



Transmitted via FedEx and Email

April 28, 2025

Vito Di Maio
Di Maio Enterprises Inc.
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Matthew Carroll, P.E.
Tenen Environmental, LLC
121 West 27th Street, Suite 702
New York, NY 10001
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Re: **NOTICE OF INTENT TO TERMINATE BCA
AND OPPORTUNITY TO CURE**
Brownfield Cleanup Program
Site: 127 12th Avenue, Site No: C224411
Location: 127 12th Street, Brooklyn, NY 11215, Kings County

Dear Vito Di Maio, Matthew Sinkman, and Matthew Carroll,

As you know, Di Maio Enterprises, Inc. (the Applicant) and the New York State Department of Environmental Conservation (NYSDEC) executed a Brownfield Cleanup Agreement (Index # C224411-08-24) (the Agreement) relative to the 127 12th Street site (the Site) on September 24, 2024.

A draft Interim Remedial Measure Work Plan (IRMWP) was submitted by Matthew Carroll, P.E., the environmental consultant for the site, on November 11, 2024. To date, NYSDEC has not received an approvable IRMWP and implementation of the work, which will address an ongoing exposure to human health, has not yet begun. Additionally, several requests have been made by NYSDEC regarding the site status and contaminant usage at the site that have not been adequately answered by the Applicant or the Applicant's team.

1. Based on a NYSDEC comment letter dated November 11, 2024, a revised draft IRMWP to address was due within 30 days, or December

11, 2024, per BCA Appendix A, section II(B)2(ii) and 6 NYCRR § 3751.6(d)(3). The revised draft IRMWP was not received until March 26, 2025, over 90 days past due, and was disapproved on April 18, 2025.

2. Information on the site status and contaminant usage was requested by March 26, 2025 by NYSDEC, but adequate information has not been provided.

NYSDEC considers the progress of the Remedial Program for the Site, or the lack thereof, to be unsatisfactory and the delay to be in violation of the requirements of the Agreement. Relevant facts in this matter include, but are not limited to:

- **In May 2023**, a Phase II Environmental Site Assessment (ESA) was performed by Tenen Environmental as part of a RCRA-regulated facility Closure Plan, which included SVI sampling in the occupied on-site building. Sampling results indicated numerous chlorinated VOCs (CVOCs) at concentrations above “mitigate” levels when compared to the NYSDOH SVI Matrices as summarized in the following bullet.
- **On May 17, 2024**, the NYSDEC received a BCP Application that discussed the NYSDOH SVI Matrices “mitigate” levels for the following four CVOCs: PCE, TCE, cis-1,2-DCE and methylene chloride. The application also noted PCE and TCE were detected in indoor air in exceedance of the NYSDOH AGVs of 30 µg/m³ and 2 µg/m³, respectively.

Maximum indoor concentrations include:

- PCE up to 1,270 µg/m³ (16,100 µg/m³ in sub slab)
- TCE up to 4.82 µg/m³ (537 µg/m³ in sub slab)
- cis-1,2-DCE up to 0.349 µg/m³ (377 µg/m³ in sub slab)
- methylene chloride up to 21.4 µg/m³ (23 µg/m³ in sub slab)

The BCP Application submittal included a Draft Remedial Investigation Work Plan (RIWP) and a Draft Interim Remedial Measures Work Plan (IRMWP), both dated May 2024.

- **On October 20, 2024**, the Site was determined to represent a significant threat to public health based upon the high chlorinated volatile organic compounds (CVOCs) present at the site and exposure for current occupants at the site.
- **On November 11 and November 22, 2024**, the NYSDEC and the NYSDOH issued Remedial Investigation Work Plan (RIWP) and IRMWP comments to the Applicant, including the following:
 - Due to exceedances of NYSDOH Air Guideline Values for trichloroethene (TCE) and tetrachloroethene (PCE) as well as exceedance of the Immediate Action Level for PCE in on-site indoor air identified during the Phase II Investigation, mitigation of on-site soil vapor intrusion impacts via

the proposed SSDS should proceed without delay, prior to the remaining proposals.

- Communication testing, as well as design and construction of an SSDS to mitigate intrusion from VOC impacted soil vapor into the on-site building should be completed first, due to the exceedances of immediate action level for PCE and Air Guideline Values for PCE and TCE.
- **From December 2024 to January 2025**, the NYSDEC, the NYSDOH, and Matthew Carroll had various phone and email discussions reiterating the need to have the IRMWP be for the SSDS, only. Matthew Carroll requested to “decouple” on-site work from off-site, to which NYSDEC agreed with a caveat that the work plans be submitted at the same time. Matthew Carroll replied via email that they understood. The off-site SVIWP was submitted February 28, 2025, but the revised IRMWP was not received until March 26, 2025
- **On January 14, 2025**, Matthew Carroll sent an email to the NYSDEC indicating, “...the site is basically shutting down and then will be vacant...” leading the NYSDEC and the NYSDOH to believe the site would be vacated, shortly.
- **On February 4, 2025**, the NYSDEC inquired about the occupancy of the on-site building, but Matthew Carroll did not provide an answer or acknowledge the question.
- **On February 18, 2025**, the NYSDEC inquired again about the occupancy of the on-site building as well as recent and current use of PCE on-site, to which Matthew Carroll responded that the building was actively occupied, and, “[c]urrently the plan is to continue operating until active investigatory and remedial activities begin.” Matthew Carroll also noted NYSDOH SVI Matrices are not applicable to the site based on current use of PCE at the facility.
- **On February 25, 2025**, the NYSDEC inquired about site status as an active facility, to which Matthew Carroll responded, “[they] are reaching out to the site owner and attorney and will get back to the Department with clarifications.”
- **On February 27, 2025**, the NYSDEC requested a response regarding recent and current PCE use on-site by February 28, 2025 and/or a site update the following week. Matthew Carroll did not provide the information or an update.
- **On March 10, 2025**, the NYSDEC followed-up with Matthew Carroll regarding site status, to which Matthew Carroll responded, “[t]he Participant is currently in the process of transitioning counsel. And we are working out the details to get you an update ASAP.”
- **On March 19, 2025**, the NYSDEC requested confirmation of active site status and the current and recent use of PCE onsite as well as the Interim Remedial Measures

Work Plan (IRMWP, often referred to Matthew Carroll as on-site Soil Vapor Intrusion Work Plan (SVIWP)), with a deadline for submittal of March 26, 2025.

- On **March 26, 2025**, the new remedial attorney, Gibbons P.C., submitted the IRMWP; however, the information requested by the NYSDEC regarding active site status and current and recent use of PCE onsite was not provided. To date, the requested information has not been received.
- On **April 2, 2025**, the NYSDEC counsel followed up with an email reiterating requested information regarding current and recent use of PCE was still outstanding, and that an IRM implementation date of October 1, 2025, as stated in March 2025 revised IRMWP, was unacceptable given the immediate action and mitigate levels detected in indoor air and sub-slab samples, the age of the SVI data (almost two years old), and the ongoing human health exposure within the active, occupied building on site.
- In a letter dated **April 18, 2025**, the March 2025 IRMWP was disapproved because implementation of the proposed IRM would interfere with the achievement of remedial investigation and program goals, which have not yet been completed, per 6 NYCRR Part 375-1.8(e) and 6 NYCRR Part 375-3.8(b).

Specific issues identified included:

1. The installation of an engineered cavity beneath a topping slab will interfere with the remedial investigation efforts required to characterize the nature and extent of soil, groundwater, and soil vapor contamination at the site.
2. The IRM Schedule included in Table 2 of the March 2025 IRMWP indicates an IRM Implementation date of October 1, 2025, which is not acceptable given: (1) the October 2024 determination by NYSDEC and NYSDOH that contamination at the site poses a significant threat to public health, (2) the immediate action and mitigate levels detected in indoor air and sub-slab samples resulting in an ongoing and current human health exposure within the occupied on-site building, (3) that the contamination levels and human health exposure has been known since the SVI data was collected in May 2023 (nearly two years), and (4) over 120 days elapsed between NYSEC's comment letter and the submission of a revised IRWMP.
3. Tenen Environmental is not certified to provide engineering services in the State of New York. The IRMWP needs to be submitted under the cover of the certifying party; however, the work plan states that IRMWP was prepared by Matthew M. Carroll, P.E., **and Tenen Environmental**. Therefore, this document was not prepared in accordance DER-10 Section 1.5, nor is it in compliance with Article 145 of the New York State Education Law.

4. Comments provided by NYSDEC and NYSDOH in the November comment letter have not been addressed (see attached).
- **On April 25, 2025**, the NYSDEC received a letter from the NYSDOH expressing concerns regarding the Applicant's failure to submit a revised IRMWP that adequately addressed NYSDOH's November 2024 draft IRMWP comments. The NYSDOH letter also expressed concerns regarding unsupported delays in the implementation of effective SVI mitigation measures to address ongoing human health exposures within the on-site, occupied building, which include exposures to several chlorinated volatile organic compounds including tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, and methylene chloride. The NYSDOH stated, "Additional delays in installation of effective mitigation measures is not supported given the immediate action level exceedances in this occupied building, as this represents an ongoing human health exposure concern to building occupants."

This letter serves to put you on notice of NYSDEC's objection to the pace and lack of progress of the Remedial Program at the Site and to provide an opportunity for you to remain in the Brownfield Cleanup Program, provided you submit a revised and approvable IRMWP fully addressing NYSDEC and NYSDOH comments for review and submit a revised schedule prepared in accordance with ECL § 27-1411 (1) and 6 NYCRR § 375-1.6 and that is acceptable to NYSDEC letter. Additionally, the NYSDEC and the NYSDOH are requesting implementation of the IRM must take place within 30 days from the date of IRMWP acceptance by the NYSDEC and the NYSDOH.

If the Applicant does not respond within the time frame above NYSDEC will Terminate the Agreement, in accordance with Paragraph XII of the Agreement-Standard Clauses for all New York State Brownfield Site Cleanup Agreements. However, be advised that certain obligations of the Volunteer survive the termination of the Agreement as stated in 6 NYCRR § 375-3.5(d). If the Agreement is terminated, the Department will seek to list the site as a Class 2, significant threat site, refer the site to the State Superfund Program for action, and will seek to recover any monies expended from the Applicant.

Nothing contained herein constitutes a waiver by NYSDEC or the State of New York of any rights held pursuant to any applicable state and/or federal law or the Agreement or a release for any party from any obligations held under those same laws and the Agreement. Any questions regarding this matter should be directed to the newly assigned project manager, Daniel Nierenberg, at (518) 402-9554 or daniel.nierenberg@dec.ny.gov.

Sincerely,



Sarah Quandt, P.E.
Section Chief, Remedial Bureau B

ec: A. Guglielmi, J. Brown, S. Deyette, J. O'Connell, S. Quandt, L. Schmidt, J.
Andaloro, D. Nierenberg
NYSDOH – A. Keegan, S. Surani, S. McLaughlin