

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of Alleged Violations of Article 12 of the
Navigation Law of the State of New York,
and Title 17 of the Official Compilation of Codes,
Rules and Regulations of the State of New York
by

ORDER ON CONSENT

Site No.: C360176
Spill No.: 1808873

Index No.: CO 3-20190404-74

14 Le Count Place LLC, and
WBLM 14 Le Count Owner LLC,

Collectively, Respondents.
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WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department" or "NYSDEC") 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.

B. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL §3-0301, the Navigation Law, and Title 17 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("17 NYCRR").

2. Respondent 14 Le Count Place LLC is a New York limited liability corporation with offices located at 480 Bedford Road, Chappaqua, NY 10514, Attention: Bill Balter.

3. Respondent WBLM 14 Le Count Owner LLC is a New York limited liability corporation with offices located at 480 Bedford Road, Chappaqua, NY 10514, Attention: Bill Balter.

4. Respondents are in the process of investigating/remediating and redeveloping a brownfield site as a "volunteer" pursuant to a brownfield site remedial program, as those terms are defined in ECL §27-1405 and 6 NYCRR § 375-3.2. The site is located at 14 Le Count Place (Tax Map/Parcel No.: 1-228-0100) and 455 Main Street (Tax Map/Parcel No.: 1-228-0200), New Rochelle, Westchester County, New York consisting of approximately 0.920 acres and it is assigned DEC site number C360176 (hereinafter the "Site").

5. Navigation Law Article 12 § 173 provides that the discharge of petroleum is prohibited.

6. On November 20, 2018 a petroleum spill was reported at the Site (the "Spill"). The Spill has been assigned NYSDEC spill number 1808873.

7. 17 NYCRR 32.3 requires any person responsible for causing a prohibited discharge, and any person who was in actual or constructive control of such petroleum immediately prior to such discharge to notify the Department immediately, but in no case later than two hours after the discharge.

8. Respondents report that the Spill was caused by an unidentified trespasser(s) engaged in stealing copper piping from a building located on the Site. The Department alleges that Respondents were in actual control of such petroleum immediately prior to the discharge because the tanks and piping were located in the basement of the building located at 207 North Avenue which is part of Site. The Spill was discovered on November 19, 2018 and was reported to the NYSDEC spill notification telephone line on November 20, 2018, more than two hours after the discovery.

9. Navigation Law Article 12 § 176 obligates a person discharging petroleum to immediately undertake to contain the discharge.

10. Notwithstanding Respondents' contractor initial actions, which are understood to include limited removal/disposal of impacted oily water and soil/concrete, the Department alleges, the spill was not promptly and fully investigated/remediated as required by the Navigation Law and impacted groundwater/free product remains at the Site.

11. Respondents consent to the issuance of this Order without an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever.

12. Solely with regard to the matters set forth below, Respondents hereby waive any right to a hearing as may be provided by law, consent to the issuance and entry of this Order, and agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, it is **ORDERED THAT**:

I. PENALTY

A. With respect to the civil violations which the Department alleges above against Respondents, the Department, in settlement of any and all such civil violations, hereby assesses against Respondent 14 Le Count Place LLC and Respondent WBLM 14 Le Count Owner LLC a total civil penalty in the amount of TEN THOUSAND U.S. DOLLARS (\$10,000.00).

Payment must be made by certified or cashier's check or money order or certified Business check of the Respondents made payable to the order of the New York State Department of Environmental Conservation. Respondents will submit the settlement payment as required by this Order along with two signed originals of this Order, to:

Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603
Attn: Rosalie K. Rusinko

B. Failure to timely pay the civil penalty due under this Order or otherwise comply with this Order is a violation of this Order and NL Article 12 with respect to the Site.

II. COMPLIANCE

A. Within ten (10) Days of the effective date of this Order, Respondents shall submit to the Department for review and comment a Work Plan for the Remediation of the Spill including, monitoring and management of petroleum in groundwater on and off of the Site (the "Spill Remediation Work Plan"). The Spill Remediation Work Plan shall include a schedule of remediation activities and provisions for submittal of reports documenting completion of the significant tasks therein.

B. Within five (5) Business Days of receipt of the Department's comments, Respondents shall submit the revised Spill Remediation Work Plan in approvable form to the Department.

C. Respondents shall implement the Department-approved Spill Remediation Work Plan.

D. Respondents shall provide no less than 48-hours advance notice of any field work, including an implementation schedule, under this Order to the Department. Respondents shall not undertake any field work for which no less than 48-hour advance notice has been provided, including any implementation schedule changes for previously noticed field work. Respondents shall obtain the Department's prior task-specific written approval of any changes to the implementation schedule of previously noticed field work which result in less than 48-hours advanced notice to the Department of the change in schedule.

E. Respondents shall submit to the Department daily reports for both field work and groundwater monitoring/management under this Order. These reports shall be

in the format of the template attached hereto as Exhibit "A" with their content being consistent with the specified content on the template.

