

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,

by

2201 Union LLC

**ORDER ON CONSENT**

Index No. CO2-20230301-63  
Site No. C224219

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 2201 Union LLC is a limited liability company with a principal place of business at 55 Washington Street, Suite 551, Brooklyn 11201 and is the owner of the property located at 450 Union Street, Brooklyn NY (Block 438, Lot 7) (the Site).

**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 issues 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 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. The regulations state that all workplans, including a site management plan shall be implemented in accordance with the requirements all applicable laws, rules and regulations. *See* 6 NYCRR 375-1.6(a)(1)(i).
7. The regulations state that during all field activities conducted under a Department-approved work plan, including a site management plan, a qualified environmental professional be present on site to supervise the activities undertaken.
8. The 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* NYCRR 375-1.11(b)(2)(ii).
9. 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.

### **FACTS**

10. The Site is in the Brownfield Cleanup Program and a Certificate of Completion was issued on December 20, 2020.
11. The site is currently in the site management phase of remediation. The site is subject to a Site Management Plan (SMP) that was approved by the Department on December 20, 2020.
12. The SMP requires that all drilling fluids be captured, contained and treated as investigation derived waste. *See*, December 20, 2020 SMP, Appendix D, Excavation Work Plan.
13. The SMP requires that a Community Air Management Plan (CAMP), be implemented during intrusive fieldwork. *See*, December 20, 2020 SMP Appendix F, Community Air Monitoring Plan Section.

14. The SMP requires that environmental oversight be conducted during intrusive work. *See*, December 20, 2020 SMP, Section 3.2 Institutional Controls and Section 3.3.1 Site Cover System.<sup>15</sup>
15. On March 8, 2023, Department staff visited the Site and observed drilling fluids being discharged to the ground surface, exiting the site and flowing off the site towards a storm sewer entrance on the corner of Bond and Union Street. Respondent failed to properly capture, contain and treat drilling fluids as investigation derived waste. This activity exposed the public health or the environment to a significantly increased threat of harm or damage.
16. From March 7-8, 2023, Respondent failed to implement the CAMP during intrusive field work.
17. On March 8, 2023, Respondent failed to provide appropriate oversight by a qualified environmental professional during field activities.

### **VIOLATIONS**

Respondent violated 6 NYCRR 375-1.11(b)(2)(i) by engaging in an activity that exposes the public health or the environment to a significantly increased threat of harm or damage at a BCP site.

Respondent violated 6 NYCRR 375-1.6(a)(1)(i) by failing to implement and manage the approved SMP.

Respondent violated 6 NYCRR 375-1.6(a)(3) by failing to have a qualified environmental professional on site to supervise these activities.

In settlement of Respondent's liability for the aforesaid violations, Respondent admits the violation 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 \$150,000.00 for the violations stated in this Consent Order to be paid as follows:

1. **Payable Penalty:** Respondent will pay \$ 20,000.00 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 "CO2-20230301-63" 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, 10<sup>th</sup> Floor, Albany, NY 12233-4900.
2. **Suspended Penalty:** Notwithstanding the Payable Penalty above, \$130,000.00 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order. In the event that Respondent fails to make the submissions, 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 Andalaro, Remediation Bureau Chief  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-1500

## II. CORRECTIVE ACTION

A corrective action plan in the form of the Remedial Site Optimization Work Plan was approved by the Department on April 6, 2023 and the Addendum thereto dated and approved by the Department on May 3, 2023.

## III. ENTIRETY OF ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent, 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 Respondent shall be construed as relieving the Respondent 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 Respondent, 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 Respondent undertake any additional measures required to protect human health or the environment and shall reserve the Department's rights to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law. This Order does not bar, diminish, adjudicate, or in any way affect the Department's rights or authorities, except as set forth in this Order, including but not limited to, exercising summary abatement powers.

#### **VI. BINDING EFFECT**

The provisions, terms and conditions of this Order shall be deemed to bind Respondent and the Respondent's 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**

Respondent'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 the Respondent 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 Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard

have been given to the Respondent. The Respondent shall have the burden of proving entitlement to any modification requested.

#### **X. INDEMNIFICATION**

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

#### **XII. FORCE MAJEURE**

If Respondent 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 Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent 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. Respondent shall include in such application the measures taken by Respondent 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. Respondent 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  
June 9, 2023

BASIL SEGGOS  
Commissioner, NYSDEC

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

### CONSENT BY RESPONDENT

Respondent 2201 Union 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:

Robert Doster

Title:

Manager

Date:

5-24-23

### ACKNOWLEDGMENT

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

On this 24<sup>th</sup> day of May, 2023, before me personally came Robert Doster, who being properly identified and who being by me duly sworn did depose and say that s/he is Manager of 2201 Union LLC, and did execute this Order on Consent on behalf of and as authorized by \_\_\_\_\_.

Notary Public

JOSEPHINE C. MANTELLINO  
Notary Public, State of New York  
No. 01MA6009016  
Qualified in Richmond County  
Commission Expires June 22, 2026