANCE OF ARTICLE 78 PROCEEDING

62. Within five business days of the effective date of this Order, the parties shall electronically file with the Court a stipulation of discontinuance of the pending Article 78 proceeding, thereby mooted the Department's pending motion to dismiss the Article 78 Petition.

P. COOPERATION

63. The parties agree to act in good faith with respect to the terms of this Order and to cooperate reasonably in taking such actions as may be necessary or appropriate to effectuate its provisions including the filing of any document necessary to effectuate the stipulation of discontinuance of the pending Article 78 proceeding.

Q. SEQUENCE OF EXECUTION

64. 18 Division's counsel shall e-mail a copy of the Order, duly executed by 18 Division, along with any applicable submissions, to the Department's counsel at michael.murphy1@dec.ny.gov, and concurrently send the original execution version by overnight courier to:

NYS Department of Environmental Conservation
Office of General Counsel
Attention: Michael Murphy, Remediation Bureau
625 Broadway, 14th Floor
Albany, NY 12233-1500

Once executed on behalf of the Department, the Department shall e-mail the fully-executed Order to gduke@foxrothschild.com and tspeer@foxrothschild.com.

DATED: Albany, New York
January 29, 2026

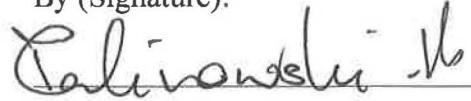
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Commissioner, NYSDEC

By: *Andrew Guglielmi*
Andrew O. Guglielmi, Division Director
Division of Environmental Remediation

CONSENT BY 18 DIVISION PLACE CORP.

18 Division Place 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):



Print Name: BOGDAN MALINOWSKI

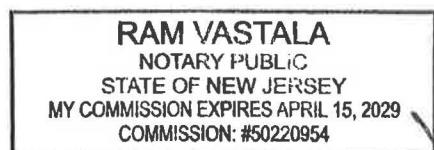
Title: PRESIDENT

Date: 01.21.2026

ACKNOWLEDGMENT

STATE OF NEW YORK }
 } SS:
COUNTY OF Hudson }

On this 21 day of January, 2026, before me personally came _____, who, being properly identified and who being by me duly sworn did depose and say that s/he is _____, of _____, and did execute this Order on Consent on behalf of and as authorized by _____.



By (Signature):

