
In the Matter of the Violations of Article 27
of the New York State Environmental
Conservation Law and Part 375 of Title 6 of the
Official Compilation of the Codes, Rules, and
Regulations of the State of New York

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**

Case No. R2-20250911-189

by: 101 Fleet Realty LLC,
101 Fleet Place LLC,
and
101 Fleet Holding LLC

Hereinafter referred to as "Respondents"

JURISDICTION

1. The New York State Department of Environmental Conservation ("Department") is responsible for remedial programs pursuant to Article 27 of the New York State Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

2. The Department is responsible for carrying out the policy of the state of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

3. This order on consent ("Order") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27 and ECL 3-0301.

SITE AND PARTIES

4. The Site is a Brownfield Cleanup Program ("BCP") site that received its Certificate of Completion ("COC") on September 18, 2024. Prior to remediation, the Site was contaminated with semi-volatile organic compounds in on-site soil as well as petroleum compounds and chlorinated solvents in soil vapor.

5. The Site consists of approximately 0.472 acres, and is located at Kings County Block 2061, Lot 100, having an address of 101 Fleet Place, Brooklyn, NY 11201.

6. Respondent 101 Fleet Realty LLC is an active foreign limited liability company authorized to do business in the state of New York with an address at 25 West 36th Street, 2nd Floor, New York, NY 10018.

7. Respondent 101 Fleet Place LLC is an active domestic limited liability company with an address at 84 Kosciuszko Street, Brooklyn, NY 11205.

8. Respondent 101 Fleet Holding LLC is an active foreign limited liability company authorized to do business in the state of New York with an address at 84 Kosciuszko Street, Brooklyn, NY 11205.

9. Respondents 101 Fleet Realty LLC, 101 Fleet Place LLC, and 101 Fleet Holding LLC are collectively referred to herein as the "Respondents."

FACTS

10. The Site was admitted into the BCP on March 2, 2022. Respondents were designated by the Department as Volunteers in the BCP, as defined in 6 NYCRR 375-3.2(c)(2). A Brownfield Cleanup Agreement ("BCA"), Index No. C224345-03-22, was executed on March 2, 2022.

11. The Site was remediated pursuant to Conditional Track 1 remedial action objectives, allowing for unrestricted use, provided that the remedial goals for soil vapor intrusion ("SVI") must be achieved within five years of the date of the COC.

12. On August 29, 2024, Respondents submitted a Site Management Plan ("SMP") to the Department for review and approval. On September 5, 2024, the Department approved the SMP.

13. The SMP required that "[a]s part of the conditional Track 1 remedy, sub-slab soil vapor and indoor air monitoring will be conducted after completion of the building envelope during the 2024/2025 heating season, prior to building occupancy, to assess the need to activate the SSDS to mitigate the potential for SVI."

14. The SMP further stated that successful remediation allowing for building occupancy is considered complete "when monitoring indicates that the remedy has achieved the remedial action objectives identified by the Decision Document." This includes co-located sub-slab vapor and indoor air monitoring ("SVI sampling") that indicates the remedy has been achieved, as demonstrated through data showing indoor air contamination levels below New York State Department of Health ("NYSDOH") SVI guidance values.

15. On September 18, 2024, the Department issued a COC to Respondents.

16. A twenty-two story residential building is currently located at the Site. Respondents allowed tenants to occupy the building beginning on September 15, 2024.

17. On November 19, 2024, over two months after tenants began occupying the building at the Site, Respondents conducted the SVI sampling required by the SMP.

18. On November 22, 2024, Respondents received the results of the November 19, 2024 SVI sampling. The SVI sampling results identified elevated levels of carbon tetrachloride in sub-slab air and in basement indoor air, with maximum concentrations of 71 micrograms per meter cubed ($\mu\text{g}/\text{m}^3$) and $2.4 \mu\text{g}/\text{m}^3$, respectively, at co-located sub-slab and indoor air sampling locations. According to NYSDOH's May 2017 SVI Indoor Air Matrix, these concentrations require mitigation.

19. Respondents did not provide the SVI sampling results to the Department until January 30, 2025, despite multiple requests from the Department for those results prior to that date.

20. On February 11, 2025, the sub-slab depressurization system ("SSDS") at the building at the Site was activated pursuant to Department instructions.

21. On March 18, 2025, Respondents performed follow-up SVI sampling. On April 21, 2025, Respondents submitted the results of that March 18, 2025 sampling to the Department, which demonstrated that the SSDS is effective and identified maximum concentrations of $8.3 \mu\text{g}/\text{m}^3$ in sub-slab air and $0.49 \mu\text{g}/\text{m}^3$ in basement indoor air.

22. As of August 19, 2025, 289 units at the Site had been leased. Of those units, 80 had been occupied prior to the November 19, 2024 SVI sampling, and 187 units had been occupied prior to the April 21, 2025 submission of the results of the March 18, 2025 SVI sampling.

23. Prior to February 11, 2025, Respondents did not take any measures to prevent tenants from accessing the basement areas of the building at the Site, which could reasonably be expected to have higher concentrations of carbon tetrachloride relative to higher floors.

APPLICABLE LAW

24. The New York legislature found and declared that "there are thousands of abandoned and likely contaminated properties that threaten the health and vitality of the communities they burden, and that these sites, known as brownfields, are also contributing to sprawl development and loss of open space." Accordingly, the legislature enacted Article 27, Title 14 of the ECL "to encourage persons to voluntarily remediate brownfield sites for reuse and redevelopment by establishing within the department a statutory program to encourage cleanup and redevelopment of brownfield sites." See ECL 27-1403.

