



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

September 30, 2013

VIA REGULAR MAIL AND ELECTRONIC MAIL

(See Attachment 1 - List of Addressees)

Re: Gowanus Canal Superfund Site, Brooklyn, Kings County, New York

Notice of Potential Liability under 42 U.S.C. § 9607(a) to Two Parties Not Previously Noticed

Demand for Past Response Costs Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)

Commencement of Negotiations for Remedial Design

Dear Sirs and Madams:

As you know, the U.S. Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Sections 9601-9675, (also known as the "Superfund" law). More information about CERCLA, including a copy of the Superfund law, may be found at [www.epa.gov/superfund](http://www.epa.gov/superfund).

EPA has documented the release and threatened release of hazardous substances into the environment at the Gowanus Canal Superfund Site (the "Site"), located in Brooklyn, Kings County, New York. In March 2010, the Gowanus Canal was added to the National Priorities List ("NPL") established pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605. In response to the release and threatened release of hazardous substances into the environment at the Site, EPA has spent public funds and anticipates spending additional public funds.

EPA began a remedial investigation/feasibility study ("RI/FS") at the Site in 2009. In April 2010, EPA entered into separate administrative consent orders with New York City ("NYC") and National Grid to perform work in support of EPA's RI/FS. An RI report was completed by EPA in January 2011 and an FS report was completed in December 2011. An FS addendum report was completed in December 2012.

Sampling results from the RI/FS document the presence of hazardous substances in groundwater, soil, and Canal sediments at the Site. These include polycyclic aromatic hydrocarbons ("PAHs"),

polychlorinated biphenyls ("PCBs"), pesticides (such as methoxychlor and DDT), metals (such as barium, cadmium, copper, lead, mercury, nickel and silver), and volatile organic compounds (such as benzene, toluene, ethylbenzene and xylene). The contamination extends the entire length of the Canal.

Based on the results of the RI/FS, chemical contamination in the Canal sediments presents an unacceptable ecological and human health risk, primarily due to exposure to PAHs, PCBs, and metals (barium, cadmium, copper, lead, mercury, nickel and silver). Additional information about the Canal, including the RI/FS reports, can be found on EPA Region 2's website at [www.epa.gov/region02/superfund/npl/gowanus/](http://www.epa.gov/region02/superfund/npl/gowanus/).

The Gowanus Canal is a brackish, tidal arm of the New York-New Jersey Harbor Estuary, extending for approximately 1.8 miles through Brooklyn. The approximately 100-foot-wide Canal runs southwest from Butler Street to Gowanus Bay and Upper New York Bay. The adjacent waterfront is primarily commercial and industrial, currently consisting of concrete plants, warehouses, and parking lots, and the Site is near several residential neighborhoods.

The Canal was constructed by bulkheading and dredging a tidal creek and wetland. After its completion in the 1860s, the Canal quickly became one of the nation's busiest industrial waterways, home to heavy industry including gas works (*i.e.*, manufactured gas plants), coal yards, cement makers, soap makers, tanneries, paint and ink factories, machine shops, chemical plants and oil refineries. The Canal was used as a repository for untreated industrial wastes, raw sewage, and runoff for decades, causing it to become one of New York's most polluted waterways. Although much of the industrial activity along the Canal has ceased, high contaminant levels remain in the groundwater and Canal sediments. Despite the ongoing pollution problems, the Canal is currently used by some for recreational purposes, such as canoeing and diving, while others catch fish for consumption. Significant redevelopment is occurring and planned along the Canal.

