

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

Gowanus 300 Nevins Street LLC,

Respondent.

**ORDER ON CONSENT**

Index No. CO2-20220811-307  
Site No. C224350

-----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 Gowanus 300 Nevins Street LLC is a limited liability company with a principal place of business at 19 West 24<sup>th</sup> Street, 12<sup>th</sup> Floor, New York, NY 10010, is the owner of the property located at 318 Nevins Street, Brooklyn NY (Block 439, Lot 1) (the Site) and is a party to a Brownfield Cleanup Agreement dated April 29, 2022 (Index No. C224350-03-22).

**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 issue 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 of the ECL 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. A person proposing to change the use of a site is required to provide a notification to the Department in advance that includes an explanation of how such change may affect the site's proposed or ongoing remedial program. *See* ECL §27-1425 and Part 375-1.11(d)(1) & (2).
7. The statute regulations state that it is a violation to engage in any activity that will, or that is reasonably anticipated to, prevent or interfere significantly with any proposed or ongoing remedial program. *See* ECL §27-1425(2) and 6 NYCRR 375-1.11(b)(2)(i).
8. 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, and may also be enjoined from conducting such activity.
9. Pursuant to Title 14 of the ECL and 6 NYCRR 375-3.5(c)(3), the Department may terminate a site from the Brownfield Cleanup Program if the Department determines that information provided or certifications made by the applicant to the Department are materially inaccurate.

### FACTS

10. The Site is in the Brownfield Cleanup Program pursuant to a Brownfield Cleanup Agreement dated April 29, 2022 (Index No. C224350-03-22). The site has non-aqueous phase liquid (NAPL) contamination, among other contaminants; the NAPL is located primarily in the northern portion of the site.
11. The site is currently in the remedial investigation phase of remediation and is subject to the specifications in a Change of Use that was authorized by the Department on March 24, 2023, to perform foundation pile installation with an approved methodology (horizontal displacement).
12. On March 2, 2023, Respondent submitted the Change of Use notification to the Department. The Change of Use notification included a scope of work indicating that foundation piles within the footprint of the proposed southern building and outside of the extent of the northern NAPL area at this site would be installed using horizontal displacement to mitigate the migration of NAPL during installation to demonstrate that the contemplated change would have no effect on the site's ongoing remedial program.
13. Based upon the representation of the Respondent that it would use horizontal displacement to install foundation piles, the Department authorized the Change of Use and allowed the

proposed work to proceed.

14. Based upon Daily Status Reports submitted to the Department, Respondent installed piles at the site within the footprint of the proposed southern building and outside of the extent of the northern NAPL area on June 28, 29, 30 and July 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, and 20.
15. On July 19, 2023, Department inspectors inspected the Site and observed the implementation of pile installation within the footprint of the proposed southern building and outside of the northern NAPL area of the site using technology that was not approved by the Department (continuous flight augers). Respondent was directed by the Department to immediately stop all work at the site.
16. On July 20, 2023, Department inspectors returned to the site and observed the continued implementation of pile installation within the footprint of the proposed southern building and outside of the northern NAPL area of the site using inappropriate technology (continuous flight augers). Respondent was again directed to immediately stop all work at the site. On-site representatives of Respondent did not stop operations. DEC communicated the directive to stop work at the site directly to Respondent and ultimately work stopped thereafter.
17. Respondent installed foundation piles within the footprint of the proposed southern building and outside of the northern NAPL area of the site using unapproved technology (continuous flight augers) Continuous flight augers cannot be used on sites containing NAPL contamination due to potential of spreading NAPL contamination.

## VIOLATIONS

18. Respondent violated 6 NYCRR 375-1.11(b)(2)(ii) by engaging in activities that were reasonably anticipated to prevent or interfere significantly with any proposed or ongoing remedial program. Fourteen Daily Field Reports with false information were submitted to the Department for activities on June 28, 29, 30 and July 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, and 19, all indicating that production piles were being installed within the footprint of the proposed southern building and outside of the northern NAPL area of the site according to the DEC approved Change of Use. Respondent, by submitting this false information, provided the Department materially inaccurate information regarding work performed at the site, providing a basis for the Department to terminate the site from the Brownfield Cleanup Program.
19. In settlement of Respondents' liability for the aforesaid violations, Respondent admits the violations 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 \$412,500.00 for the violations stated in this Consent Order to be paid as follows:

1. **Payable Penalty:** Respondent will pay \$100,000.00 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 2-20220811-307" 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 & BCA Termination:** Notwithstanding the Payable Penalty above, \$312,500.00 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order, including the provision to pay the state costs for Non-Personal Services to provide oversight for the site as set forth in paragraph II below. In the event that Respondent fails to make the submissions or payments, 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, 14<sup>th</sup> Floor  
Albany, NY 12233-1500

## II. CORRECTIVE ACTION – ENVIRONMENTAL OVERSIGHT COSTS AND FINANCIAL ASSURANCE

A. State Costs for Non-Personal Services

1. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs for Non-Personal Services as provided by 6 NYCRR § 375-1.5 (b)(3)(i). Invoices shall be sent to Respondent at the following address:

Charney Companies  
Attn: Justin Pelsinger, COO  
5-26 46th Avenue, Suite 2A  
Long Island City, NY 11101  
email: [justin@charneycompanies.com](mailto:justin@charneycompanies.com)

2. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.
3. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Division of Management and Budget  
New York State Department of Environmental Conservation  
625 Broadway, 10th Floor  
Albany, New York 12233-4900

4. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.
5. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph A.3 above.
6. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2).
7. Upon written request of the Respondent, the Department will review Respondent's compliance with this Order and the Brownfield Cleanup Agreement (and work plans submitted under it) and shall reconsider the continued need and scope of the Payment Obligation to determine if the Payment Obligation may be reduced or is no longer necessary based on that compliance record and such other reasonable factors as the Department considers to be relevant. The Department shall, in good faith, consider such request and provide Respondent with a written determination setting forth the basis for its decision.

#### B. Financial Assurance

As a condition of accepting institutional and/or engineering controls that may be required by the remedial program, the Department will require that the Respondent post financial assurance as set forth in 6 NYCRR 375-1.11(c) to ensure the long term implementation, maintenance and enforcement of any such controls. Acceptable financial insurance mechanisms include those listed in 6 NYCRR 375-1.11(c)(2)(i)-(iv).

### 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 or seeking a claim for natural resource damages.

#### **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  
August 18, 2023

BASIL SEGGOS  
Commissioner, NYSDEC


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



**CONSENT BY RESPONDENT**

Respondent Gowanus 300 Nevins Street 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):

  
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Print Name: Samuel Charney  
Title: Member  
Date: 08/17/2023

**ACKNOWLEDGMENT**

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

On this 17<sup>th</sup> day of August, 2023, before me personally came Samuel Charney, who being properly identified and who being by me duly sworn did depose and say that s/he is Member of Gowanus 300 Nevins Street LLC and did execute this Order on Consent on behalf of and as authorized by Gowanus 300 Nevins Street LLC

  
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Notary Public

ANISA P CHULHAI  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01CH0002466  
Qualified in NEW YORK County  
Commission Expires 03/07/2027