

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations of Articles 27, Title 13
Article 71, Title 27 of the New York State Environmental
Conservation Law and Part 375 of Title 6 of the Official
Compilation of Codes, Rules and Regulations
of the State of New York,

ORDER ON CONSENT

- by -

NYSDEC File No.
C734154-01-22
Index No.
R7-C734154-01-22

UR-ban Villages PFA, LLC
925 7th North Street
Liverpool, NY 13088

Respondent.

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WHEREAS:

1. The New York State Department of Environmental Conservation (“NYSDEC” or the “Department”) is responsible for carrying out the policy of the State of New York to conserve, improve and protect natural resources and the 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 New York State Environmental Conservation Law (“ECL”); and
2. The Department is responsible for the administration and enforcement of law and regulation pursuant to Article 3 of the ECL.
3. The Department is authorized to administer the Brownfield Cleanup Program (“BCP”) as set forth in Article 27, Title 14 of the ECL and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations (“6 NYCRR”) and may issue orders consistent with authority granted to the Commissioner by such statute.
4. Respondent UR-ban Villages PFA, LLC, a New York limited liability company with offices at 925 7th North Street, Liverpool, NY, is the owner of a parcel of real property located at 100 Buckley Road, Salina, NY and identified as Onondaga County Tax Map/Parcel No. 086-01-15.2 (the “Site”).

5. On February 25, 2022, the Respondent entered into a Brownfield Site Cleanup Agreement (“BCA”), Index No. C734154-01-22, with the Department regarding a remedial program for the Site. The Respondent was participating in the Brownfield Cleanup Program (“BCP”) as a Volunteer, as defined in ECL § 27-1405(1)(a).

6. 6 NYCRR 375-1.11(b)2 states that it is a violation to engage in any activity that prevents or significantly interferes with an ongoing remedial program or activity that is reasonably foreseeable expose the public health or the environment to a significantly increased threat of harm or damage at any site.

7. The Department approved a Remedial Investigation Work Plan (“RIWP”) on August 16, 2022. The approved RIWP included a schedule for implementation of that work plan.

8. On May 25, 2023, within a Project Status Report, the Respondent submitted a revised schedule for implementation of the RIWP that was acceptable to the Department. Based on the revised schedule, the Remedial Investigation Report (“RIR”) was to be submitted by the end of May 2023.

9. On October 2, 2023, the Department sent the Respondent a letter indicating the Department’s objection to the pace and progress of the Remedial Program at the Site and allowing Respondent to remain in the BCP provided that Respondent submit a revised schedule (“Notice of Termination”)

10. The Department did not receive a revised schedule. On November 4, 2023, the Department notified Respondent that the BCA was terminated pursuant to 6 NYCRR § 375-3.5(c) (“Termination Letter”).

11. Following the Termination Letter, the Respondent submitted the RIR and an Alternative Analysis Report to the Department on November 17, 2023.

12. Pursuant to ECL Section 71-2705(1), a person who violates ECL Article 27, Title 13 or 6 NYCRR Part 375, is subject to a penalty of up to \$37,500 per day for each violation.

13. Respondent and the Department agree that the primary goals of this Order are to resolve the above-described violations at the Site and provide a mechanism for the Respondent to continue in the BCP as a Volunteer, so that it may implement any required remedial measures and associated site management activities.

14. In settlement of the Respondent’s liability for the aforesaid violations, the Respondent waives the right to a hearing herein as provided by law and consents to the issuing and entering of this Order on Consent pursuant to the provisions of Articles 27 and 71 of the ECL 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, WHEREFOR, it is hereby ORDERED that:

I. Civil Penalty. With respect to the violations identified in this Order, the Department hereby assesses against the Respondent a civil penalty in the amount of FIFTY THOUSAND dollars (\$50,000.00), to be deposited in the Hazardous Waste Remedial Fund and to be paid as follows:

A. Payable Penalty: TWELVE THOUSAND FIVE HUNDRED dollars (\$12,500.00) shall be paid when Respondent signs this Order and returns it to the Department, 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 the Case Number of this Order on Consent 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.

This Order on Consent, along with any applicable submissions shall be sent to the Department of Environmental Conservation, Office of General Counsel, 5786 Widewaters Parkway, Syracuse, New York 13214, attention: Margaret A. Sheen, Esq.

B. Suspended Penalty: The remaining penalty amount, THIRTY-SEVEN THOUSAND FIVE HUNDRED dollars (\$37,500.00), shall be suspended, and shall not be payable provided that Respondent fully complies with the requirements of this Order, including all incorporated Appendices and Attachments. If, in the Department’s sole discretion, Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondent within 30 days of receiving written notice from the Department that penalties are due.

C. 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 schedule contained in the 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 will constitute a

debt owed to the State of New York when and if such penalty becomes due.

D. Failure to timely pay the civil penalty due under this Order or otherwise comply with this Order will result in termination of the Brownfield Cleanup Agreement, referral of the Site to the State Superfund, if appropriate, and no Certificate of Completion will be issued for this Site

II. RESPONDENT'S CONTINUED PARTICIPATION IN THE BCP

The Department has agreed to allow the Respondent to continue its participation in the BCP under the terms of the February 25, 2022 BCA and any subsequent amendments thereto. The Department hereby withdraws the Termination Letter dated November 14, 2023. Respondent shall not be entitled to, and will not use the costs incurred to defend or comply with this Order for the purpose of tax credits under the Brownfield Cleanup Program. Respondent shall be entitled to tax credits for eligible costs incurred by Respondent from October 2, 2023 to the effective date of this Order.

III. COMPLIANCE SCHEDULE

Respondent shall:

- A. Upon Department review of the RIR submitted by Respondent on November 17, 2023, submit modifications to the RIR within 30 days of receiving a modification request letter from the Department, if request letter is provided by the Department.
- B. Submit a Remedial Action Work Plan (RAWP) within 30 days of receiving approval of the RIR from the Department.
- C. Commence the remedial action within 30 days of receiving approval of the RAWP and issuance of the Decision Document from the Department.
- D. Submit an Environmental Easement Package to the Department before June 1, 2024.

IV. FAILURE, DEFAULT AND VIOLATION OF ORDER AND VIOLATIONS OF THE ECL

A. The failure of Respondent to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.

B. Respondent's 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.

C. 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 is not caused by the negligence or willful misconduct of Respondent, and which could not have been avoided by 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.

V. INDEMNIFICATION

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent or its successors (including successors in title) and assigns.

VI. BINDING EFFECT

This Order shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to, those who may carry on any or all of the operations to be conducted by Respondent at the Site.

VII. MODIFICATION

No change in this Order shall be made or become effective except as agreed to by the Parties and set forth by a written order of the Commissioner or the Commissioner's designee.

VIII. ENTIRE ORDER

This Order shall constitute the entire agreement of the Department and the Respondent with respect to settlement of the violations specifically referenced herein. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph VIII of this Order, and subscribed by the party to be bound. No informal oral or written advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

IX. EFFECTIVE DATE

The effective date of this Order is the date that it is signed by the Commissioner or his/her designee. The Department will provide Respondent with a fully executed

copy of this Order as soon as practicable after it has been signed by the Commissioner or the Commissioner's designee.

DATED: Albany, New York
December 21, 2023

Basil Seggos
Commissioner, NYSDEC

By: *Andrew Guglielmi*
Andrew O. Guglielmi, Director
Division of Environmental Remediation
Department of Environmental Conservation

CONSENT BY RESPONDENT

Respondent UR-ban Villages PFA, LLC hereby consents to the issuing and entering of this Order without further notice, waives his right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

UR-ban Villages PFA, LLC
By [signature]: _____

Print name: Vittorio Pascarella

Title: MEMBER

Date: 12/12/23

ACKNOWLEDGMENT

STATE OF New York)
) ss:
COUNTY OF Onondaga)

On this 12th day of December, 2023, before me personally came Vittorio Pascarella, to me known, who being by me duly sworn did depose and say that s/he is the member of UR-ban Villages PFA, LLC, the corporation described in and which executed the above instrument, and that s/he signed this instrument as authorized by said UR-ban Villages PFA, LLC.

Susan P. Dine
Notary Public

SUSAN P. DINE
Notary Public, State of New York
No. 01DI6225988
Qualified in Onondaga County
My Commission Expires Aug. 2, 2026