

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of Article 17 of the New York State
Environmental Conservation Law
and Article 12 of the New York State
Navigation Law

ORDER ON CONSENT

File No. R4-2008-1126-167

-by-

Plaine and Son, Inc.

Respondent

WHEREAS:

1. DEC is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, inter alia, ECL Section 3-0301. In particular, DEC has jurisdiction over the maintenance and enhancement of the purity of the waters of the State pursuant to Article 17 of the New York State Environmental Conservation Law (ECL), and over oil spill prevention and control pursuant to Article 12 of the New York State Navigation Law (NL).

2. Respondent is the owner of property located at 1816 State Street, Schenectady, New York ("site").

3. Respondent is a "person" as defined in Section 172 of the NL and Section 17-0105 of the ECL.

4. In August 2007, Empire Geoservices, Inc. completed three soil borings at the site for the purposes of a Phase 2 environmental site assessment. The borings revealed petroleum contaminated soil and groundwater. Empire Geoservices, Inc. notified the Department's Spill Hotline and the spill was assigned case #0705900.

5. In March 2008, ground penetrating radar was performed at the site and revealed the presence of at least two large underground storage tanks.

6. Respondent has not remediated the site.

7. Navigation Law Section 173 prohibits the discharge of petroleum.

8. Respondent violated Navigation Law Section 173 by discharging petroleum at the site.

9. Navigation Law Section 176 requires that any person discharging petroleum immediately undertake to contain such discharge.

10. Respondent violated Navigation Law Section 176 by not containing the discharge.

11. ECL Section 17-0501 provides that it shall be “unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-301.”

12. Respondent’s discharge of petroleum to the groundwater at the site is a violation of ECL Section 17-0501.

13. 6 NYCRR 612.2 provides that owners of petroleum bulk storage facilities must register such facility with the Department.

14. Respondent’s failure to register the facility with the Department is a violation of 6 NYCRR 612.2.

15. NL Section 192 provides that any person who violates any of the provisions of Article 12 of the NL, or any rule promulgated thereunder, or who fails to comply with any duty created by this article, shall be subject to a penalty not to exceed Twenty-five thousand dollars (\$25,000).

16. ECL Section 71-1929 provides, inter alia, for a civil penalty of up to \$37,500 for each of the violations of the provisions of Article 17 of the ECL cited herein and regulations promulgated thereunder, and for an additional \$37,500 for each day on which such violations continue, and that such violations may be enjoined.

17. Respondent has affirmatively waived their right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

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

I. In respect of the aforesaid violations, a civil penalty in the amount of TWENTY ONE THOUSAND DOLLARS (\$21,000) is hereby assessed against the Respondent. Payment of the civil penalty is due in accordance with the following schedule:

1. \$3,000 with the return of the signed and notarized copy of this Order;
2. \$3,000 by June 30, 2009;
3. \$3,000 by July 31, 2009;
4. \$3,000 by August 31, 2009;
5. \$3,000 by September 30, 2009;
6. \$3,000 by October 30, 2009, and
7. \$3,000 by November 30, 2009.

The failure to make a timely payment shall result in the entire balance of civil penalty being immediately due. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, their agents, employees, and all persons, firms, corporations acting under or for them.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. 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 the provisions hereof by Respondent, their directors, officers, employees, servants, agents, successors or assigns.

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

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Spills Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, their agents, servants, employees, successors and assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations in this Order.

DATED: _____, 2009
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT
Plaine and Son, Inc.

Respondent hereby consents to the issuing and entering of this Order, waives their right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

BY: _____

TITLE: _____

DATE: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 200__, before me, the undersigned,
personally appeared _____,
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