25. An "Applicant" means a person whose request to participate in the brownfield cleanup program under this title has been accepted by the Department. See ECL 27-1405(1).

26. A "Volunteer" means an applicant other than a participant, including without limitation a person whose liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants, provided however, such person exercises appropriate care with respect to contamination found at the facility. See ECL 27-1405(1)(b).

27. Pursuant to 6 NYCRR 375-1.6(a)(1)(i), all work undertaken as part of a remedial program for a site shall be detailed in a work plan, unless determined otherwise by the Department. All work plans shall be prepared and implemented in accordance with the requirements of all applicable laws, rules, and regulations.

28. Pursuant to 6 NYCRR 375-1.11(b)(2), it is a violation to engage in any activity that will, or that is reasonably: (i) anticipated to, prevent or interfere significantly with any proposed, ongoing, or completed remedial program at any site; or (ii) foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site.

29. 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, Titles 9, 11, or 13 or any rule or regulation promulgated thereto, including those rules and regulations at 6 NYCRR Part 375-1, shall be liable for penalties of up to \$37,500 per day per violation.¹

VIOLATIONS

30. Respondents violated 6 NYCRR 375-1.6(a)(1)(i) by failing to adhere to the Department-approved SMP, which required confirmation that the remedy had achieved the remedial action objectives prior to building occupancy.

31. Respondents violated 6 NYCRR 375-1.11(b)(2)(i) by engaging in activities that were reasonably anticipated to interfere significantly with the ongoing remedial program at the Site by allowing tenants to occupy the building before the required SVI evaluation confirmed that the remedy had achieved the remedial action objectives.

32. Respondents violated 6 NYCRR 375-1.11(b)(2)(ii) by engaging in activities that were reasonably foreseeable to expose the public health to a significantly increased threat of harm or damage at the Site by allowing tenants to occupy the building before the SVI evaluation could confirm whether indoor air concentrations exceeding the New York State Department of Health's indoor air guidelines were present, thus requiring the activation of the SSDS.

33. In settlement of the Respondents' civil liability for the aforesaid violations, the Respondents admit the violations, waive their rights to a hearing as provided by law, consent to the issuing and entering of this Order on Consent ("Order") pursuant to the

¹ On May 9, 2025, ECL 71-2705 was amended to increase the maximum statutory penalty for these violations. The cited portion of ECL 71-2705 was effective at the time of all violations.

provisions of Articles 27 and 71 of the ECL, and agree to be bound by the provisions, terms, and conditions herein.

NOW, having considered this matter, **IT IS ORDERED THAT:**

I. **COMPLIANCE.** Respondents are bound by and agree to follow and comply with the terms, provisions, and requirements set forth in this Order, which are incorporated and made enforceable herein.

II. **CIVIL PENALTY.** With respect to Respondents' violations listed in this Order, Respondents are hereby assessed a civil penalty in the amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000.00), for which Respondents are jointly and severally liable.

- A. Payable Penalty: Of that amount, Respondents shall pay EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00) within 30 days of the Department's execution of this Order by electronic payment at <https://customer.sfs.ny.gov> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and the file number of this Order written in the memo section of the check, which shall be sent to the New York State Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.
- B. Suspended Penalty: The remaining penalty amount, FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00), shall be suspended and shall not be payable provided that Respondents do not violate the SMP for two years following the effective date of this Order. If, in the Department's sole discretion, Respondents violate any term of this Order or the SMP, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondents within thirty (30) days of receiving written notice from the Department that penalties are due.

This Order, along with any applicable submissions shall be sent signed to the New York State Department of Environmental Conservation, Office of General Counsel, 4740 21st Street, Long Island City, NY 11101, attention: Jonathan Agosta, Assistant Regional Attorney.

III. ENTIRETY OF ORDER.

The provisions of this Order constitute the complete and entire Order issued to 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 Respondents shall be construed as relieving 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.

This Order does not bar, diminish, adjudicate, or in any way affect the Department's rights or authorities, except as set forth in the Order, including but not limited to, exercising summary abatement powers, recovery of any natural resource damages, the collection of regulatory fees, and requiring Respondents to undertake any additional measures required for the protection of human health or the environment.

VI. BINDING EFFECT.

The provisions, terms and conditions of this Order shall be deemed to bind Respondents and 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. ACCESS.

The Department, including its employees, agents, and representatives shall have the right at all reasonable times during normal business hours on normal business days, and after proper notification to Respondents and proper identification as Department employees, agents, and/or representatives, to enter and inspect any property or premises related to this Order for the purpose of ascertaining compliance with the Order. Respondents shall provide a person to accompany the Department's representative during an inspection when notification is provided, be it written or verbal, at least 24 hours prior to such inspection.

VIII. 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

revocation of any permit, license, certification, or approval issued to Respondents by the Department.

IX. 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 Respondents by the state of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order will constitute a debt owed to the state of New York when and if such penalty becomes due.

X. 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 Respondents, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondents. Respondents shall have the burden of proving entitlement to any modification requested.

XI. INDEMNIFICATION.

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 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 Respondents or their employees, servants, agents, successors, or assigns.

XII. 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 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 Respondents' compliance with this Order will result in compliance with any laws, regulations, or permits.

XIII. EFFECTIVE DATE AND TERMINATION.

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

DATED: 2/11/26

AMANDA LEFTON
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

Regional Director
Antonia Pereira
Region 2

EXHIBIT "A"

Map

