

Re: Court Won't Let Company Skirt Cleanup at New York Gowanus Canal

1 message

Mark Yarish <mark.yarish@gmail.com>
To: Steve Marcus <stevemarcus7@gmail.com>
Cc: Joan Rodriguez <jblue406@aol.com>

Tue, Mar 31, 2026

Hi Steve - From my perspective, and I am not a lawyer, so Joan may understand the legal language better than I do, this ruling seems to affirm something that many residents and community advocates have been saying for a long time: you cannot separate the canal from the surrounding upland properties that helped contaminate it. The court appears to recognize that the uplands and lowlands are part of the same connected system shaped by historic industrial activity, contaminated fill, and groundwater migration. For the community, that matters because pollution does not respect property lines, and accountability should not either. To me, this strengthens the case for long-term protectiveness, system-wide monitoring, full transparency, and clear oversight so that cleanup and redevelopment are judged in relation to cumulative environmental risk, not just on a site-site basis.

On Tue, Mar 31, 2026 at 9:26 AM Steve Marcus <stevemarcus7@gmail.com> wrote:
Good Morning, Mark
Thanks for sharing!

Curious what are your thoughts are regarding National Grid's lawsuit?

On Tue, Mar 31, 2026 at 8:55 AM Mark Yarish <mark.yarish@gmail.com> wrote:

Joan - Good guess..

Nearby Polluters Must Face Gowanus Canal Cleanup Suit

By [Gautama Mehta](#) · [Listen to article](#)

Law360 (March 30, 2026, 7:18 PM EDT) -- A New York federal judge on Sunday declined to dismiss a lawsuit brought by [National Grid](#) seeking to force 40 other parties accused of polluting Brooklyn's Gowanus Canal to pay their share of the Superfund cleanup costs.

U.S. District Judge Margo K. Brodie rejected the argument of TDA Industries, one of the defendants, that it was entitled to an exemption under the Comprehensive Environmental Response, Compensation, and Liability Act because a plastics factory it owned near the canal wasn't part of the Superfund site itself — i.e. the canal — and because its emissions of hazardous substances into the canal were less than the statutory threshold for liability, according to TDA's motion to dismiss.

The dispute centered in part on the definition of the Superfund site as laid out in the EPA's cleanup plan included in a 2014 administrative order. Under that order, the judge wrote, "TDA's argument that the 'facility,' or the 'Superfund site,' is only that of the Canal, i.e., the Gowanus Superfund Site excluding the surrounding businesses, is incorrect."

TDA Industries was named in the suit because its predecessor, Northeastern Plastics, owned a manufacturing facility on Carroll Street in Gowanus from 1963 to 1999.

Judge Brodie said since TDA's predecessor owned the factory, it did not fall under CERCLA's so-called "de minimis" exemption, which applies to "arrangers and transporters of hazardous substances" under a certain threshold, but not to owners or operators of the Superfund site. TDA had argued that the Superfund site should only be considered the canal, and that its emissions into the canal rendered it only an "arranger" under the statute.

"If the Court were to accept TDA's narrow definition, the results would contradict the statutory scheme, limit potential liability, and frustrate CERCLA's goals," said Judge Brodie in her opinion.

In 2024, Brooklyn Union Gas Company — now doing business as New York's primary gas utility company National Grid, which has borne a large share of the cleanup costs since the canal was listed as a Superfund site in 2010 — sued dozens of parties, including corporations, government entities, and branches of the military it said had contributed to the canal's pollution, under CERCLA.

On Mon, Mar 30, 2026 at 3:56 PM Joan Rodriguez <jblue406@aol.com> wrote:

Hi, Mark - I don't have access either but I am glad that this company was part of a raft of companies sued by National Grid where NG sought more \$ from them for the Canal cleanup. Presumably the company, TD, moved to dismiss and the Federal denied that motion is what this looks like to me.

----- Forwarded Message -----

From: Mark Yarish <mark.yarish@gmail.com>
To: Joan Salome-Rodriguez <jblue406@aol.com>; Steve <stevemarcus7@gmail.com>
Sent: Monday, March 30, 2026 at 03:33:17 PM EDT
Subject: Court Won't Let Company Skirt Cleanup at New Gowanus Canal

Hi - This popped up on my news feed. I do have access to Bloomberg. I did not see it posted anywhere else.

Mark

<https://news.bloomberglaw.com/environment-and-energy/court-wont-let-company-skirt-cleanup-at-new-york-gowanus-canal>

Some of the defendants, including the United States of America, the [Federal Maritime Commission](#), the U.S. Department of the Navy, the [U.S. Department of Defense](#), the [U.S. Coast Guard](#), and the [U.S. Department of the Army](#), were named in the suit because of their participation in federal ship construction and repair operations at Gowanus Shipyards beginning in World War I.

The defendants also include the [Kraft Heinz Company](#), the [Phillips 66 Company](#), [Hess Corp.](#), [Verizon New York Inc.](#), and other corporations.

An attorney for National Grid declined to comment. Counsel for TDA Industries did not immediately return a request for comment Monday.

Brooklyn Union is represented by J. Michael Showalter, Matthew F. Prewitt, Sonul Rao, Bradley S. Rochlen, and David C. Giles of [ArentFox Schiff LLP](#).

TDA Industries is represented by Lee Henig-Elona of [Gordon Rees Scully Mansukhani LLP](#).

The case is The Brooklyn Union Gas Company v. [Consolidated Edison Company](#) of New York, Inc. et al., case number 24-CV-6993 in the [U.S. District Court for the Eastern District of New York](#).

--Editing by Amy Rowe.