F. Respondents shall not be entitled to, and will not use the costs incurred to (i) respond to or investigate the Spill prior to the effective date of this Order or (ii) defend or comply with this Order for the purposes of tax credits under the Brownfield Cleanup Program. Respondents shall maintain records of costs related to the Spill separate and apart from costs related to the Brownfield Cleanup Program.

II. DISPUTE RESOLUTION

A. In the event that disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondents knew or should have known of the facts which are the basis of the dispute, make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondent to the appropriate Bureau Chief in the Department's Central Office. The Department and Respondent shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph II.B. The period for informal negotiations shall not exceed thirty (30) Days from the date of the Department's initial response to the Respondent's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondent notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph II.B.

B. 1. Respondent shall file with the Office of Hearings and Mediation Services ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Respondent relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director and any other contact people listed in this Order.

2. The Department shall serve its Statement of Position no later than twenty (20) Days after receipt of Respondent's Statement of Position.

3. Respondent shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via video or telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision in a timely manner. The final decision

shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Respondent notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Respondent shall be in violation of this Order if it fails to comply with the final decision resolving this dispute within forty-five (45) Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Respondent seeks judicial review, Respondent shall be in violation of this Order if it fails to comply with the final Court Order or any settlement within thirty (30) Days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Respondent's obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a Court orders otherwise. Except as otherwise provided in this Order, the invocation of the procedures set forth in this Paragraph II shall constitute an election of remedies and such election shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph II that shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph II shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622.

III. RESERVATION OF RIGHTS

A. The Department expressly reserves all rights to any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondents.

B. If, for any other reason, Respondents fail to comply with any of the requirements of this Order, the Department reserves the right to perform the work. Under such circumstances, the Department will either bring administrative enforcement including cost recovery, or refer to the Attorney General a request that the Attorney General pursue Respondents or any of their successors or assigns, for reimbursement to the New York State Environmental Protection and Spill Compensation Fund [New York Navigation Law Article 12] of any costs relating to the work performed by Department plus any applicable fines and/or penalties.

IV. ACCESS

Respondents shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondents' obligations under this Order. If Respondents are unable to gain access to a location, which the Department has determined must be accessed for investigation and/or remediation required under this Order, or unable to obtain building, zoning or wetlands permits for the remediation work, solely at the request of Respondents, the Department agrees, to the extent authorized by law, to assist the Respondents in gaining such access or permits. If, even with the Department assistance, such access is still unavailable to the Respondents, the Department will, to the extent that it deems necessary, legally obtain access for the Department's Contractors to do such work. If the Department has to utilize its Contractors, Respondents shall, within 30 days of receipt of the bills, reimburse the Department for all costs that the State incurs.

Respondents' inability to gain access to a location, which the Department has determined must be accessed pursuant to this Order, or to obtain any permits necessary for the remediation work, in a timely manner, despite good faith efforts, shall not be deemed non-compliance with this Order.

V. INVESTIGATION AND REMEDIATION COSTS

Department Costs. Within 30 days of the effective date of this Consent Order, Respondents shall pay to the Department THIRTY-FIVE THOUSAND U.S. DOLLARS (\$35,000.00), which shall represent full reimbursement for all past and future costs of the Department, including, but not limited to, 1) direct labor, 2) fringe benefits, 3) indirect costs, 4) travel incurred by the State of New York, and 5) review of submittals and revised submittals made pursuant to this Consent Order. The Department agrees that it will not seek any additional sums from the Respondents for past or future costs attributable solely to the Department Oversight of the Spill remediation work at the site. For the purposes of this Order, it is expressly understood and agreed that the term, "Department Oversight Costs" shall be the relevant costs of Department Staff (including NYS Department of Health Staff), including, but not limited to, 1) direct labor, 2) fringe benefits, 3) indirect costs, 4) travel incurred by the State of New York, 5) negotiation of this Consent Order, 6) review of submittals and revised submittals made pursuant to this Consent Order. It is expressly agreed that Department Oversight Costs, as defined above, shall not include any contractual costs which have been, or which may be incurred by the State of New York pursuant to the Environmental Conservation Law or Sections 176 or 181 of the Navigation Law.

VI. STANDARD PROVISIONS

Respondents will further comply with the standard provisions which are attached hereto, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED:

JUN 11 2019

JUN 11 2019

Basil Seggos, Commissioner
New York State Department of
Environmental Conservation

By:



Michael J. Ryan, P.E.
Director

Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent 14 Le Count Place LLC hereby consents to the issuing and entering of this Order without further notice, waive its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

By (Signature): [Signature]

Print Name: William G. Butler

Title: MANAGING MEMBER

Date: 5-22-19

ACKNOWLEDGMENT

STATE OF New York)

) ss:

COUNTY OF Westchester)

On the 22nd day of May in the year 2019 before me personally came William G. Butler to me known, who, being by me duly sworn, did depose and say that s/he resides in Mt. Kisco / Chappaqua, New York that s/he is the managing member of 14 Le Count Place LLC, the corporations described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporations.

