

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

www.dec.ny.gov

June 13, 2024

Connell Foley LP
875 Third Avenue
21st Floor
New York, NY 10022
Attn: George C.D. Duke

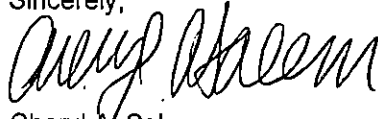
RE: Order on Consent by Third at Third LLC and Third Street Gowanus Owner LLC
Site Name: Third Street Gowanus
Site No.: C224346
Index No.: CO2-20231025-272

Dear Mr. Duke,

Enclosed please find the executed Order on Consent for Third Street Gowanus, Site Number C224346 as well as invoice number 7770000001974 for the amount of \$25,000.00 payable to the New York State Department of Environmental Conservation.

Please contact Attorney Jennifer Andaloro at 518-402-9199 or Jennifer.andaloro@dec.ny.gov with any questions.

Sincerely,



Cheryl A. Salem
Legal Assistant II
Remediation Bureau
Cheryl.salem@dec.ny.gov

CC: J. Andaloro, DEC
File

(518) 402-8539

SHIP DATE: 13JUN24

ORIGIN ID: ALBA
CHERYL SALEM
MYSDEC CO
625 BROADWAY
14TH FLOOR - OGC
ALBANY, NY 12233
UNITED STATES US

ACTWT: 1.00 LB
CAD: 25595370/IN/NET4535

BILL SENDER

TO GEORGE DUKE

CONNELL FOLEY LLP

875 3RD AVE

FL 21

NEW YORK NY 10022

583J5/B21D/9AE3

(212) 542-3772

REF: SITE NO. C224346

INV: 770000001974

PO: 002-20231024272

DEPT: 1500



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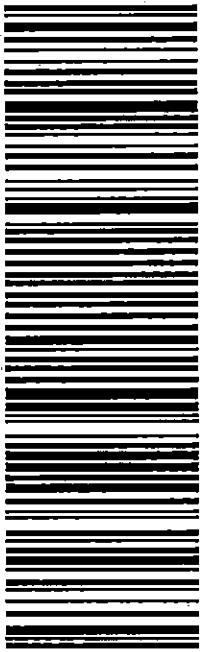
TRK# 7768 4829 7351

FRI - 14 JUN 5:00P
STANDARD OVERNIGHT

10022

E3 JRBA

NY-US EWR



After printing this label:

CONSIGNEE COPY - PLEASE PLACE IN FRONT OF POUCH

1. Fold the printed page along the horizontal line.
2. Place label in shipping pouch and affix it to your shipment.

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Department of Environmental Conservation

Consent Order INVOICE

Customer #: 192833
Invoice #: 7770000001974
Invoice Date: 13-Jun-2024

Legally Responsible Party:

Instructions for viewing your invoices on-line and paying electronically can be found at: https://www.dec.ny.gov/about/61016.html#On-Line

Table with 6 columns: DEC Order Number, Billing Year, Description, Qty, Unit Price, Payable Penalty Due. Row 1: CO2-20231025-272, , Violation, 1, 25,000.00, 25,000.00

SubTotal 25,000.00
Payments 0.00
Credits 0.00
Outstanding balance as of 13-Jun-2024 in USD 25,000.00
Payment Due Date 13-Jul-2024

=====TEAR HERE=====

CHECKS SHOULD BE MADE PAYABLE TO: NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION. PLEASE TEAR THE BOTTOM PORTION AND INCLUDE IT ALONG WITH YOUR PAYMENT.

Customer #: 192833
Invoice #: 7770000001974
Invoice Date: 13-Jun-2024

Amount Enclosed: _____
Check Number: _____

Bill To:
Third Street Gowanus Owner LLC
Orange Management
22 Carroll Street
Ground Floor
BROOKLYN, N.Y. 11231

Remit To:
NYS Department of Environmental Conservation
Division of Management & Budget, 10th Floor
625 Broadway
ALBANY, NY 12233-4900



STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
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

Index No. CO2-20231025-272
Site No. C224346

by

Third at Third LLC and
Third Street Gowanus Owner LLC,

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 Third Street Gowanus Owner LLC is a limited liability company with a principal place of business at c/o Orange Management Inc., 22 Carroll Street, Ground Floor, Brooklyn, NY 11231, is the owner of a portion of the property located at 125 3rd Street, Brooklyn, New York (Block 462, Lot 6) (the Site) and is a party to a Brownfield Cleanup Agreement dated March 22, 2022 (Index No. C224346-03-22).
4. Respondent THIRD AT THIRD LLC is a limited liability company with a principal place of business at 84 14th Street, Brooklyn, NY 11215 and is a party to the Brownfield Cleanup Agreement dated March 22, 2022.