(Full mailing address)

and that he/she/they is (are) the _____
(President or other officer or director or attorney in fact duly appointed)

of the _____,
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

Notary Public, State of New York

SCHEDULE OF COMPLIANCE

1. Upon the effective date of this Order, Respondent shall properly register and close the underground storage tanks located on the site. Proof of these actions are required within 30 days of the effective date of this order
2. Within 15 days of the effective date of this Order, the Respondent shall submit a subsurface investigation work plan to the Department for approval. The purpose of the subsurface investigation is to completely characterize the site and to delineate the extent and magnitude of the contamination originating from the site. The workplan is to include a health and safety plan as well as a time schedule, indicating when each aspect of the investigation will be completed. The Department shall either approve or disapprove the plan in writing. If the plan is disapproved, the Department shall specify any deficiencies and required modifications. Within 30 days of the Department's disapproval notice, the Respondent shall submit a revised plan which addresses the Departments comments, correcting any deficiencies identified in the disapproval notice.
3. Within 30 days of the Department's notice of approval of the subsurface investigation workplan as described in paragraph 1 above, the Respondent shall implement the approved plan.
4. Within 60 days of the completion of the field work portion of the subsurface investigation workplan, the Respondent shall submit a Report containing all of the data and information gathered during the investigation and include, scaled site maps, groundwater contour maps, analytical data tables, a discussion of results and recommendations for further action. The Department shall respond to the Respondent in writing, with comments pertaining to the report and will provide future investigation, remediation and reporting requirements, as is deemed necessary by the Department and consistent with the Department's applicable policies and guidance documents. Any written Department requirements pertaining to this site will be made part of this Schedule of Compliance.
5. The Respondent shall perform quarterly sampling of select monitoring wells utilizing Department specified laboratory analytical methods (which will be dependent on the contaminants found on the site) and continue sampling until at least one year after demonstrating the groundwater at the site meets State groundwater standards in 6NYCRR Part 703.5 , or an acceptable alternative as determined by the Department.
6. The Respondent shall maintain and operate the approved remediation system, if any, until the Department approves its suspension or termination.
7. The Respondent shall submit quarterly reports containing quarterly monitoring well sampling data, system operation and maintenance data, a groundwater contour map, historical groundwater data in tabular form, mass removal calculations, and a conclusion section discussing the current effectiveness of the remedial efforts and recommendations for future activities.

8. To the extent that any measures undertaken pursuant to the corrective action plan requires treatment and discharge of waste waters to groundwaters or surface waters of New York State, or operation of an air point source, Respondent shall be authorized to undertake such treatment and discharge in accordance with the general conditions attached in Appendix A, and the applicable standards contained in Appendix B, not withstanding any otherwise applicable requirements.
9. No water discharge as part of this remediation of this site, shall exceed groundwater standards.

APPENDIX A

General Conditions Applicable to All Wastewater Discharges

1. Advance notice shall be given to the Department of any planned changes in the treatment facility or activity which may result in noncompliance with effluent limitations.
2. Any noncompliance which may endanger bathing areas during the bathing season, shellfishing or public drinking water intakes, must be reported orally within 2 hours from the time Respondent becomes aware of the circumstances. A written report shall be submitted within 5 days and contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if it has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent the noncompliance and its recurrence.
3. Any noncompliance which may endanger health or the environment must be reported orally within 24 hours from the time Respondent becomes aware of the circumstances. A written report shall contain the same information described in paragraph 2 above.
4. Bypasses which do not cause a violation of effluent limitations are allowable, but only of essential maintenance, repairs or replacement to assure efficient and proper operation. The Department must be given 5 days advanced written notice of any anticipated bypass. The Department shall be notified within 24 hours of any unanticipated bypass.

Bypass is prohibited, and the Department may take enforcement action, unless:

- the bypass was unavoidable to prevent loss of life, personal injury, public health hazard, or severe property damage;
- there were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities or retention of untreated wastes; and
- required notices were sent to the Department and, with the exception of emergency conditions, were accepted by the Department.

“Bypass” means the intentional or unintentional diversion of wastewater around any portion of a treatment facility for the purpose or effect of reducing the degree of treatment intended to be provided by the bypassed treatment facility.

“Severe property damage” means substantial damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which would not reasonably be expected to occur in the absence of a bypass.

APPENDIX B

Water Discharges are to meet the standards listed in the following tables.

	GASOLINE GW EFFLUENT STANDARD	GASOLINE SW EFFLUENT STANDARD	SAMPLING FREQUENCY
pH RANGE	6.5 - 8.5	6.5 - 8.5	Monthly
Benzene	1.0 ug/l	1.0 ug/l	“
Ethyl benzene	5.0 ug/l	5.0 ug/l	“
Toluene	5.0 ug/l	5.0 ug/l	“
o-xylene	5.0 ug/l	5.0 ug/l	“
m-xylene	5.0 ug/l	5.0 ug/l	“
p-xylene	5.0 ug/l	5.0 ug/l	“
Mixed Xylenes	5.0 ug/l	5.0 ug/l	“
Napthalene	5.0 ug/l	5.0 ug/l	“
MtBE	10.0 ug/l	10.0 ug/l	“

	FUEL OIL GW EFFLUENT STANDARD	FUEL OIL SW EFFLUENT STANDARD	SAMPLING FREQUENCY
pH RANGE	6.5 - 8.5	6.5 - 8.5	Monthly
Benzene	1.0 ug/l	1.0 ug/l	“
Ethyl benzene	5.0 ug/l	5.0 ug/l	“
Toluene	5.0 ug/l	5.0 ug/l	“
o-xylene	5.0 ug/l	5.0 ug/l	“
m-xylene	5.0 ug/l	5.0 ug/l	“
p-xylene	5.0 ug/l	5.0 ug/l	“
Mixed Xylenes	5.0 ug/l	5.0 ug/l	“
Napthalene	10.0 ug/l	10.0 ug/l	“
n-Butyl benzene	5.0 ug/l	N/A	“
sec-Butyl benzene	50.0 ug/l	N/A	“
t-Butyl benzene	50.0 ug/l	N/A	“
Anthracene	50.0 ug/l	N/A	“
Dibenz (a,h) anthracene	50.0 ug/l	N/A	“
Flourene	50.0 ug/l	N/A	“
Phenanthrene	50.0 ug/l	N/A	“
Pyrene	50.0 ug/l	N/A	“
Acenaphthene	20.0 ug/l	N/A	“
Benzo (a) anthracene	20.0 ug/l	N/A	“
Benzo (b) fluoranthene	20.0 ug/l	N/A	“
Chrysene	20.0 ug/l	N/A	“
Benzo (a) pyrene	20.0 ug/l	N/A	“
Benzo (g, h, i) perylene	20.0 ug/l	N/A	“
Ideno pyrene	20.0 ug/l	N/A	“
Benzo (k) fluoranthene	20.0 ug/l	N/A	“

**Soil Vapor Extraction System (SVES)
Benzene Emission Limits**

Stack Height (feet)	Air Flow (cfm)	Maximum Benzene Emissions (ppm-v)	Maximum Benzene Emissions (ug/m ³)	Maximum Benzene Emissions (lbs/hr)
15	50	8.00	26360	0.00494
	100	4.00	13180	0.00494
	150	2.66	8787	0.00494
	200	2.00	6590	0.00494
	250	1.60	5272	0.00494
20	50	14.88	49069	0.00919
	100	7.44	24535	0.00919
	150	4.96	16356	0.00919
	200	3.72	12267	0.00919
	250	2.98	9814	0.00919
25	50	24.10	79458	0.01488
	100	12.05	39729	0.01488
	150	8.03	25486	0.01488
	200	5.02	19864	0.01488
	250	4.82	15892	0.01488
30	50	35.72	117806	0.02206
	100	17.86	58903	0.02206
	150	11.91	39269	0.02206
	200	8.93	29452	0.02206
	250	7.14	23561	0.02206

Air Stripper Benzene Emission Limits

Stack Height (feet)	Water Flow Rate (gal/min)	Maximum Benzene influent (mg/l or ppm)
15	10	0.96875
	25	0.375
	60	0.15625
	100	0.0625
	150	0.0625
20	10	1.8125
	25	0.71875
	60	0.28125
	100	0.1875
	150	0.125
25	10	2.84375
	25	1.125
	60	0.53125
	100	0.28125
	150	0.1875
30	10	4.3125
	25	1.6875
	60	0.71875
	100	0.5
	150	0.28125