EPA released a Proposed Plan for cleanup of the Site on December 27, 2012 and accepted comments for 120 days. On September 27, 2013, EPA issued Record of Decision ("ROD") for the Site which mirrors the Proposed Plan and includes the following response actions: 1) dredging of the entire column of hazardous substance-contaminated sediments which have accumulated above the native sediments in the upper and mid-reaches of the Canal (referred to as "soft sediments"); 2) in-situ stabilization of those native sediments in select areas in the upper and mid-reaches of the Canal contaminated with high levels of nonaqueous phase liquid ("NAPL"); 3) construction of a multilayered cap in the upper and mid-reaches of the Canal to isolate and prevent the migration of PAHs and residual NAPL from native sediments; 4) dredging of the entire soft sediment column in the lower reach of the Canal; 5) construction of a multilayer cap to isolate and prevent the migration of PAHs from native sediments in the lower reach of the Canal; 6) off-Site treatment of the NAPL-impacted sediments dredged from the upper and mid-reaches of the Canal with thermal desorption, followed by beneficial reuse off-Site (*e.g.*, landfill daily cover) if possible; 7) off-Site stabilization of the less contaminated

sediments dredged from the lower reach of the Canal and the sediments in the other reaches not impacted by NAPL, followed by beneficial reuse off-Site; 8) excavation and restoration of approximately 475 feet of the filled-in former 1st Street turning basin; 9) excavation and restoration of the portion of the 5<sup>th</sup> Street turning basin beginning underneath the 3<sup>rd</sup> Avenue bridge and extending approximately 25 feet to the east and the installation of a barrier or interception system at the eastern boundary of the excavation; 10) implementation of institutional controls incorporating the existing fish consumption advisories (modified, as needed), as well as other controls to protect the integrity of the cap; 11) periodic maintenance of the cap and long-term monitoring to insure that the remedy continues to function effectively; and 12) combined sewer overflow ("CSO") controls to significantly reduce overall contaminated solid discharges to the Canal, which shall include: a) construction of in-line sewage/stormwater retention tanks to retain stormwater which currently discharges through outfalls RH-034 and OH-007; and b) implementation of appropriate engineering controls to ensure that hazardous substances and solids from separated stormwater, including from future upland development projects, are not discharged to the Canal.

The documents that form the basis for EPA's selected remedy are contained in the administrative record, which is maintained at EPA's offices in New York City, and at the following repositories located near the Site:

Carroll Gardens Library  
396 Clinton St.  
Brooklyn, NY 11231  
(718) 596-6972

Joseph Miccio Community Center  
110 West 9th St  
Brooklyn NY 11231  
(718) 453-1296

You may inspect copies of the administrative record during regular business hours at EPA's offices in New York City or at the local administrative record repositories identified above. (The administrative record files in the local repositories are in the process of being updated; we expect this process to be completed shortly.) Please contact Christos Tsiamis, the Remedial Project Manager for the Site, at (212) 637-4257, if you wish to arrange an appointment to inspect the administrative record at EPA's New York office.

#### **NOTICE OF POTENTIAL LIABILITY**

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial, and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves. Responsible parties under CERCLA include current owners or operators of a facility, past owners or operators of a facility at the time of disposal of hazardous substances, and persons who arranged for the treatment or disposal of hazardous substances which came to be located at a facility. EPA has previously notified a number of parties of their potential liability at the Site. Since those notifications, EPA has evaluated information obtained



in connection with the Site about two additional parties, including the responses of those parties to EPA Requests for Information pursuant to Section 104(e) of CERCLA, 42 U.S.C. Section 9604(e).

By this letter, EPA notifies the Brooklyn Improvement Co. and Puget Sound Commerce Center, Inc. that they are potentially responsible parties ("PRPs") with respect to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

#### **DEMAND FOR PAST RESPONSE COSTS**

As noted above, EPA has spent public funds and anticipates spending additional public funds in connection with CERCLA response actions undertaken by the Agency in response to the release and threatened release of hazardous substances at the Site. EPA has paid approximately \$15,192,620.52 in response costs with respect to the Site through July 31, 2013. These costs were incurred by EPA, for a variety of activities in connection with the RI/FS and remedy selection process, including but not limited to, sampling and analysis, technical consultants, payroll, enforcement, public outreach and records management. Enclosed with this letter you will find a printout from EPA's financial management system, which breaks down the different categories of costs that have been paid by EPA with respect to the Site. Please note that these costs do not include certain Site response costs which are still being compiled, including costs of the Department of Justice ("USDOJ") and the Agency for Toxic Substances and Disease Control on behalf of EPA. The costs paid by EPA with respect to the Site are charged to the Hazardous Substances Superfund, established pursuant to 26 U.S.C. § 9507 and administered by EPA. A narrative summary of these costs will be provided under separate cover in the near future.

In September 2010, EPA entered into a judicial bankruptcy consent decree with Chemtura Corp. under which Chemtura paid EPA \$3.9 million to resolve its liability with respect to the Site. In August 2013, National Grid reimbursed EPA \$122,089.64 for EPA oversight of National Grid's work under the administrative consent order noted above. In July 2013, EPA billed NYC for \$55,425.88 in oversight costs under its administrative consent order, payment of which is in process. After deducting these amounts from the total past response costs, the amount of EPA's unreimbursed past costs for the Site are \$11,115,105.00.

As a PRP, you are potentially liable, jointly and severally, for EPA's unreimbursed past response costs. In accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), demand is hereby made for \$11,115,105.00, plus any and all interest recoverable under Section 107 of CERCLA, 42 U.S.C. §9607. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), interest on \$11,115,105.00 will accrue from the date of this letter.

#### **NOTICE OF REMEDIAL DESIGN ADMINISTRATIVE ORDER NEGOTIATIONS**

By this letter, EPA wishes to determine whether you, either individually or collectively, will voluntarily perform the remedial design ("RD") for the remedy selected in the ROD.

Attached is a draft RD Administrative Order and Settlement Agreement ("RD Agreement") which provides for the performance of the RD, the partial reimbursement of EPA's past response costs, and the reimbursement of EPA's future RD oversight costs.

This notice is not being given in accordance with the "special notice" procedures of Section 122(e) of CERCLA, 42 U.S.C. § 9622(e). Use of those procedures here and the moratorium that accompanies them would be inappropriate since they would not expedite the Remedial Action ("RA"). EPA wishes to promptly secure a commitment to perform the RD for the Site so as to ensure commencement of RD field work in early 2014, and thus the timely implementation of the RA. As you are aware, in March 2012, EPA convened a meeting of the then-noticed PRPs in order to assist them in beginning the process of formulating an equitable allocation of liability among the parties. Having begun the process in March 2012, EPA believes that the moratorium is not necessary or appropriate. Consequently, EPA will seek signature of the enclosed RD Agreement by December 13, 2013.

EPA recognizes that the PRPs have not yet reached a final equitable allocation of responsibility among themselves and that such an allocation is likely to be finalized as part of the final negotiations for RA consent decree ("CD") at this Site. For this reason, EPA is willing, for settlement purposes only and conditioned on timely execution of the RD Agreement, to accept \$5,000,000.00 in partial payment of its past costs, with a reservation as to the remaining unreimbursed costs.

Following conclusion of RD negotiations, EPA plans to promptly begin negotiation of the RA CD under which the PRPs would implement EPA's selected remedy for the Site. The RA CD would also provide for the reimbursement of balance of EPA's pre-July 31, 2013 costs, as well as all response costs paid by EPA with respect to the Site after July 31, 2013, and interest.

#### **RESPONSE TO EPA'S NOTICE AND DEMAND**

Within twenty-one (21) days from the date of this letter, please advise EPA whether you are willing to enter into the RD Agreement in substantially the same form as enclosed. We have tentatively scheduled a meeting with all PRPs for November 7, 2013 at 11 AM in EPA's offices in New York. In your response, please notify EPA as to whether you or your representative will attend the meeting. We urge you and the other PRPs to coordinate among yourselves before the meeting in order to facilitate discussion of the enclosed documents with EPA.

Please send you notice to:

Brian Carr  
Assistant Regional Counsel  
New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II

290 Broadway, 17th Floor  
New York, NY 10007-1866  
[carr.brian@epa.gov](mailto:carr.brian@epa.gov)

with a copy to:

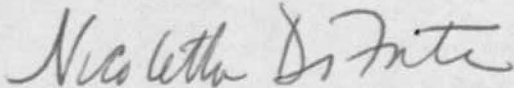
Christos Tsiamis  
Remedial Project Manager  
New York Remediation Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 20th Floor  
New York, NY 10007-1866  
[tsiamis.christos@epa.gov](mailto:tsiamis.christos@epa.gov)

Please be aware that should no PRP volunteer to perform the RD for the Site, EPA will proceed with its enforcement options, which may include performing the work itself (the cost of which you may be held liable for under Section 107(a) of CERCLA) and/or requiring one or more PRPs to perform the RD pursuant to Section 106(a) of CERCLA. If some but not all PRPs agree to perform the RD, EPA may also require any non-settling PRPs to cooperate and coordinate with the performing PRPs pursuant to Section 106(a) of CERCLA.

If you have any questions regarding this letter, you may contact Mr. Carr via email at [carr.brian@epa.gov](mailto:carr.brian@epa.gov) or by phone at (212) 637-3170.

We appreciate and look forward to your prompt response to this letter.

Sincerely yours,



Nicoletta Diforte  
Senior Enforcement Policy Advisor  
Emergency and Remedial Response Division

Attachment 1 - List of Addressees  
Attachment 2 - Counsel of Record for Addressees

Enclosures: Cost Summary  
Draft RD Agreement and Statement of Work  
(available at: [www.epa.gov/region02/superfund/npl/gowanus/additionaldocs.html](http://www.epa.gov/region02/superfund/npl/gowanus/additionaldocs.html))



cc: Peter Flynn, USDOJ  
Deborah Zwany, USDOJ  
Mark Barash, Esq., USDOJ  
Ken Finkelstein, NOAA  
Robert W. Schick, P.E., NYSDEC  
George Heitzman, NYSDEC

**Attachment 1 - List of Addressees to Gowanus Canal RD Notice and Demand Letter**

1. Beazer East, Inc.  
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Three Rivers Mgmt., Inc.  
One Oxford Centre, Suite 3000  
Pittsburgh, PA 15219-6401  
[paul.kline@hanson.com](mailto:paul.kline@hanson.com)
2. National Grid USA  
Attn: Allen Hecht, Esq.  
175 East Old Country Road  
Hicksville, NY 11801  
[Allen.Hecht@us.ngrid.com](mailto:Allen.Hecht@us.ngrid.com)
3. Consolidated Edison Company Of  
New York, Inc.  
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4 Irving Place, Room 1810-S  
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8. Kraft Foods Global, Inc.  
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Senior Counsel, Environment &  
Safety  
Three Lakes Drive  
Northfield, IL 60093  
[Katherine.OHalleran@kraft.com](mailto:Katherine.OHalleran@kraft.com)
9. Stauffer Management Co., LLC  
Attn: Luke W. Mette  
President  
1800 Concord Pike  
Wilmington, DE 19803
10. Estate of Daniel Tinneney  
Robert A. Sgarloto, Esq.  
Slater Sgarloto & Cappello, PC  
1298 Victory Boulevard  
Staten Island, NY 10301  
[Sgarloto@aol.com](mailto:Sgarloto@aol.com)
11. MCIZ Corp., Fifteen Second Avenue  
LLC, 36-2nd-J Corp., and 107 Sixth  
Street LLC  
Attn.: Jacob Marmurstein  
5307 17<sup>th</sup> Avenue  
Brooklyn, NY 11204



12. Brink's Inc.  
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1801 Bayberry Court  
P.O. Box 18100  
Richmond, VA 23226-8100  
[kyocum@brinkscorporation.com](mailto:kyocum@brinkscorporation.com)
13. Bayside Fuel Oil Corp.  
Attn: Sergio Allegretti  
President  
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Brooklyn, NY 11214
14. ConocoPhillips Co.  
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Senior Counsel  
600 N. Dairy Ashford, ML2080  
Houston, TX 77079  
[paul.hamada@conocophillips.com](mailto:paul.hamada@conocophillips.com)
15. ExxonMobil Oil Corp.  
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ExxonMobil Law Department  
3225 Gallows Road  
Fairfax, VA 22037  
[kevin.j.vaughan@exxonmobil.com](mailto:kevin.j.vaughan@exxonmobil.com)
16. Citigroup, Inc./MRC Holdings, Inc.  
Attn: Preston Turner  
Associate General Counsel  
Citi Litigation Service Center  
300 St. Paul Place, BSP17D  
Baltimore, MD 21202
17. NL Industries, Inc.  
Attn: Courtney J. Riley  
Executive Director, Environmental  
Management  
Three Lincoln Centre  
5430 LBJ Freeway, Suite 1700  
Dallas, TX 75240-2697  
[criley@valhi.net](mailto:criley@valhi.net)
18. Patterson Fuel Oil Company, Inc.  
Attn: Stephen J. Patterson  
Chairman  
185 Magnolia Avenue  
P.O. Box 300  
Floral Park, NY 11002
19. The Union Oil Company of  
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Law Dept.)  
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20. Verizon New York Inc.  
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21. SPX Corporation  
Attn: Dan McGrade  
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Charlotte, NC 28277
22. U.S. Postal Service  
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Raleigh, NC 27668-9000  
[gary.w.bigelow@usps.gov](mailto:gary.w.bigelow@usps.gov)
23. U.S. General Services  
Administration  
Attn: Carol Schafer  
Senior Assistant General Counsel  
Real Property Division  
Office of the General Counsel  
Room 574A  
1275 First Street, NE

- Washington, D.C. 20417  
[carol.schafer@gsa.gov](mailto:carol.schafer@gsa.gov)
24. Dun & Bradstreet, Inc.  
Attn: Louis Sapirman  
Vice President/Associate General Counsel  
103 JFK Parkway  
Short Hills, NJ 07054
25. Cooper Standard Automotive, Inc.  
Attn: Tom Petko  
Associate General Counsel  
39550 Orchard Hill Place Drive  
Novi, Michigan 48375  
[tepetko@cooperstandard.com](mailto:tepetko@cooperstandard.com)
26. Rexam Beverage Can Co.  
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27. Northville Industries Corp.  
Attn: H. Brant Brown  
President  
25 Melville Park Road  
Melville, New York 11747
28. Hauck Manufacturing, Inc.  
Attn: Michael Shay  
President  
100 North Harris Street  
Cleona, PA 17042
29. CBS Corporation  
Attn: William D. Wall  
Vice President, Senior Counsel  
20 Stanwix Street  
Pittsburgh, PA 15222  
[william.wall@cbs.com](mailto:william.wall@cbs.com)
30. Beam Inc.  
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Assistant General Counsel  
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31. TDA Industries, Inc.  
Attn: Douglas P. Fields  
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32. Northeastern Plastics, Inc.  
Attn: Daniel Dror  
Chief Executive Officer  
601 Cien Street, Suite 235  
Kemah, TX 77565
33. U.S. Maritime Administration  
Krystyna Bednarczyk  
Attorney - Environmental Law  
Div. of Litigation & General Law  
Office of Chief Counsel, MAR-221  
W24-208  
1200 New Jersey Ave., SE  
Washington, DC 20590  
[krystyna.bednarczyk@dot.gov](mailto:krystyna.bednarczyk@dot.gov)
34. Brooklyn Improvement Co.  
Attn: Michael D. De Milt  
President  
369 Lexington Avenue (E. 41), Suite  
2700  
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New York, NY 1016-2700
35. Puget Sound Commerce Center, Inc.  
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## Attachment 2 - List of Counsel of Record

1. Phil Bender, Esq.  
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14. U.S. Department of Justice  
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(Beam Inc.)

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