PROVISIONS OF LAW

5. 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 issue orders consistent with the authority granted to the Commissioner of the Department by such statute.

6. 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).
7. The regulations state that all work undertaken as part of a remedial program for a site shall be implemented in accordance with a work plan approved by the Department. *See* 6 NYCRR 375-1.6 (a).
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 pursuant to a Brownfield Cleanup Agreement dated March 22, 2022 (Index No. C224346-03-22).
11. The site is subject to a Remedial Investigation Work Plan (RIWP) that was approved by the Department on August 4, 2022.
12. The RIWP requires that investigation derived waste (IDW) be properly secured on site and proper labeling of such waste. *See*, August 4, 2022 RIWP, Section 3.6, Investigation Derived Waste.
13. The site is subject to a Remedial Action Work Plan (RAWP) that was approved by the Department on December 8, 2023.
14. The RAWP requires that a decontamination pad/area be constructed at each Site entrance/exit planned for construction vehicle use.
15. On October 24, 2023, Department staff inspected the Site and observed:
 - i. Metal drums containing IDW in a location in close proximity to ongoing demolition at the site. The metal drums were not properly labeled.
 - ii. Due to the demolition work at the site, the metal drums of IDW were cracked and did not have lids, causing such waste to disperse into the environment.

16. On January 4, 2024, Department staff inspected the site and observed:
- i. Implementation of the RA WP without constructing a decontamination pad/area.
 - ii. Construction vehicles leaving the site without being decontaminated, resulting in contaminated soil from the site on Third Street.

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) by failing to comply with the RIWP and RA WP.

In settlement of Respondents' 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 \$75,000.00 for the violations stated in this Consent Order to be paid as follows:
 1. **Payable Penalty:** Respondent will pay \$25,000.00 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 "CO 2-20231025-272" 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, 10th Floor, Albany, NY 12233-4900.
 2. **Suspended Penalty:** Notwithstanding the Payable Penalty above, \$50,000.00 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order and applicable laws. In the event that Respondent fails to comply with all the terms of this Order and applicable laws 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 Andaloro, Remediation Bureau Chief
625 Broadway, 14th Floor
Albany, NY 12233-1500

II. CORRECTIVE ACTION

Corrective action was undertaken by the Applicants consultant. The drums were staged on poly sheeting, inspected, and the contents were sampled. The drums will be removed per the requirements of the RIWP. A decontamination pad/area was constructed.

III. ENTIRETY OF ORDER

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

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

X. INDEMNIFICATION

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

XII. FORCE MAJEURE

If Respondents 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 Respondents and which could not have been avoided by Respondents through the exercise of due care, Respondents 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. Respondents shall include in such application the measures taken by Respondents 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. Respondents 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
6/10/2024, 2024

Sean Mahar
Interim Commissioner, NYSDEC

By: 

Janet Brown, Asst. Division Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent Third at Third 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: Joel Wertzberger

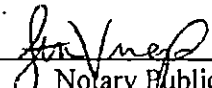
Title: Authorized Signatory

Date: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

On this 22 day of MAY, 2024, before me personally came JOEL WERTZBERGER who being properly identified and who being by me duly sworn did depose and say that s/he is AUTHORIZED SIGNATORY of THIRD at THIRD LLC., and did execute this Order on Consent on behalf of and as authorized by THIRD at THIRD LLC.



Notary Public

JEANETTE ELIZA VENEGAS
Notary Public, State of New York
Registration #01VE6372833
Qualified In Queens County
Commission Expires March 26, 2026

CONSENT BY RESPONDENT

Respondent Third Street Gowanus Owner 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: Andrew Bradfield

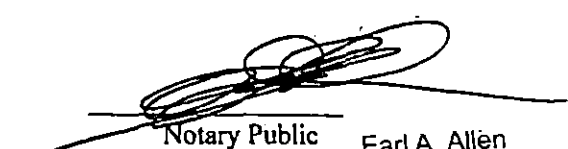
Title: Authorized Signatory

Date: May 29, 2024

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF Kings)

On this 29th day of May, 2024, before me personally came Andrew Bradfield who being properly identified and who being by me duly sworn did depose and say that s/he is Authorized Signatory of Third Street Gowanus Owner LLC, and did execute this Order on Consent on behalf of and as authorized by Third Street Gowanus Owner LLC.



Notary Public Earl A. Allen
Notary Public, State of New York
Registration No: 01AL6161706
Qualified in Kings County
Commission Expires 02/26/2027