[Signature]

Notary Public

Signature and Office of individual taking acknowledgment

Christine A. Crisci
Notary Public, State of New York
LIC # 01CR6365109
Qualified in Westchester County
Comm. Exp. September 25, 2021

CONSENT BY RESPONDENT

Respondent WBLM 14 Le Count Owner LLC hereby consents to the issuing and entering of this Order without further notice, waive its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

By (Signature): 

Print Name: WILLIAM G. BALTER

Title: MANAGING MEMBER

Date: 5-22-19

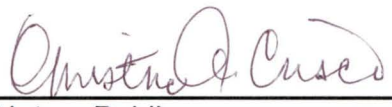
ACKNOWLEDGMENT

STATE OF New York)

) ss:

COUNTY OF Westchester)

On the 22nd day of May in the year 2019 before me personally came William G. Balter to me known, who, being by me duly sworn, did depose and say that s/he resides in Mt. Kisco / Chappaqua New York that s/he is the managing member of WBLM 14 LeCount Owner LLC, the corporations described in and which executed the above instrument; and that s/he signed his/her name thereto by authority of the board of directors of said corporations.


Notary Public
Signature and Office of individual taking acknowledgment

Christine A. Crisci
Notary Public, State of New York
LC # 01CR6365109
Qualified in Westchester County
Comm. Exp. September 25, 2021

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to: Department of Environmental Conservation, Office of General Counsel, Attn: Rosalie K. Rusinko, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to: NYS Department of Environmental Conservation, Office of General Counsel, Attn: Rosalie K. Rusinko, 100 Hillside Avenue, Suite 1W, White Plains, New York 10603.

Duration. This Order shall take effect when it is signed by the Commissioner of Environmental Conservation, or his designee, and shall expire when Respondent has fully complied with the requirements of this Order.

Access. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent 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.

Indemnity. Respondent 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 Respondent, 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 Respondent or its employees, servants, agents, successors or assigns.

Modifications. 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 Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.

EXHIBIT "A"
DAILY OBSERVATION REPORT

DAILY OBSERVATION REPORT

Pg. 1 of 3

Project Consultant

Report Number:

Report Date:

Site:

Phase:

Site No.:

Project Contact List

Contractor PM:

NYSDEC PM:

NYSDEC Region 3:

Construction Manager:

Project Engineers:

Remedial Contractor:

Air Monitoring:

Health & Safety:

Weather Conditions

General Description	am	Pm
Temperature	am	Pm
Wind Direction	am	Pm

HEALTH & SAFETY:

*(*If any box(s) below are checked "Yes", list the deviation under the "Items for Concern" section of this report).*

Were there any changes to the Health & Safety Plan?		*Yes ()	No ()	NA ()
Were there any exceedances at the perimeter action level reported on this date?	Air:	*Yes ()	No ()	NA ()
Were there any Noise /Vibration exceedances reported on this date?	Noise:	*Yes ()	No ()	NA ()
	Vibration:	*Yes ()	No ()	NA ()
Were there any breaches to the tent structure or silt fence reported/observed on this date?		*Yes ()	No ()	NA ()
Were there any dust/odor issues reported or observed on this date?		*Yes ()	No ()	NA ()

WASTE HAULING :

*(*If any box(s) below are checked "Yes", list the deviation under the "Items of Concern" section of this report).*

Were there any vehicles which did not display proper D.O.T numbers and placards?	*Yes ()	No ()	NA ()
Were there any vehicles which were not lined or tarped?	*Yes ()	No ()	NA ()
Were there any vehicles which were not decontaminated prior to exiting the work site?	*Yes ()	No ()	NA ()

Other Items

Site Drawings Attached:	Yes ()	No ()	NA ()
Site Photo(s) Taken Attached:	Yes ()	No ()	NA ()

Summary of Materials

DAILY OBSERVATION REPORT

Materials Delivered to the Site:

Material	Source	Daily Total Tons/Yards	Number of Truckloads	Project Totals to Date

Materials Removed From Site:

Waste Stream	Daily Method of Transport	Daily Total Tons/Yards	Daily Destination Disposal Facility	Project Totals to Date

Summary of Events:

- Samples collected for laboratory analysis:
-
-

Description of Daily Work Performed

CONTRACTORS PERSONNEL ON SITE:

Name	Company	Duty

VISITORS TO SITE

NAME	Representing	Entered Exclusion/CRZ Zone
		Yes () No ()
		Yes () No ()
		Yes () No ()
		Yes () No ()

PROJECT SCHEDULE:

-

DAILY OBSERVATION REPORT

ISSUES PENDING/COMMENTS:

-

ITEMS OF CONCERN:

-

INTERACTIONS WITH SITE OWNER, PUBLIC, MUNICIPALITY:

SITE REPRESENTATIVE /
CONSTRUCTION INSPECTOR:

Name: (*signature*)

Date:
