

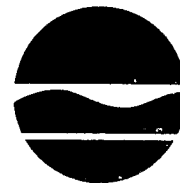
**New York State Department of Environmental Conservation**

**Division of Legal Affairs, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • FAX: (518) 357-2087

Website: www.dec.state.ny.us



Alexander B.  
Grannis  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7006 2150 0000 8024 8621

October 15, 2007

Anthony Fabiano  
Fairview Plaza Inc  
65 Maple Avenue  
Hudson, NY 12534

Re: Order on Consent  
R4-2007-0924-124

Dear Mr. Fabiano:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$500 as payment of the civil penalty pursuant to Paragraph I.

Sincerely,

Jill T. Phillips  
Assistant Regional Attorney  
Region 4

Enclosure

cc: K. Goertz

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged  
Violations of the Environmental  
Conservation Law ("ECL") Article 17  
and Part 750 of Title 6 of the Official  
Compilation of Codes, Rules and Regulations  
of the State of New York ("6 NYCRR"),

ORDER ON  
CONSENT

File No.  
R4-2007-0924-124

Fairview Plaza, Inc.  
65 Maple Avenue  
Hudson, NY 12534

RESPONDENT

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WHEREAS:

1. The Department has jurisdiction in all matters pertaining to the protection of the water quality of the State pursuant to ECL Article 17 and applicable regulations.
2. Respondent is the owner of Fairview Plaza located at 160 Fairview Avenue, Hudson, New York.
3. On August 5, 2002 a spill at Fairview Plaza, 160 Fairview Avenue, Hudson, New York was reported to the Department (spill #0204750). Gasoline and chlorinated solvent contamination were identified. Post-remedial subsurface investigation has been conducted at the site ("investigation").

Violation

4. The investigation has revealed remaining subsurface chlorinated solvent contamination. The contamination exceeds Department groundwater standards. The contamination consists primarily of perchloroethylene ("PERC") and its daughter compounds including trichloroethene cis-1,2-dichloroethene and vinyl chloride.

5. 6 NYCRR 703.5 sets forth water quality standards for specific substances or groups of substances.

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

7. Respondent's contamination of the subsurface in excess of the Department's groundwater standards is a violation of 6 NYCRR 703.5 and ECL § 17-0501.

8. 18. ECL § 71-1929 provides that any person who violates any provision of Titles 1 through 11 inclusive and title 19 of Article 17 of the ECL or any rule or regulation, order or determination of the Commissioner promulgated thereunder shall be liable for a civil penalty of up to thirty seven thousand five dollars (\$37,500). Injunctive relief is also available.

9. Respondent has affirmatively waived his 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 alleged violation, a civil penalty in the amount of FIVE HUNDRED DOLLARS (\$500) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. 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, his agents, employees, and all persons, firms, corporations acting under or for it.

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, his 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:  
Division of Environmental Remediation  
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, his agents, his servants, his employees, his successors and his 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. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondent shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

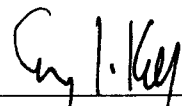
2. After receipt of the revised submittal from Respondent, the Department shall notify Respondent in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondent in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

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

DATED: 10/15, 2007  
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  
Fairview Plaza, Inc.

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

BY: Anthony Felice TITLE: VP

DATE: 10/5/07

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

On the 5<sup>th</sup> day of October in the year 2007 before me, the undersigned, a Notary Public in and for the State, personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Robin L. Siter  
Notary Public  
Qualified in the County of: Columbia  
My Commission Expires: 7/14/2011

**ROBIN L. SITER**  
Notary Public, State of New York  
No. 01HE5081855  
Qualified In Columbia County  
Commission Expires July 14, 2011

## Schedule of Compliance

1. Within 15 days of the effective date of this Order, Respondent shall submit a remedial pilot test work plan to the Department for approval. The purpose of the pilot test is to determine the most effective remedial technology to utilize and to obtain the necessary site specific hydrological and subsurface information to properly design the components of a remedial system. 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.
2. Within 15 days of the Department's notice of approval of the remedial pilot test plan as described in paragraph 1 above, Respondent shall implement the approved plan.
3. Within 30 days of the completion of the pilot test, as described in the pilot test work plan, Respondent shall submit a report that will include the results of the pilot test and a proposed Remedial Action Plan. The Department shall either approve or disapprove the plan in writing. The plan is to include a time schedule describing when each phase of the Remedial Action Plan will be completed. If the plan is disapproved, the Department shall specify any deficiencies and required modifications. Within 30 days of the Department's disapproval notice, Respondent shall submit a revised plan which addresses the Departments comments, correcting any deficiencies identified in the disapproval notice.
4. Immediately upon the Department's notice of approval of the remedial pilot test plan as described in paragraph 3 above, Respondent shall implement the approved plan in accordance with the approved schedule.
5. Respondent shall perform quarterly sampling of select monitoring wells utilizing EPA method 8260B 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. Respondent shall maintain and operate the approved remediation system and existing vapor intrusion mitigation system, until the Department approves its suspension or termination.



7. 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, notwithstanding any otherwise applicable requirements.

9. No discharge as part of remediation of this portion of the facility shall exceed the air and water effluent limits listed in Appendix B.

## 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 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 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. 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:

	Chlorinated Solvents GW EFFLUENT STANDARD	Chlorinated Solvents SW EFFLUENT STANDARD	SAMPLING FREQUENC Y
pH RANGE	6.5 - 8.5	6.5 - 8.5	Monthly
Vinyl Chloride	2.0 ug/l	2.0 ug/l	“
Tetrachloroethene (PCE)	5.0 ug/l	5.0 ug/l	“
Trichloroethene (TCE)	5.0 ug/l	5.0 ug/l	“
1,1,1-Trichloroethane (1,1,1-TCA)	5.0 ug/l	5.0 ug/l	“
Carbon tetrachloride	5.0 ug/l	5.0 ug/l	“
cis-1,2-Dichloroethene (1,2- DCE)	5.0 ug/l	5.0 ug/l	“

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

Stack Height (feet)	Air Flow (cfm)	Maximum PERC Emissions (ppm-v)	Maximum PERC Emissions (ug/m <sup>3</sup> )	Maximum PERC Emissions (lbs/hr)
15	50	61.54	202769	0.0380
	100	30.77	101385	0.0380
	150	20.46	67592	0.0380
	200	15.38	50692	0.0380
	250	12.31	40533	0.0380
20	50	114.46	377454	0.0707
	100	57.23	188731	0.0707
	150	38.15	125815	0.0707
	200	28.62	94362	0.0707
	250	22.92	75492	0.0707
25	50	185.38	611215	0.1145
	100	92.69	305608	0.1145
	150	61.77	196046	0.1145
	200	38.62	152800	0.1145
	250	37.08	122292	0.1145
30	50	274.77	906200	0.1697
	100	137.38	453100	0.1697
	150	91.62	302069	0.1697
	200	68.69	226554	0.1697
	250	54.92	181238	0.1697

### Air Stripper PERC Emission Limits

Stack Height (feet)	Water Flow Rate (gal/min)	Maximum PERC influent (mg/l or ppm)
15	10	7.452
	25	2.885
	60	1.202
	100	0.745
	150	0.481
20	10	13.942
	25	5.529
	60	2.163
	100	1.442
	150	0.962
25	10	21.875
	25	8.654
	60	4.087
	100	2.163
	150	1.442
30	10	33.173
	25	12.981
	60	5.529
	100	3.846
	150	2.163

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

Stack Height (feet)	Air Flow (cfm)	Maximum TCE Emissions (ppm-v)	Maximum TCE Emissions (ug/m <sup>3</sup> )	Maximum TCE Emissions (lbs/hr)
15	50	30.77	101385	0.0190
	100	15.39	50693	0.0190
	150	10.23	33796	0.0190
	200	7.69	25346	0.0190
	250	6.16	20267	0.0190
20	50	57.23	188731	0.0354
	100	28.62	94366	0.0354
	150	19.08	62908	0.0354
	200	14.31	47181	0.0354
	250	11.46	37746	0.0354
25	50	92.69	305608	0.0573
	100	46.35	152804	0.0573
	150	30.89	98023	0.0573
	200	19.31	76400	0.0573
	250	18.54	61146	0.0573
30	50	137.38	453100	0.0849
	100	68.69	226550	0.0849
	150	45.81	151035	0.0849
	200	34.35	113277	0.0849
	250	27.46	90619	0.0849

### Air Stripper TCE Emission Limits

Stack Height (feet)	Water Flow Rate (gal/min)	Maximum TCE influent (mg/l or ppm)
15	10	3.726
	25	1.443
	60	0.601
	100	0.373
	150	0.241
20	10	6.971
	25	2.765
	60	1.082
	100	0.721
	150	0.481
25	10	10.938
	25	4.327
	60	2.044
	100	1.082
	150	0.721
30	10	16.587
	25	6.491
	60	2.765
	100	1.923
	150	1.082