

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

Turner Construction Company

Respondent.

ORDER ON CONSENT

Index No. CO2-2024-06-
07-243

Site No. C241146F

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WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the administration and enforcement of law and regulations related to inactive hazardous waste disposal sites, pursuant to Article 27, Titles 13 and 14 of the New York State Environmental Conservation Law ("ECL") and may issue orders thereunder.
2. The Department is authorized to administer the inactive hazardous waste disposal sites as set forth in ECL Article 27, Titles 13 and 14 and 6 NYCRR Part 375 and may issue orders under it.
3. This Order on Consent (the "Order") is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.

PARTIES

4. Respondent Turner Construction Company is a domestic business corporation with a principal place of business at 66 Hudson Boulevard East, New York, New York 10001 and is a contractor performing work on the Willets Point Development T-Parcel (Site No. C241146F).

PROVISIONS OF LAW

5. The 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

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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 workplans, including a site management plan, shall be implemented in accordance with the requirements of all applicable laws, rules and regulations. See 6 NYCRR 375-1.6(a)(1)(i).

8. The regulations require 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.

9. 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).

10. 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

11. The Site is in the Brownfield Cleanup Program and is subject to the terms of a Brownfield Cleanup Agreement dated October 31, 2023 and effective December 16 2013 nunc pro tunc, Index No. C241146F-09-23, and any amendments thereto (the "BCA"), and is located at 126-36 34th Avenue in Queens, NY.

12. The Site is currently in the Remedial Action Work Plan (RAWP) implementation phase of the remedial program.

13. The RAWP requires that NYSDEC will be promptly notified prior to commencement of any construction work, as well as any changes to the approved work plan or schedule.

14. The RAWP requires that a Community Air Monitoring Plan (CAMP) be implemented during all intrusive fieldwork.

15. The RAWP requires that a Health & Safety Plan (HASP) be implemented during all intrusive fieldwork.

16. The RAWP requires that a professional engineer, qualified environmental professional, or their designee oversee all intrusive fieldwork.

17. On May 7, 2024, Respondent commenced ground intrusive activities at the Site, including installation of an 8' x 22' x 8" concrete slab to support a construction trailer and excavation of a 15' trench for utility installation to service the construction trailer. Respondent failed to provide prior notification to NYSDEC regarding breach of the Site's cover system, which serves as the primary engineering control for the Site.

18. On that same date, Respondent failed to implement the CAMP and HASP as required under the Site's RAWP.

19. On that same date, Respondent failed to have a qualified professional or independent environmental monitor on Site to oversee the work.

VIOLATIONS

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

21. Respondent violated 6 NYCRR 375-1.6(a)(3) by failing to have a qualified environmental professional and independent environmental monitor on Site to supervise the excavation, backfill, and restoration of the cover system.

22. Respondent violated 6 NYCRR 375-1.11(b)(2)(i) by engaging in activities that were reasonably anticipated to prevent or interfere significantly with any proposed, ongoing, or completed remedial program at the Site by performing unauthorized excavation, breach of the cover system, backfill, and failure to comply with the RAWP.

23. 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

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 \$75,000.00 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 "CO2-2024-06-07-243" 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.

- A. 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, 14th Floor
Albany, NY 12233-1500

II. CORRECTIVE ACTION

A Corrective Measures Work Plan (CMWP) detailing the means and methods which will be implemented to ensure that the cover system is properly restored was submitted on May 24, 2024, and approved by the Department on June 14, 2024. The corrective measures were completed as of June 28, 2024. The work performed under the CMWP is documented in the Final Engineering Report (FER) submitted by the Applicant (as defined in the BCA) on September 4, 2024. The Department has reviewed the corrective measures described in the FER and determined the work performed is satisfactory.

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
November 8, 2024

SEAN MAHAR
Interim Commissioner, NYSDEC

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

CONSENT BY RESPONDENT

Respondent Turner Construction Company 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):

Charles Whitney

Print Name:

Charles Whitney

Title:

Vice President and General Manager

Date:

5 November 2024

ACKNOWLEDGMENT

STATE OF NEW YORK)

) ss:

COUNTY OF)

On this 5th day of November, 2024, before me personally came Charles Whitney, who being properly identified and who being by me duly sworn did depose and say that s/he is V.P. Gen Mgr of Turner Construction, and did execute this Order on Consent on behalf of and as authorized by Turner Construction

Angela Ciccone
Notary Public

ANGELA CICCONE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01C16317984
Qualified in Richmond County County
Commission Expires JANUARY 20, 2027