

Real Estate Group to Contribute \$20 Million In Gowanus Canal Cleanup Agreement



Two subsidiaries of the Lightstone Group, a New York City real estate developer, have agreed to carry out an estimated \$20 million in sampling, cleanup work and other measures on land parcels slated for residential housing adjacent to the Gowanus Canal superfund site, the Environmental Protection Agency announced Sept. 9.

The developers aren't among the numerous potentially responsible parties identified at the Gowanus site, the EPA said. In exchange for the cleanup work, the EPA has agreed it won't sue Lightstone in the future for additional cleanup work related to existing contamination at the property and impacts to or from the canal, the agency said.

The Lightstone properties, rezoned for residential use in 2009, previously housed oil terminals, dry cleaners and manufacturing and warehousing operations, the EPA said.

The proposed settlement covers 3.4 acres under development by the Lightstone Group subsidiaries, where they plan to build 700 housing units, the EPA said. The properties also are subject to cleanup under the New York State Department of Environmental Conservation Brownfield redevelopment program, the agency said.

In an e-mail to Bloomberg BNA, Lawrence Schnapf of the Schnapf LLC law firm in New York City gave credit to the EPA, noting they have been "receptive to the plight of purchasers of property near [the Gowanus site]." In order to minimize the transactional costs of redeveloping superfund sites located near populated urban areas, "EPA is authorized to enter into what is known as *de minimis* or *de micromis* settlements where the smaller entities will make a payment in exchange for a release from further responsibility," he said.

"EPA has entered into a number of these agreements or issued comfort letters to facilitate deals and development along the Gowanus," Schnapf said. This approach "could serve as a model for other contaminated rivers elsewhere in the nation," according to Schnapf.

Focus on Future Use

"These settlements illustrate that the superfund program can work in parallel with redevelopment," EPA Region 2 Administrator Judith A. Enck said in a statement. "The removal of contaminated soil and the other actions proposed under this agreement will reduce pollution along the Gowanus Canal and serve as a model for addressing the impacts of future potential development along the canal."

The state cleanup will focus on the land's future use, while the EPA-required work will prevent contaminants from entering the canal, the agency said.

The EPA in September 2013 announced a \$506 million final cleanup plan for the Gowanus site, which includes the heavily polluted Brooklyn canal and its banks. Contaminants at the historically industrial site include polycyclic aromatic hydrocarbons, polychlorinated biphenyls and heavy metals, including mercury, lead and copper ([22 EDDG 7, 1/17/13](#)).

'Positive, Collaborative Relationship'

The proposed settlements, open for public comment until Oct. 8, call for the Lightstone subsidiaries, with EPA oversight, to conduct sampling to help determine additional source areas of contamination and remove an estimated 17,500 cubic yards of contaminated soil to licensed waste disposal facilities. The companies also would have to construct a bulkhead to prevent residual contamination from spreading and permit dredging, as well as submit sewage and stormwater plans to ensure the project won't be a future contamination source.

A spokesman for Lightstone, Ethan Geto, said in a Sept. 10 statement that the proposed agreements had grown out of a "positive, collaborative relationship" with the EPA to develop the property.

"All the steps in the agreement are things Lightstone volunteered to do early in this process, starting two years ago," he told Bloomberg BNA. "EPA was very happy with Lightstone's plans

to clean up the site, put in new sewer and stormwater structures and build a new bulkhead at their own expense.”

The developer was eager to go through the EPA process for the liability protection it offered, Geto said. “This is an agreement Lightstone wanted,” he said, in that EPA and the Justice Department have agreed to hold the developer harmless for past pollution in the cana