

New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway Albany, New York 12233
Phone: (518) 402-9535 • FAX: (518) 402-9019
Website: www.dec.state.ny.us



Alexander B. Grannis
Commissioner

September 10, 2008

REGULAR MAIL

Dean Sommer, Esq.
Young, Sommer . . . LLC
Executive Woods
Five Palisades Drive
Albany, New York 12205



Re: Osborne Road Site (the "Site"), Unlisted
Osborne Road Associates, LLC, Respondents,
Order on Consent No. A5-0606-06-08, (the "Order"),

Dear Mr. Sommer:

Enclosed please find a fully executed copy of the above referenced Order on Consent.
Please contact me with any questions in this regard at (518) 402-9535.

Very truly yours,

Michael J. Lesser

Michael J. Lesser, Esq.
Assistant Counsel

MJL:mjl/316183v1
Enclosure

cc: C. O'Neill (R4) w/encl. ✓

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law

by

Osborne Road Associates, LLC,

Respondent.

**ORDER ON
CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # A5-0606-06-08

Site # UNLISTED
EDMS 304242 v4

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. Respondent Osborne Road Associates, LLC, ("Osborne" or "Respondent") is a New York Limited Liability Corporation with a business address located at c/o D'Agostino Krackler Baynes & Maguire, 16 Sage Estate Menands, New York 12204.

3. Respondent owns real property identified and known as 253 Osborne Road, in Colonie, New York (hereinafter known as the "Site"). Past investigations of the Site indicated the release and presence of hazardous wastes and/or substances on or near the Site including

but not limited to volatile organic compounds in soils and groundwater. The Site is not currently listed on the N.Y.S. Registry of Inactive Hazardous Waste Disposal Sites. Exhibit "A" is a map of the Site showing its general location.

4. Prior to the execution of this Order, Respondent undertook certain remediation measures at the Site under the Department's oversight including but not limited to Site investigations and soil removals. Respondent plans to enter into a transaction for a commercial redevelopment of the parcel. Such redevelopment shall include, the demolition of the existing commercial building and the new construction of a commercial building, and associated parking, on the Site.

5. The Department alleges for purposes of this Order only that the Respondents are liable for the reimbursement of the Department's administrative response costs (including any legally accrued interest) for the investigation and remediation of hazardous wastes and/or substances existing on the Site referenced herein in accordance with applicable state and federal law

6. The Respondents deny any liability for the reimbursement of the Department's administrative costs for this Site as set forth in this Order. Furthermore, Respondents, in entering into this Order on Consent, do not admit to any allegations made herein with regard to liability or fault with respect to any matter arising out of or relating to the Site. Further, the Department acknowledges that Respondent acquired the Site in 2005, which was after the time the Site had been contaminated with hazardous wastes and/or substances.

7. The Department and Respondent agree that the goals of this Order are for Respondent to (i) Implement the Interim Remedial Measure and or Remediation Program ("IRM" or "Remediation" Program) Work Plan for the Site, a copy of which is attached hereto and made a part hereof, which includes but is not limited to:

- installation of a sub-slab depressurization system in any new structure that is constructed on the Site after the existing commercial building is demolished ;
- implementation of additional soil investigation, and removal, as described in the attached Work Plan;
- development of a post remediation site management plan to address future construction activities; and,
- the placement of an environmental easement on the Site, including a prohibition on the extraction and use of groundwater.

8. Respondent understands that conditions exist down gradient of the Site that may be associated with the Site and that will need to be addressed, and that a second Order on Consent will be required to address such conditions (hereinafter referred to as Off-Site).

9. Respondent consents to the Department's issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement,

or standard of care of any kind whatsoever, or (ii) an acknowledgment that there has been a past release or threatened release of hazardous waste or that the past release or threatened release of hazardous waste at or from the Site constitutes a significant threat to public health or the environment that gave rise to earlier remediation activities as referenced above and the work described in the attached Work Plan.

10. The parties recognize that implementation of this Order will expedite the cleanup and commercial redevelopment of the Site and may avoid prolonged and complicated litigation between the parties, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

11. Solely with regard to the matters set forth herein, Respondent hereby waives its rights to a hearing herein as provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and both Respondents and the Department agree not to contest the validity of this Order or its terms.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Initial Submittal

If specifically notified by the Project manager upon the effective date of the Order, then within thirty (30) Days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached hereto. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan under this Order addresses on-Site conditions and shall be developed and implemented in accordance with 6 NYCRR _ 375-1.6(a). All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan

in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. Site Characterization ("SC") Work Plan: a Work Plan whose objective is to identify the presence of any hazardous waste disposal at the Site;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study;
3. Interim Remedial Measure ("IRM") or Remediation Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;
4. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD; or
5. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. (a) The On-Site Remediation Work Plan has previously been submitted to the Department prior to the execution of this Order. The Department has commented on the Work Plan and revisions were made and the Work Plan submitted for Department approval. The Work Plan has been approved, is attached to this Order and is made a part of this Order as Exhibit "C."

(b) The Department may request that Respondent submit additional or supplemental Work Plans for the Site. Within thirty (30) Days after the Department's written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan or whether it elects to terminate this Order pursuant to Paragraph XIII. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election. If Respondent elects to terminate this Order or fails to make a timely election, this Order shall terminate pursuant to Paragraph XIII.

(c) Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

(d) Any request made by the Department under Subparagraph II.B.1.(b) shall be subject to dispute resolution pursuant to Paragraph XII.

2. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

3. During all field activities conducted under this Order, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision.

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII, provide written notification as provided at 6 NYCRR 375-1.6(d)(3) as to whether it will modify the Work Plan, or invoke dispute resolution

D. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6 (c).

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the Site management. Such annual report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer

necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

E. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD/RA Work Plan, elect as provided at 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

F. Subsequent to the Department's Issuance of a ROD, if Required

Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, and 6 NYCRR Part 375-1.10, as necessary.

G. Cost Recovery Reservations

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that (i) Respondent may have against anyone other than the

Department, including but not limited to rights of contribution under Sections 107, 113(f)(3)(B) of CERCLA, 42 U.S.C. §§ 9607, 9613(f)(3)(B), and (ii) the Department may have against anyone other than Respondent, its directors, officers, employees, agents, and servants, and those successors and assigns of Respondent that were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order, and their respective secured creditors.

III. Progress Reports

Respondent shall submit written progress reports to the parties identified in Subparagraph XI.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in the approved Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site during the reporting period, including quality assurance/quality control information; information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the

failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations

under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Order, Respondent shall pay to the Department a sum of money which shall represent reimbursement for past State Costs as provided at 6 NYCRR 375-1.5(b)(3).

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VI.A, for work performed at or in connection with the Site through and including the Termination Date, as provided at 6 NYCRR 375-1.5(b)(3).

C. Personal service costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Respondent at the following address:

Tony Cardona,
Osborne Road Associates, LLC,
D' Agostino Krackler Baynes & Maguire,
16 Sage Estate Menands,
New York 12204.

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

VII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under Sections 107 and 113(f)(3)(B) of CERCLA, 42 U.S.C. §§ 9607, 9613(f)(3)(B).

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(I).

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

X. Environmental Easement

A. If a Department-approved final engineering report for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD or this Order provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph X.A. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR 375-1.9 and 375-2.9.

XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communication from Respondent shall be sent to

Christopher O' Neill
Project Manager
Division of Environmental Remediation
N.Y.S. Department of Environmental Conservation
1130 N. Westcott Road
Schenectady, N.Y. 12306

Note: three hard copies (one unbound) of work plans are required, as well as one electronic copy.
with copies to:

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
gal09@health.state.ny.us

Michael J. Lesser, Esq.
Office of General Counsel
NYSDEC
625 Broadway
Albany, New York 12233

2. Communication to be made from the Department shall be sent to:

Dean Sommer, Esq.
Young, Sommer . . . LLC
Counselors at Law
Executive Woods
Five Palisades Drive
Albany, New York 12205

and

Tony Cardona,
Osborne Road Associates, LLC,
D'Agostino Krackler Baynes & Maguire,
16 Sage Estate Menands,
New York 12204.

B. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XI or in Paragraph VI.

XII. Dispute Resolution

In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XIII. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election to terminate pursuant to Subparagraphs II.B.1.b, II.C or II.E.2 so long as such election is made prior to the Department's approval of the RD/RA Work Plan. In the event of termination in accordance with this Subparagraph XIII.A.1, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification terminating this Order or the 5th Day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order pursuant to Subparagraphs II.B.1.b or II.E.2 or its failure to timely make such an election pursuant to Subparagraphs II.B.1.b or II.E.2, Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order is terminated pursuant to Subparagraph XIII.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XIV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of

the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XI.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XIV.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those

Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.


K. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

L. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner's designee.

DATED: SEP 4 2008

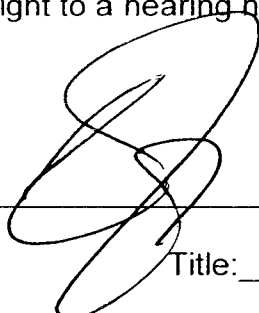
ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation


CONSENT BY RESPONDENT
Osborne Road Associates, LLC,

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By:  _____
Title: MEMBER. Date: 8/19/08

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 19th day of AUG, in the year 2008, before me, the undersigned, personally appeared ANTHONY V. CARONAS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature and Office of individual
taking acknowledgment

BONNIE JARMANN
Notary Public, State of New York
Qual. in Rensselaer Co. No. 1959000
Commission Expires Sept. 30, 2009

EXHIBIT "A"

Map of Site

EXHIBIT "B"

RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.
2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.
3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:
 - (i) a history and description of the Site, including the nature of operations;
 - (ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;
 - (iii) a description of current Site security (i.e. fencing, posting, etc.); and
 - (iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

EXHIBIT "C"
WORK PLAN

CPI ENVIRONMENTAL SERVICES, INC.

GEOLOGIC AND ENVIRONMENTAL CONSULTING

253 Osborne Road Post-Demolition Site Remediation Plans and Citizen Participation Information

August 7, 2008

II Winners Circle • Albany, NY 12205 • (518) 458-9203 • Fax (518) 458-9206
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FACT SHEET

253 Osborne Road Cleanup

253 Osborne Road
Consent Order
Loudonville, Town of Colonie, NY

July 2008

Remedial Actions to Address Soil, Groundwater, and Soil Vapor Contamination

The New York State Department of Environmental Conservation (DEC) has entered into an Order on Consent with 253 Osborne Road Associates, LLC for an environmental cleanup of 253 Osborne Road in Loudonville in the Town of Colonie. Historic dry cleaning activities at 253 Osborne Road have caused limited contamination of soil, groundwater, and soil vapor in the immediate vicinity of this site with tetrachloroethene, a dry cleaning chemical. The site cleanup will be performed under a DEC and New York State Department of Health (NYSDOH) approved work plan and associated monitoring and health and safety plans to ensure the protection of the public health during cleanup activities. The Consent Order stipulates that the site soil cleanup criteria will be for unrestricted use while the actual future use of the site will be commercial. A consent order is a legal agreement between DEC and a private party sometimes used to address environmental contamination at a given site and outline cleanup requirements.

The site owner, 253 Osborne Road Associates, LLC, has completed a remedial investigation, interim cleanup activities at the site, and submitted a Post-Demolition Site Remediation Work Plan, which has been approved by DEC and NYSDOH. Approximately 425 tons of tetrachloroethene-impacted soil has already been removed from the site. Tetrachloroethene, or PCE, is a chemical used in the dry cleaning process.

The work plan states that the cleanup objectives will be achieved to address site contamination to fully protect public health and the environment for the intended use of the site. The work plan calls for the installation of a sub-slab depressurization system when a new commercial structure is built on the site and for further removal of contaminated soil above state cleanup criteria, if necessary, after demolition of the existing building. A sub-slab depressurization system is used to remove any residual vapors that may be present in the remaining soil. The work plan also provides for the implementation of an environmental easement restricting the use of groundwater at the site.

The Consent Order and work plan are available at the document repository identified in this fact sheet. See attached map for the location of the site.

Highlights of the Post-Demolition Site Remediation Work Plan

The Post-Demolition Site Remediation Work Plan and associated Site Management Plan have several goals:

- 1) describe investigative and remedial activities completed and proposed;
- 2) establish monitoring and health and safety plans to ensure the protection of the public health during cleanup activities;
- 3) certify that remediation requirements have been achieved and will be achieved;
- 4) define the boundaries of the site;
- 5) describe institutional/engineering controls to be used. An *institutional control* is a non-physical restriction on use of the site, such as a deed restriction, when the remedial action leaves residual contamination that makes the site suitable for some, but not all uses (e.g., environmental easement). An *engineering control* is a physical barrier or method to manage contamination such as a cap or vapor barrier (e.g., sub-slab depressurization system);
- 6) certify that an operation, monitoring and maintenance plan for any engineering controls used at the site has been approved by DEC.

"*Remedial activities*" and "*remediation*" refer to all necessary actions to address any known or suspected contamination associated with a site.

Next Steps

DEC will place the approved Post-Demolition Site Remediation Work Plan and Site Management Plan in the site document repository. After final DEC and NYSDOH approvals are in place, the 253 Osborne Road building will be demolished and a soil and groundwater investigation will be performed to establish whether additional soil removal is required. The property will then be re-developed for commercial use with engineering controls to prevent soil vapor migration to protect public health and an environmental easement will be established and enforced to protect public health. A fact sheet will be sent to the site contact list when DEC approves site remediation activities and the implementation of institutional or engineering controls. A separate investigation will be performed to identify the limits of tetrachloroethene in soil, groundwater and soil vapor beyond the 253 Osborne Road property.

Background

253 Osborne Road is comprised of an abandoned single- and two-story concrete-block building located northeast of the intersection of Albany-Shaker and Osborne Roads in Loudonville, New York. The abandoned commercial property is slightly less than an acre in size and is bounded by Osborne Road to the southeast, a former Citgo gas/service station to the southwest (now vacant), a former food distribution warehouse to the west (now vacant), an office building with restaurants, retail, and office space to the northwest, and a strip mall to the northeast. A dry cleaner leased space in the 253 Osborne Road building reportedly from 1965 to 1995.

Through a series of property transactions between 2003 and 2007, environmental assessments were performed and tetrachloroethene, was detected in soil and groundwater. As a result, several environmental investigations and clean-ups have been performed. Extensive sampling has been

performed and 425 tons of soil were removed. Reports describing these activities, which have all been provided to DEC and NYSDOH, are available at a document repository described below.

253 Osborne Road Associates, LLC is interested in re-developing the property for commercial purposes. In order to redevelop this property, the existing building needs to be demolished and additional investigation needs to be performed to fully characterize the extent of soil and groundwater contamination. Additional site cleanup may also be necessary.

FOR MORE INFORMATION

Document Repository

A local document repository has been established at the following location to help the public to review important project documents. These documents include the Consent Order, previous investigative and remedial reports, and the Post-Demolition Remedial Work Plan accepted by DEC:

William K. Sanford Library
629 Albany-Shaker Road
Loudonville, New York 12211
(518) 458-9274

Who to Contact

Comments and questions are always welcome and should be directed as follows:

Project Related Questions

Mr. Christopher O'Neill
New York State Department of
Environmental Conservation
1130 North Westcott Road
Schenectady, New York 12306-2014
(518) 357-2394
cxoneill@gw.dec.state.ny.us

Health Related Questions

Ms. Maureen Schuck
New York State Department of Health
Flanigan Square, Room 300
547 River Street
Troy, New York 12180-2216
(518) 402-7860
mer10@health.state.ny.us

If you know someone who would like to be added to the project mailing list, have them contact the DEC project manager above. We encourage you to share this fact sheet with neighbors and tenants, and/or post this fact sheet in a prominent area of your building for others to see.

CPI ENVIRONMENTAL SERVICES, INC.

GEOLOGIC AND ENVIRONMENTAL CONSULTING

June 17, 2008

Mr. Christopher O'Neill, P. E.
Regional Spill Engineer
NYSDEC Region IV
1130 North Westcott Road
Schenectady, New York 12306

**Re: 253 Osborne Road Post-Demolition
Site Remediation Work Plan - Revised
Spill #0702543
253 Osborne Road
Town of Colonie, Loudonville, New York**

Dear Mr. O'Neill:

This is the revised Post-Demolition Site Remediation Work Plan for the 253 Osborne Road property, which supersedes the May 9, 2008 Work Plan. This June 16, 2008 work plan has been revised to incorporate June 12, 2008 comments by the New York State Department of Environmental Conservation ('the Department') and the New York State Department of Health ('DOH').

CPI Environmental Services, Inc. (CPI) has completed delineation of the soil, groundwater, and soil vapor levels of volatile organic compounds (VOCs) at 253 Osborne Road and submitted the results of these delineations to the Department in letter reports dated October 11, November 2, and December 27, 2007. Two soil removal actions at this property have also been performed removing a total of 425 tons of tetrachloroethene-impacted soil. As you recall, after the initial removal action was implemented in 2003, the Department issued a No Further Action letter and closed the spill number that had been assigned to the property. It was a result of subsequent due diligence investigations at the property in 2007 that gave rise to the assignment of a second spill number and the excavation and disposal of additional impacted soil.

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Mr. Chris O'Neill, P. E.
253 Osborne Road Post-Demolition Site Remediation Work Plan
Spill #0702543
253 Osborne Road
June 17, 2008
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This correspondence is a follow-up to our meeting of April 25, 2008, and the Department's subsequent written comments, and provides a proposed final work plan for Department approval with regard to the 253 Osborne Road property. This work plan specifically addresses the commercial property at 253 Osborne Road and does not address investigation and/or remedial action at the adjacent parcel along Albany Shaker Road. That parcel will be addressed separately in accordance with future discussions with Department enforcement counsel.

This work plan addresses the installation of a sub-slab depressurization system when a new commercial structure is built on the Osborne Road parcel and the further removal of tetrachloroethene-impacted soil above the 6NYCRR Part 375 Unrestricted Use Soil Criteria, if any, as necessary after demolition of the existing building. In addition to additional soil removal and the assurance of the installation of a sub-slab de-pressurization system below any future structure built on the property, the plan provides for the implementation of an environmental easement on groundwater extraction and use.

To summarize the history of the investigative and remedial activities performed at 253 Osborne Road, an overview of the background regarding discovery, investigations, and clean-up of this spill are provided below.

Site Description

253 Osborne Road is located in a commercial/residential area of the Town of Colonie. The property is bounded by Osborne Road to the southeast, a former Citgo gas/service station to the southwest (now vacant), a former food distribution warehouse to the west (now vacant), an office building with restaurants, retail, and office space to the northwest, and a strip mall to the northeast. 253 Osborne Road is currently vacant. It is comprised of an abandoned single- and two-story concrete-block building with a partial basement under the two-story portion. The single story portion of the building is along Osborne Road and was used for retail space; one of the retail spaces was occupied by a dry cleaner reportedly from 1965 to 1995. The two-story portion of the building was used for office space.

The one-story portion of the building was built in 1955, and the two-story portion in 1962. The building was serviced with underground natural gas and overhead electric utilities. The building was heated with fuel oil fired furnaces and a boiler with the fuel oil stored in four aboveground tanks. It was connected to the

municipal water and sewer sometime around 1968, prior to which wastewater was discharged to two on-site septic systems. A map showing current and historic site features is provided as Figure 1.

The present owner of the property was not the owner at the time the dry cleaner operated at the property, nor was he the owner when any active business operations were conducted on the parcel. The present owner purchased the property in or about 2005, 2 years after the issuance of the first No Further Action letter, although before the initiation of the additional investigation activities in 2007. The present owner has been funding all of the investigation and interim remediation measures to date.

Background of Environmental Investigations and Remediations

Table 1 provides a summary of the environmental investigations and remediations performed at 253 Osborne Road. An overview of the investigations and remediations performed at 253 Osborne Road follows.

In April 2003, CPI performed a Phase I and Limited Phase II Environmental Assessment of 253 Osborne Road. During this assessment, tetrachloroethene, a dry cleaning solvent, was detected at concentrations above New York State drinking water standards in groundwater in the unconsolidated overburden soils at the site. A dry cleaner was a former tenant in a portion of the 253 Osborne Road building, and may have discharged dry cleaning solvent to a building septic system.

As a result of the tetrachloroethene detection, an additional investigation was performed (July 30, 2003) delineating the extent of tetrachloroethene-impacted soil (documented in an August 27, 2003 CPI letter report) and a spill (Spill #0305984) was called into the Department in September 2003.

The overburden soil on the property is comprised of sand and silt, and the depth to bedrock is approximately 15 feet. Due to the shallow depth to bedrock and the lack of use of the overburden or bedrock groundwater as a drinking water source, emphasis was placed on removing an inactive septic tank (considered the source of the tetrachloroethene) and tetrachloroethene-impacted soil from the property.

Soil excavation and off-site disposal/treatment of soil was performed in October 2003 and post-excavation sampling was performed and the soil quality results

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were submitted to the Department in a November 5, 2003 CPI letter report. Soil excavation below the building and below underground electric and gas lines was not performed, which was typical for such remediation projects at that time. The post-excavation soil quality results were all below soil clean-up criteria, although trace levels of tetrachloroethene were detected in the soil. As a result of the excavation and post-confirmation soil quality data, the Department issued a November 14, 2003 letter closing the spill and requiring no further action.

Following the closure of the 2003 spill, the property changed ownership and a portion of the building was subsequently demolished. In preparation for another potential change of ownership, another Phase II environmental assessment was performed (by Bureau Veritas North America, Inc.) with sampling conducted in the area where the building was previously present. This sampling detected tetrachloroethene-impacts to groundwater and soil at levels above groundwater standards and soil clean-up criteria. As a result, the Department was notified, another spill number was assigned (Spill #0702543), and the May 29, 2007 Bureau Veritas North America, Inc. (BV) report was provided to the Department.

In response to this 2007 spill notification, the Department requested additional delineation of the extent of tetrachloroethene in soil and groundwater. Thirteen soil samples were collected and eight permanent monitoring wells were installed. Tetrachloroethene was detected in 5 out of 13 soil samples, although all the detections were below the Department clean-up criteria. Tetrachloroethene was also detected in 3 out of 8 groundwater samples, and each of these was above groundwater standards. Groundwater flow direction was established to be to the northwest. The highest tetrachloroethene concentration (430 ppb) in groundwater was in the most downgradient well along the northwestern property line. These findings were provided to the Department in an October 11, 2007 CPI letter report.

In addition to the septic system removed during the 2003 remediation, there was a second septic system reported to have been built on the property. This septic system was reported to be northwest of the site building and it reportedly was not utilized by the side of the building occupied by the former dry cleaner. This second septic system was not investigated as part of the 2003 environmental studies. However, based on the results of the 2007 investigations, this septic system was tracked down to determine whether it might be another source of tetrachloroethene.

With the detection by Bureau Veritas of tetrachloroethene in one soil sample below the building above clean-up criteria, and the suspicion of the second septic system as a source of the tetrachloroethene, additional sampling was performed to further delineate tetrachloroethene-impacted soil. On October 26, 2007, 7 additional soil borings were advanced using a direct push geoprobe; 4 inside the 253 Osborne Road building downgradient of the Bureau Veritas HA-1 soil sampling location (that was above clean-up criteria) and 3 downgradient of the septic system northwest of building. On October 30, 2007, CPI collected water and sludge samples from the septic tank northwest of building, a soil sample from the dry well connected to that septic tank, and a soil sample from a test pit downgradient from the dry well. Tetrachloroethene was not detected above the Department soil clean-up criteria in any soil sample, including the septic tank dry well. Tetrachloroethene was detected in the septic tank water at 26 ppb but not in the septic tank sludge. This investigation was documented to the Department in a November 2, 2007 CPI letter report.

Based on the findings from the various soil, groundwater, and septic system samples, another work plan was prepared, submitted and approved by the Department for the removal of soil at the Bureau Veritas HA-1 soil sample location and the pumping out of the tetrachloroethene-impacted water in the northwestern septic tank. At this time, the Department also requested that a soil vapor investigation be performed on the 253 Osborne Road property. On December 3, 2007 191 tons of soil were removed and disposed/treated off-site with the Department approval and residual tetrachloroethene levels in the soil excavation were all below soil clean-up criteria. Also, liquid and sludge were pumped from the septic tank on the northwest side of the building and disposed as tetrachloroethene-containing hazardous waste at United Oil recovery in Meridan, Connecticut.

On November 28, 2007, a soil vapor investigation was performed by Alpine Environmental Services, Inc. (Alpine). The vapor investigation was performed in the existing portion of the abandoned on-site building, in the area of the demolished portion of the building, and in the area north of the existing building. In all, twelve air samples were collected using laboratory supplied summa canisters for volatile organic compound (VOC) analyses. Of the twelve samples, three were sub-slab soil vapor samples from inside the existing 253 Osborne Road building, three were ambient air samples from inside the 253 Osborne Road building at the sub-slab sample locations, two were exterior soil vapor samples on

the 253 Osborne Road property, three were exterior soil vapor samples collected from the downgradient (relative to groundwater flow) neighboring property, and one was an ambient exterior air sample collected on the 253 Osborne Road property. The soil vapor levels of tetrachloroethene ranged from 80 to 49,000 micrograms per cubic meter (mcg/m³). The highest tetrachloroethene concentrations were observed northwest of the 253 Osborne Road building. When the observed concentration levels are applied to the NYSDOH Soil Vapor/Indoor Air Decision Matrices, mitigation is warranted in the event the building was to be occupied or when the building is demolished and a new structure constructed. At present, the building is vacant and abandoned. There are no present vapor exposure pathways at the 253 Osborne Road property.

In an effort to determine whether a stormwater drain on the 253 Osborne Road property could be serving as a potential source of the tetrachloroethene northwest of the 253 Osborne Road building, water and sediment from a stormwater catch basin in the vicinity of the highest groundwater and soil vapor concentrations was sampled on April 17, 2008 and analyzed of VOCs. No VOCs were detected in these samples. These results were submitted to the Department in May 6, 2008 letter report.

Figures 2, 3, and 4 show the sampling locations and soil, groundwater, and air sampling results, respectively, for all historical investigations. Figure 5 shows the groundwater elevation contours and flow direction. There has been a significant amount of investigation, assessment and sampling of soil, groundwater, and soil vapor on the property. As a result of this comprehensive investigation, 425 tons of impacted soils have been removed from the property, a septic tank was removed, another septic tank was pumped out, and no existing TAGM exceedences have been identified. With the investigations and remediations already performed, the likelihood of additional discoveries of tetrachloroethene-impacted soil that serve as an on-going source of groundwater contamination is considered low.¹

Proposed Post-Demolition Investigative Work Plan and Remedial Actions

The intent of the prospective owner of 253 Osborne Road is to demolish the existing abandoned building and re-develop the commercial property for commercial purposes. Given the environmental findings to-date at 253 Osborne Road, the current and prospective owner have committed to the following:

¹ It is understood that additional investigation will be required in the off-site down-gradient property.

- design, installation, and operation (if necessary) of a sub-slab depressurization system in any future building built at 253 Osborne Road,
- to institute an environmental easement restricting extraction and use of groundwater,
- remove any soil remaining above soil clean-up criteria that are detected, if any, below the existing building after it is demolished, and
- implement a citizen participation plan consistent with the requirements of 6 NYCRR Part 375-1.10 and the consent order for the 253 Osborne Road property.

In order to identify if soil remains present above the Part 375 Unrestricted Use soil clean-up criteria, additional soil sampling will be performed following demolition of the existing building. This sampling will be performed by drilling boreholes and by test pit excavation. Groundwater sampling will also be performed to provide additional delineation of tetrachloroethene levels (and its degradation products) in groundwater.

After the building has been removed, six to ten borings will be advanced to bedrock within the former building footprint in areas not already sampled and two soil samples per boring will be submitted for laboratory VOC analysis using USEPA Method 8260B. The soil samples will be collected using either decontaminated split spoon samplers if auger drilling is utilized or new acetate sampling sleeves if direct push drilling is utilized. The depth interval of sampling will be based on field observations (PID, color, etc.) and depth to water. It is anticipated that soil samples will be collected at the water table and immediately above bedrock.

Groundwater samples will also be collected from these borings using temporary well points and these samples will be laboratory analyzed for VOCs using USEPA Method 8260B. When performing the sampling, at least three borehole volumes of water will be purged from each borehole prior to sampling. In the event the borehole is purged to dryness, then the borehole will be sampled once sufficient water volume has re-accumulated in the borehole. Purge water will be containerized for appropriate disposal.

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If any features such as drains or subsurface tanks are discovered during the demolition then additional soil and groundwater sampling will be performed adjacent to or below (as possible) these features. Specifically, a test pit (with appropriate soil/material disposal and post-excavation sampling) will also be excavated to the bedrock surface (approximately 13 feet below grade) in the vicinity of a site catch basin and OS-8; the location of which is approximated by a concrete slab at the surface (see Figure 6). Any areas identified with soil concentrations above the Part 375 Unrestricted Use soil criteria will be excavated and appropriately disposed off-site. Wherever excavation and soil removal activities are performed, post-excavation soil samples will be collected. Post-excavation soil samples will be collected from the excavation side walls and excavation bottom.

All soil and groundwater samples will be analyzed for VOCs using USEPA Method 8260. All samples will be collected using clean sampling devices and all samples will be containerized in laboratory supplied sampling containers and immediately placed on ice while awaiting delivery to the laboratory. All sampling results and any removal activities will be documented and reported to the Department.

After the new building has been constructed, documentation will be provided to confirm that the sub-slab de-pressurization system is adequately designed for the building. In addition, sub-slab and ambient air samples will be collected during the heating season to determine if the sub-slab de-pressurization system needs to be actively operated. If it does need to be operated, then yearly certifications, as required by the Order on Consent, will be provided to the Department to document that the system is working properly.

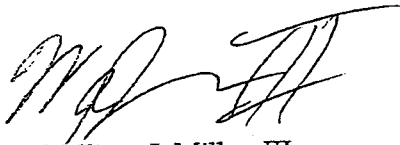
Documentation of the establishment of an environmental easement (groundwater extraction and use restrictions) will also be provided to the Department.

I hope that this revised work plan fully addresses the areas of concern that the Department expressed at our meeting. Please advise me whether this approach is approved by the Department and, if so, whether you need any more specific information or work plan. The owner of the property would appreciate if the Department could approve of the above approach prior to June 25, 2008 so that the redevelopment of the property can proceed.

Mr. Chris O'Neill, P. E.
253 Osborne Road Post-Demolition Site Remediation Work Plan
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If you have any questions, please do not hesitate to contact me.

Cordially,

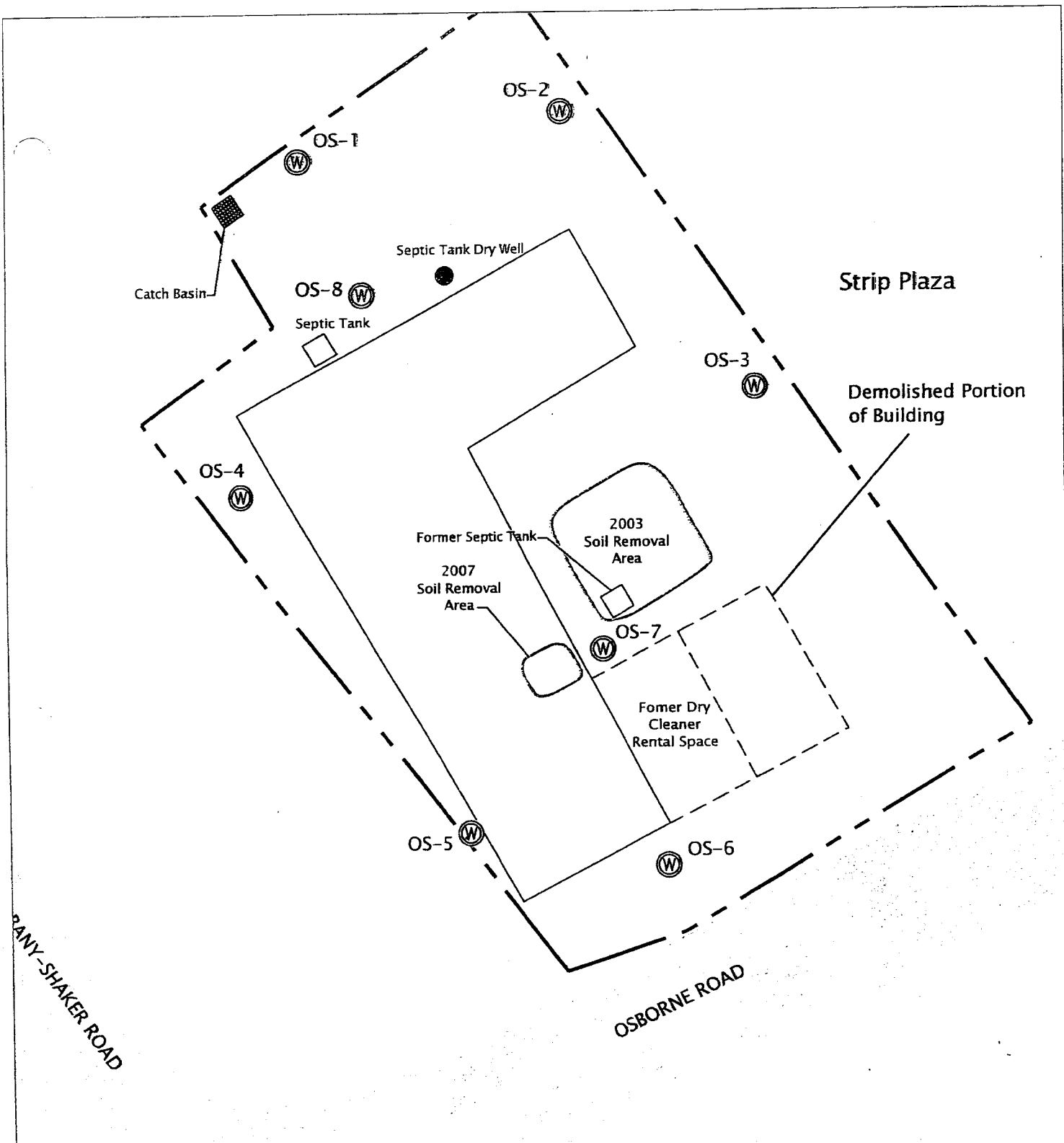
A handwritten signature in black ink, appearing to read 'WJ Miller III', written in a cursive style.

William J. Miller, III
Director, Environmental Services/Sr. Hydrogeologist

cc Maureen Schuck, NYSDOH


Table 1
Summary of Investigations and Remediations Performed at 235 Osborne Road

Report Dates	Actions	Findings	Recommendations
April 21, 2003	Phase I and Limited Phase II ESA (install single monitoring well in septic tank leach field)	Dry cleaner formerly occupied space in building Four 275-gallon fuel oil ASTs - 2 in basement, 1 in print shop, one behind liquor store Two on-site septic systems formerly used; no longer connected to building Monitoring well installed and sampled. TCE and PCE detected in groundwater, TCE at 1.2 ppb and PCE at 100 ppb	Perform additional Phase II ESA to define extent and degree of impacts
August 27, 2003	Phase II ESA - On July 30, 2003 advanced 10 borings and collected soil samples to delineate extent of PCE/TCE in septic tank leach field parking area behind (northeast of) building	Relatively small area of PCE detections with only one sample at concentration above NYSDEC soil clean-up objective	Notify NYSDEC of PCE detections and remove soil and septic tank
September 5, 2003	NYSDEC Notified of PCE Detections and Spill Hotline called	Spill Number #03-05984 Assigned	Remove suspect septic tank and impacted soil
November 5, 2003	Remediation - October 2003 removal and off-site disposal of septic tank and PCE-impacted soil, and confirmatory soil sampling	234 tons of soil removed and disposed at EMSI with NYSDEC approval and residual PCE levels in soil all below NYSDEC soil clean-up criteria	Request closure of spill from NYSDEC
November 14, 2003	NYSDEC closes spill #03-05984 as meeting soil guidelines under TAGM 4046 requiring no further action	No further action required	No further action required
May 29, 2007	Phase II ESA - On May 8, 2007 advanced 14 borings and collected soil and groundwater samples on all sides of the building and below the building	PCE detected in 14 out of 17 soil samples with only one sample below the building above NYSDEC soil clean-up criteria. Also, PCE and other chlorinated solvents were detected in 7 out of 12 groundwater samples with PCE above groundwater standards in 6 samples; including one elevated level on the north side of the building.	Further assessment is warranted
May 31, 2007	NYSDEC notified of PCE detections and Spill Hotline called	Spill Number #07-02543 Assigned	Perform additional Phase II ESA to confirm extent and degree of impacts
October 11, 2007	Phase II ESA - On September 24 and 25, 2007, advanced 8 borings, collected 13 soil samples, installed and sampled 8 permanent monitoring wells	PCE detected in 5 out of 13 soil samples, which were all below NYSDEC clean-up criteria. PCE detected in 3 out of 8 groundwater samples, which were all above groundwater standards. Groundwater flow direction was established to be to the northwest. The highest PCE concentration (430 ppb) in groundwater was in the most downgradient well along the northwestern property line.	Sample below building and in vicinity of septic system northwest of building determine PCE source on that side of building
November 2, 2007	Phase II ESA - On October 26, 2007, advanced 7 additional soil borings using direct push geoprobe; 4 inside the building downgradient of the May 29 soil sampling location above clean-up criteria and 3 downgradient of septic system northwest of building. On October 30, 2007, collected water and sludge samples from septic tank northwest of building, sample soil from dry well connected to that septic tank, and sample soil from a test pit downgradient from the dry well.	PCE was not detected above NYSDEC soil clean-up criteria in any soil sample, including the septic tank dry well. PCE was detected in the septic tank water at 26 ppb but not in the septic tank sludge	Perform soil removal where soil concentration was above clean-up criteria (May 29 th HA-1 location), pump out septic tank, and initiate soil vapor investigation
December 27, 2007	Remediation - December 3, 2007 removal of soil and septic tank pump out	191 tons of soil removed and disposed at EMSI with NYSDEC approval and residual PCE levels in soil all below NYSDEC soil clean-up criteria. Also, pumped out liquid and sludge from septic tank on northwest side of building and disposed of this PCE-containing liquid as hazardous waste at United Oil recovery in Meridan, Connecticut.	Request closure of spill from NYSDEC for 253 Osborne Road property
	Soil Vapor Investigation - Soil and sub-slab vapor, and indoor and outdoor air samples collected and analyzed for VOCs	PCE and TCE are present in the soil vapor at 253 Osborne Road with more elevated levels present in the northwestern portion of the property.	Install sub-slab de-pressurization system in any building built at 253 Osborne Road Establish restrictions on groundwater extraction




NOTE: RESULTS ARE IN MICROGRAMS PER CUBIC METER OF AIR

LEGEND

 2007 MONITORING WELL LOCATIONS

Drawn by:
BEW
Date:
12/27/07


NORTH
Scale: 1" = 40'


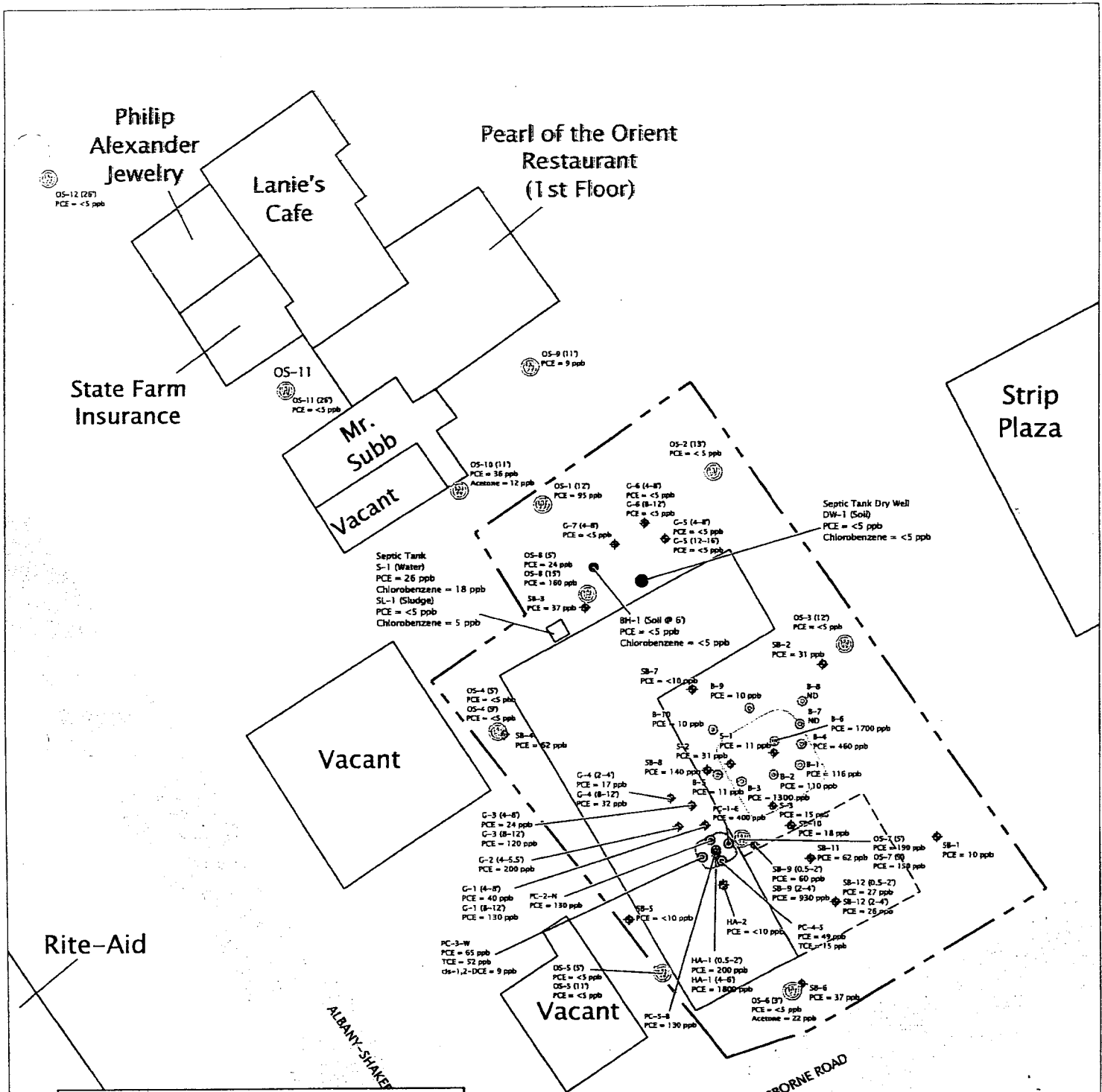
 CPI Environmental Services, Inc.

Figure 1
Site Features Map
253 Osborne Road
Colonie, NY
253 Osborne Road Associates, LLC



LEGEND

	MONITORING WELL LOCATIONS
	SOIL TETRACHLOROETHENE CONCENTRATION (in parts per billion (ppb))
	NON-DETECTABLE AT LABORATORY QUANTITATION LIMIT
	2003 POST-EXCAVATION SOIL SAMPLE
	2003 CPI SOIL SAMPLE POINTS
	OCTOBER 2007 GEOPROBE BORINGS
	BV SOIL SAMPLE POINTS
	POST-EXCAVATION SOIL SAMPLE POINTS

NOTE: 471 ALBANY-SHAKER ROAD IS ONE-STORY WITH A BASEMENT. 469 ALBANY-SHAKER ROAD IS TWO STORIES ON SLAB.

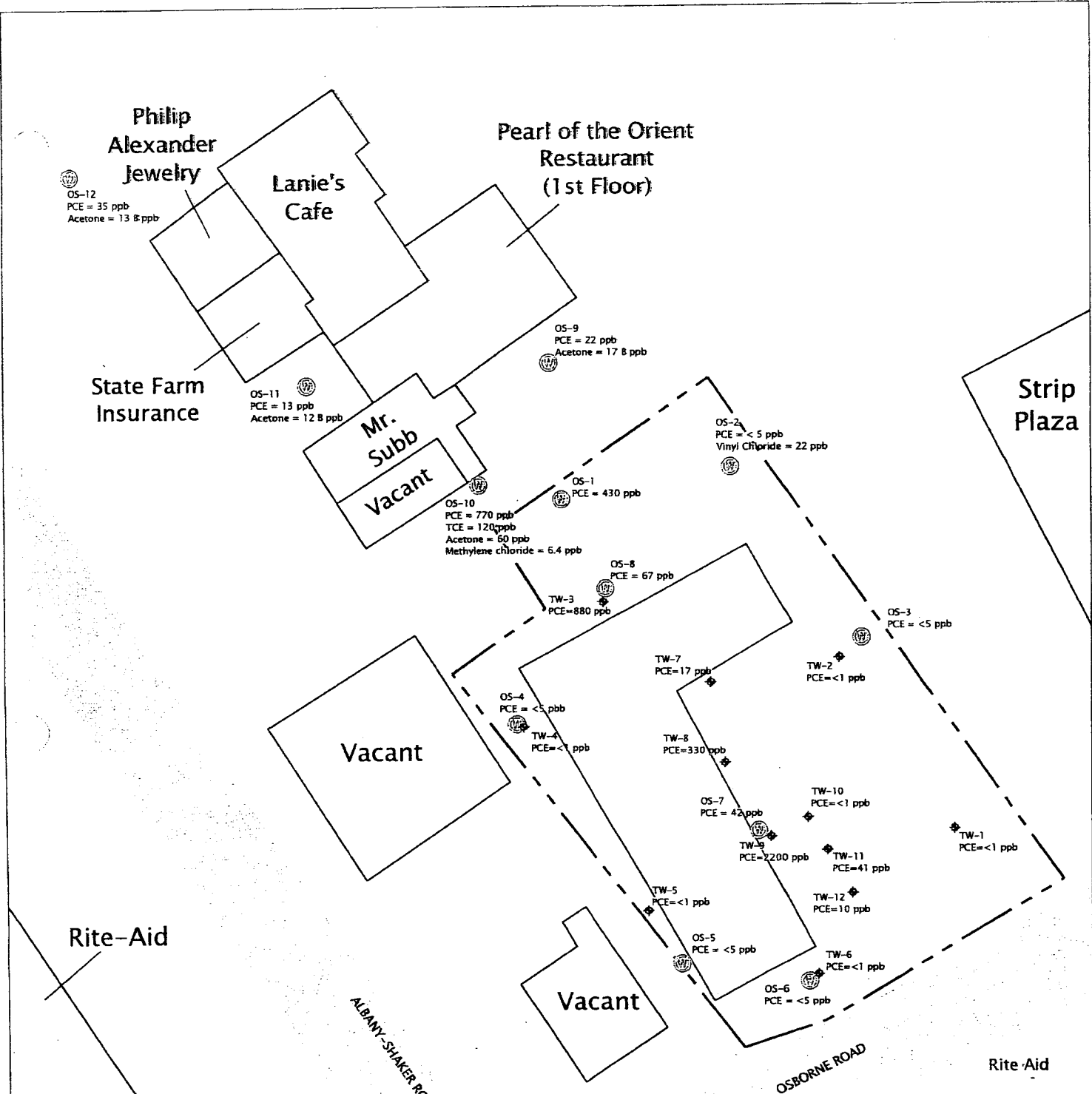
Drawn by:
BEW
Date:
3/13/08

Project No.:
E709-01-07-953

NORTH
Scale: 1" = 60'

CPI Environmental Services, Inc.


Figure 2
Soil Analytical Results Summary
469-471 Albany Shaker and
253 Osborne Roads
Colonie, NY
253 Osborne Road Associates, LLC



NOTES:
 1) 471 ALBANY-SHAKER ROAD IS ONE-STORY WITH A BASEMENT. 469 ALBANY-SHAKER ROAD IS TWO STORIES ON SLAB.
 2) OS-1 THROUGH OS-8 SAMPLED 9/22/07; OS-9 THROUGH OS-12 SAMPLED 3/3/08.

LEGEND
 MONITORING WELL LOCATIONS

Drawn by:
 BEW
 Date:
 3/13/08
 Project No.:
 E709-01-07-953


 NORTH
 Scale: 1" = 60'


 **CPI Environmental Services, Inc.**

Figure 3
Groundwater Analytical Results Summary
469-471 Albany Shaker and
253 Osborne Roads
Colonie, NY
253 Osborne Road Associates, LLC

#9
 PCE = ND < 6.8
 TCE = ND < 5.4



Philip
 Alexander
 Jewelry

Lanie's
 Cafe

Pearl of the Orient
 Restaurant
 (1st Floor)

OS-12

#7
 PCE = 320
 TCE = ND < 6.7

#8
 PCE = ND < 6.8
 TCE = ND < 5.4

State Farm
 Insurance

#4
 PCE = ND < 68
 TCE = ND < 5.4

#2
 No Data

#1
 PCE = ND < 14
 TCE = ND < 11

OS-9

#3
 PCE = 810
 TCE = ND < 6.7

#10
 TCE = ND < 1300
 PCE = 9700

Strip
 Plaza

#6
 PCE = ND < 6.8
 TCE = ND < 5.4

#5
 TCE = ND < 130
 PCE = 910

Mr.
 Subb
 Vacant

OS-10

OS-1

#11
 TCE = ND < 5.4
 PCE = 120

#09
 TCE = ND < 1300
 PCE = 49000

#06
 TCE = ND < 1300
 PCE = 9100

#12
 TCE = ND < 5.4
 PCE = 80

#08
 TCE = ND < 2.7
 PCE = ND < 3.4

OS-8

#05
 TCE = ND < 2.7
 PCE = ND < 3.4

OS-3

#04
 TCE = 41
 PCE = 680

#03
 TCE = ND < 2.7
 PCE = 3.6

Vacant

OS-4

OS-7

#07
 TCE = ND < 54
 PCE = 400

#01
 TCE = ND < 27
 PCE = 480

Rite-Aid

ALBANY-SHAKER ROAD

Vacant

OS-5

#02
 TCE = ND < 2.7
 PCE = ND < 3.4

OS-6

OSBORNE ROAD

- NOTES:
- 1) 471 ALBANY-SHAKER ROAD IS ONE-STORY WITH A BASEMENT. 469 ALBANY-SHAKER ROAD IS TWO STORIES ON SLAB.
 - 2) 253 OSBORNE ROAD SAMPLES COLLECTED 11/28/07; 469-471 ALBANY-SHAKER ROAD SAMPLES COLLECTED 3/10/08.
 - 3) ALL RESULTS IN MICROGRAMS PER CUBIC METERS OF AIR.

LEGEND

- MONITORING WELL LOCATIONS
- SUB-SLAB SOIL VAPOR SAMPLE POINTS
- AMBIENT AIR SAMPLE POINTS
- SOIL VAPOR SAMPLE POINTS

Drawn by:
 BEW
 Date:
 4/2/08

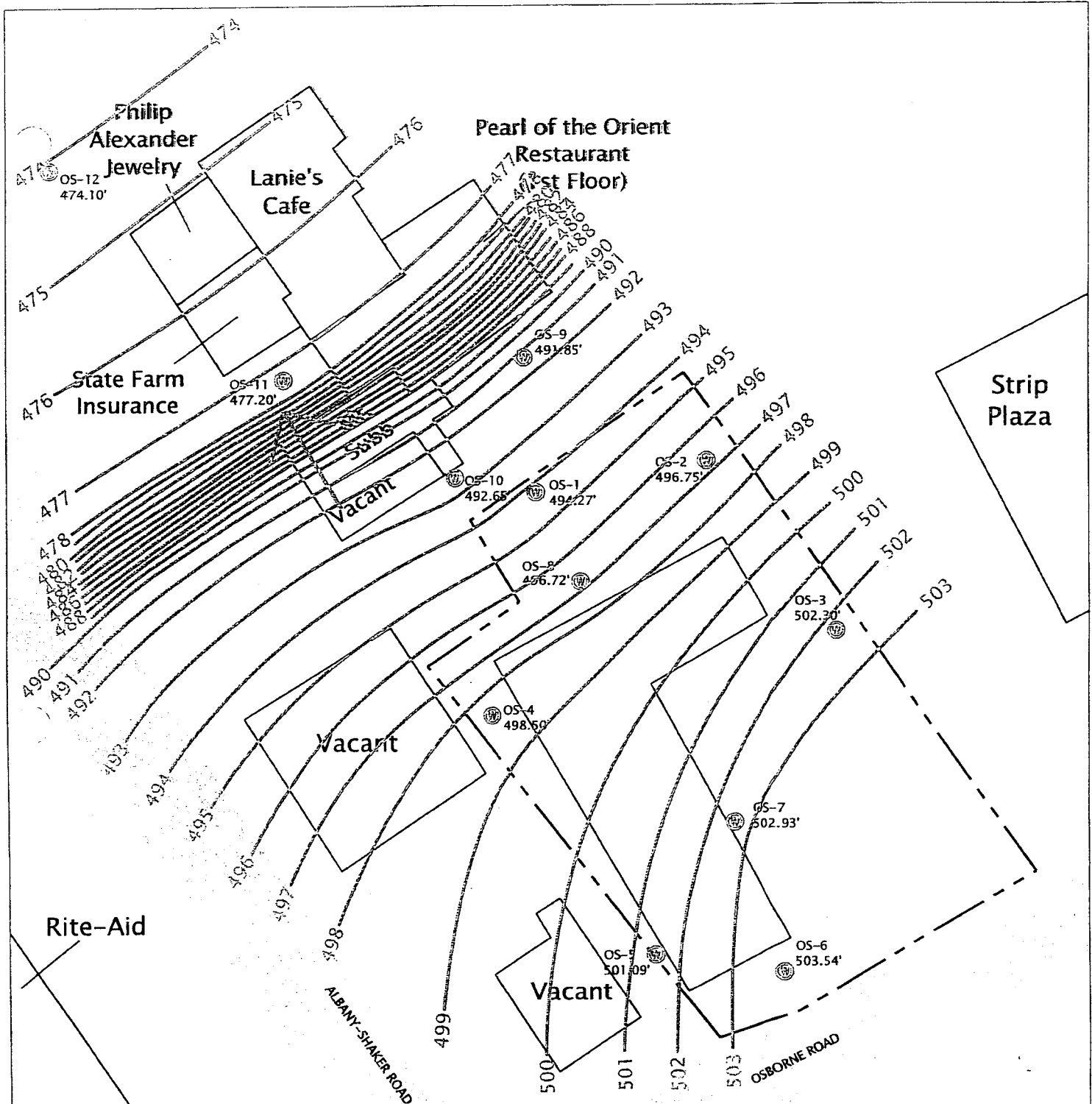


NORTH
 Scale: 1" = 60'



CPI Environmental Services, Inc.

Figure 4
 Soil Vapor and Ambient Air
 Analytical Results Summary
 Colonie, NY
 253 Osborne Road Associates, LLC



NOTE: 471 ALBANY-SHAKER ROAD IS ONE-STORY WITH A BASEMENT. 469 ALBANY-SHAKER ROAD IS TWO STORIES ON SLAB.

LEGEND

MONITORING WELL LOCATIONS

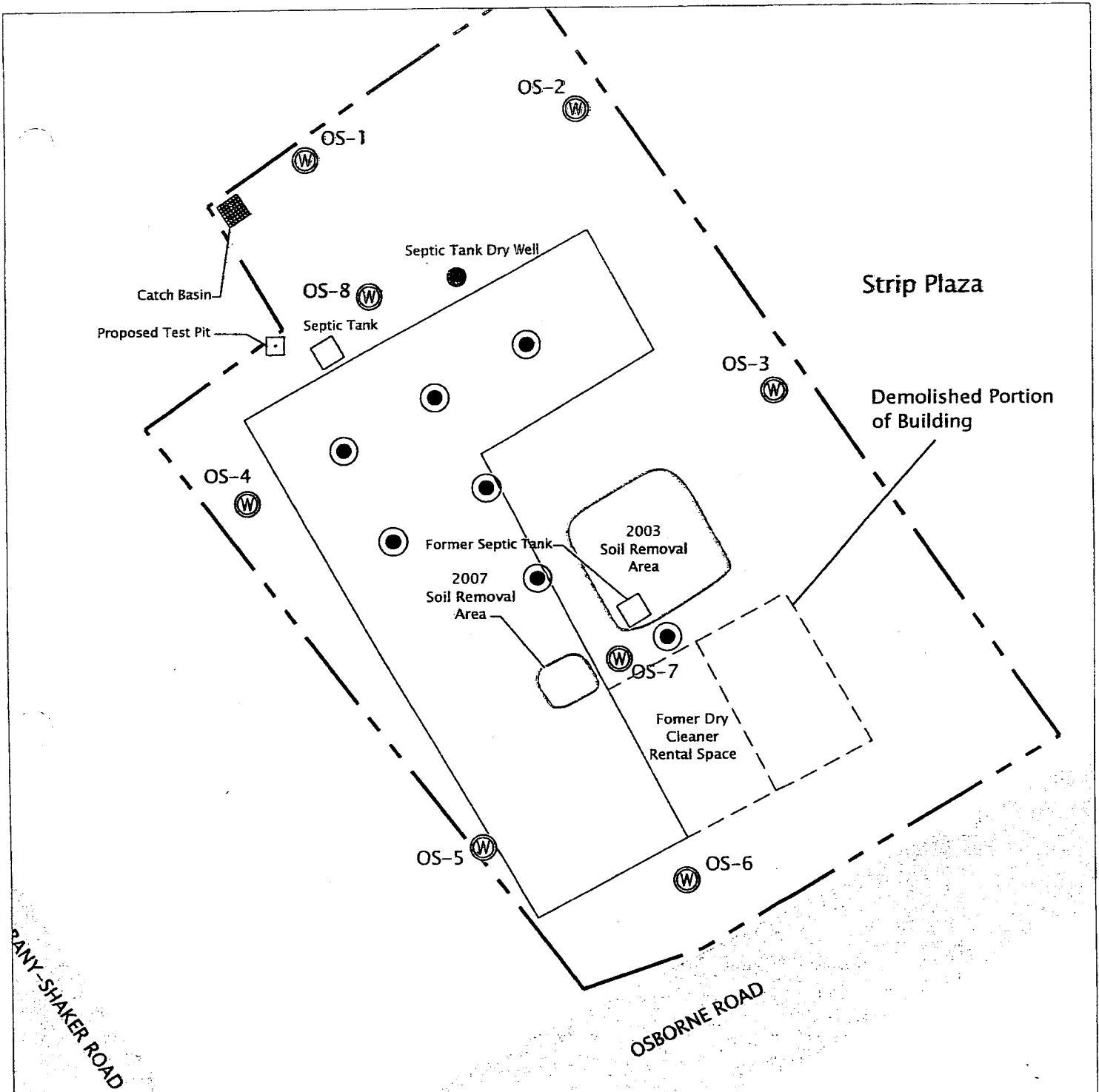
GROUNDWATER FLOW DIRECTION

Drawn by:
BEW
Date:
3/12/08
Project No.:
E709-01-07-953

NORTH
Scale: 1" = 60'

CPI Environmental Services, Inc.


Figure 5
Groundwater Elevation Contours
March 11, 2008
253 Osborne Road
Colonie, NY
253 Osborne Road Associates, LLC



NOTE: RESULTS ARE IN MICROGRAMS PER CUBIC METER OF AIR

LEGEND	
	2007 MONITORING WELL LOCATIONS
	PROPOSED BORING LOCATIONS
	PROPOSED TEST PIT LOCATION

Drawn by:
BEW
Date:
12/27/07



NORTH
Scale: 1" = 40'


 CPI Environmental Services, Inc.

Figure 6
Proposed Post-Demolition
Boring Locations
253 Osborne Road
Colonie, NY
253 Osborne Road Associates, LLC

CPI ENVIRONMENTAL SERVICES, INC.

GEOLOGIC AND ENVIRONMENTAL CONSULTING

**Site Management Plan
253 Osborne Road
Loudonville, New York**

Prepared For:

253 Osborne Road Associates, LLC
c/o D'Agostino, Krackler, Baynes & McGuire, P. C.
16 Sage Estates
Menands, New York 12204

Prepared by:

Continental Placer Inc.
II Winners Circle
Albany, New York 12205

July 21, 2008

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4.0 Soil Vapor Mitigation2

5.0 Environmental Easement2

6.0 Ongoing Operation, Maintenance, and Management.....3

1.0 Introduction

This is a Site Management Plan for future 253 Osborne Road remediation activities, as necessary. It provides the framework for future soil management, groundwater monitoring, soil vapor intrusion mitigation activities, the establishment of an environmental easement on this property, and future ongoing operation, maintenance, and management needs. It is an addendum to the June 17, 2008 Revised Post-Demolition Site Remediation Work Plan, which provides details regarding the site background and proposed site work activities. It will be implemented in conjunction with the Community Air Monitoring Plan (CAMP), another addendum to the June 17, 2008 Work Plan.

2.0 Soil Remediation

During demolition of the site building inspections will be performed to identify potential sources of tetrachloroethene including stained soil, drains, buried storage tanks, and the like. Following demolition of the site building, soil sampling will be performed in six to ten borings placed near identified potential source areas and within the building footprint as coordinated with New York State Department of Environmental Conservation (NYSDEC) and New York State Department of Health (NYSDOH). A test pit will also be excavated at a concrete pad northwest of the site building.

During the investigative activities, soil samples (two per boring and several in the test pit) will be collected and field screened, and ELAP certified laboratory analyzed for VOCs using USEPA Method 8260. These analytical results will be properly validated to ensure quality data products. The same screening and sampling procedures will be conducted for any potential future intrusive soil activities (subsurface utility repair, addition or expansion of buildings, etc.) performed on-site.

If tetrachloroethene is detected above 1.3 ug/kg then affected soil will be removed and appropriately disposed/treated off-site. Post-excavation soil samples will also be collected and ELAP certified laboratory analyzed for VOCs using USEPA Method 8260 with data validation to document soil quality conditions following any soil removals. It is anticipated that any removed soil can be disposed at EMSI in Fort Edward, New York similar to the previous two soil removal actions at this property. Prior to transport, the soil will be waste characterized and appropriate authorizations will be obtained to transport the soil to EMSI, or whatever facility the soil can be approved to receive the soil.

3.0 Groundwater Monitoring

Groundwater sampling will be performed in the six to ten soil borings using temporary sampling points (geoprobe sampling ports). These samples will be ELAP certified laboratory analyzed for VOCs. All purged groundwater will be containerized and appropriately disposed based on the laboratory analytical results. Additional groundwater sampling will be performed in the existing on-site permanent wells in conjunction with the off-site groundwater investigations.

4.0 Soil Vapor Mitigation

Prior to constructing a new building, a sub-slab de-pressurization system will be designed for the new building, and the design submitted to NYSDEC and NYSDOH. Once the design has been approved by NYSDEC and NYSDOH, it will then be incorporated into the building design and installed when the building is constructed.

After the new building has been constructed, documentation will be provided to confirm that the sub-slab de-pressurization system is adequately designed for the building. In addition, sub-slab and ambient air samples will be collected during the heating season to determine if the sub-slab de-pressurization system needs to be actively operated.

If the sub-slab de-pressurization system does not need to be operated then an evaluation of the indoor air quality and sub-slab vapor quality will be performed every two years by a professional engineer (PE) or qualified environmental professional and the results submitted to NYSDEC and NYSDOH. If it does need to be operated, then yearly certifications by a PE or qualified environmental professional (as required by the Order on Consent) will be provided to the NYSDEC and NYSDOH to document that the institutional and engineering controls are unchanged, effective, and performing as designed. If deficiencies are identified by the certifying professional then recommendations to correct the deficiencies, and schedule for corrective action will be submitted to NYSDEC and NYSDOH.

5.0 Environmental Easement

Documentation of the establishment of an environmental easement will also be provided to the NYSDEC and NYSDOH. This easement will not only include groundwater extraction and use restrictions but also requirements for soil vapor system operation, maintenance, monitoring, and periodic certifications of the institutional and engineering controls. The certifications will be performed by a PE or qualified environmental professional and be provided to the NYSDEC and NYSDOH. The certification will document that the institutional and engineering controls are unchanged, effective, and performing as designed. If deficiencies are identified by the certifying professional then

recommendations to correct the deficiencies, and schedule for corrective action will be submitted to NYSDEC and NYSDOH

6.0 Ongoing Operation, Maintenance, and Management

Ongoing operation, maintenance, and management (OMM) is required to ensure the engineering controls (sub-slab de-pressurization system) and environmental easements are in-place and performing as designed. Yearly certifications by a PE and qualified environmental professional will review and document the status of the environmental easements. In addition to the yearly certifications by a PE and qualified environmental professional, training will also be provided to on-site personnel. This training will tutor site personnel to routinely check (through visual and physical inspections) that the sub-slab depressurization system is operating by inspecting the sub-slab de-pressurization system control panel and air pressure monitor and verifying the vacuum pumps are operating, and how to turn them on if they were inadvertently turned off. This training will also identify whom to contact in the event the system has become inoperational.

CPI ENVIRONMENTAL SERVICES, INC.

GEOLOGIC AND ENVIRONMENTAL CONSULTING

**Health and Safety Plan
253 Osborne Road
Loudonville, New York**

Prepared For:

253 Osborne Road Associates, LLC
c/o D'Agostino, Krackler, Baynes & McGuire, P. C.
16 Sage Estates
Menands, New York 12204

Prepared by:

Continental Placer Inc.
II Winners Circle
Albany, New York 12205

July 23, 2008

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1.0 Introduction

This is a Health and Safety Plan (HASP) for future 253 Osborne Road investigative and remediation activities, as necessary. The purpose of this plan is to recognize substances and conditions known or suspected to be present at 253 Osborne Road and ensure they do not adversely impact the health or safety of personnel working on the property. It is also intended to ensure that procedures used during on-site activities meet reasonable professional standards to protect human health and safety of workers and the surrounding community. It is an addendum to the June 17, 2008 Revised Post-Demolition Site Remediation Work Plan, which provides details regarding the site background and proposed site work activities. It will be implemented in conjunction with the Community Air Monitoring Plan (CAMP), another addendum to the June 17, 2008 Work Plan.

2.0 Applicability

This HASP is applicable to all personnel performing investigative and remedial work at 253 Osborne Road in conjunction with the Order on Consent with New York State Department of Environmental Conservation (NYSDEC).

Specific tasks covered by this HASP may include, but are not limited to:

- Performing inspections to characterize environmental or other hazards,
- Collecting soil samples using a drilling rig, heavy excavation equipment, or other hand tools,
- Conducting non-intrusive inspections and instrument surveys,
- Constructing, developing, testing, measuring and sampling groundwater monitoring wells,
- Excavating earthen materials, fill, debris, etc. with heavy construction equipment where hazardous substances are, or may, be present, and
- Collecting samples from drums, tanks, or other containers.

This HASP does not cover, nor will our employees perform, first responder duties involving hazardous materials emergencies. In the event of any on-site emergency, trained hazardous material responders will be immediately called to the scene (see Section 4.0 of this plan for emergency numbers). CPI will assist emergency responders with any and all information regarding the work being performed or area where work was performed. Only after the site has been cleared by professional Emergency Responders will CPI re-enter the work area.

3.0 Responsibilities

The CPI Project Manager is the person on-site overseeing the work being performed. The PM will also serve as the on-scene coordinator and safety manager.

It is the responsibility of the Project Manager (PM) to ensure that:

- all site specific tasks and known or anticipated hazards are addressed within this HASP,
- protective measures ensuring the health and safety of on site personnel in regards to each known or anticipated hazard are addressed within the plan; including but not limited to the availability, use and proper maintenance of appropriate personnel protective and decontamination equipment,
- all personnel conducting field activities, CPI as well as contractors, are briefed and understand the contents of the plan and their responsibilities toward the plan; and that a copy of the plan is on site for the duration of the work,
- all CPI personnel performing field activities have the appropriate training required by regulation for each known or anticipated hazard,
- to protect the public during site activities and implement appropriate mechanisms (barriers, caution taping, etc.) to limit site access to site workers and regulatory inspectors,
- a pre-job meeting is held with site personnel to review site procedures or conditions that may be outside the scope of this work but could affect the safety of CPI personnel and/or site personnel through CPI's work, review emergency notification and evacuation procedures,, and any site specific procedures that CPI should follow while on the property.
- an employee or contractor is stopped when it is found that they are not working in accordance with this plan or in a manner that ensures their safety or the safety of the people around them; and/or to temporarily suspend the job when a hazardous condition arises, that was not previously accounted for within the plan, ensuring that activities do not resume until all new conditions or hazards have been appropriately addressed,
- all appropriate decontamination procedures have been performed prior to leaving the job-site.

It is the responsibility of all on-site workers to ensure they understand and follow the plan as written. Additionally, it is the responsibility of any on-site worker to notify the PM when a condition is encountered that was not discussed in the plan or if a co-worker is observed to be working in an unsafe manner.

4.0 Emergency Contacts

Fire:	911
Ambulance:	911
Police:	911
Nearest Hospital:	Albany Memorial Hospital 600 Northern Blvd. 518 471-3221
Town of Colonie EMS:	494 Albany Shaker Road 911
NYSDEC:	Chris O'Neill - 518 357-2394
NYSDOH:	Maureen Schuck - 518 402-7860
CPI Project Manager:	William Miller - 518 320-2959

A Town of Colonie EMS station is across (southwest of) Albany Shaker Road from the 253 Osborne Road.

Directions to Albany Memorial Hospital are as follows:

- Take right turn out of 253 Osborne Road onto Osborne Road and then make immediate left turn onto Albany Shaker Road,
- Follow Albany Shaker Road for approximately 2.6 miles to Northern Boulevard,
- Albany Memorial Hospital is on southeast corner of the intersection of Northern Boulevard and Albany Shaker Road.

5.0 Contaminants of Concern

The contaminant of concern at 253 Osborne Road is the dry cleaning solvent tetrachloroethene and its breakdown products (trichloroethene, dichloroethene, and potentially vinyl chloride). These compounds are volatile organic compounds (VOCs) that have been detected in the soil and ground water at the site.

6.0 Site Controls

Prior to beginning work each day, a morning safety meeting will be conducted by the safety officer with all on-site personnel and contractors to review tasks to be performed that day and to discuss potential physical and chemical hazards that may be

encountered. Procedures to address potential emergency incidents and evacuation routes/gathering locations will be reviewed.

Following the safety meeting the work areas will be designated and perimeter barriers will be set-up as necessary to prevent public access to the work area. As appropriate, an exclusion zone, a contaminant reduction zone, and a support zone will be established around each work area. These zones will be demarked using caution tape and or fencing. The site safety officer/PM will monitor the areas to ensure no site worker or passerby enters the site or designated work areas without authorization or training. At the end of each day, all work areas will be secured and demarked using caution tape or fencing to prevent access by passersby.

It is anticipated that all work will be conducted under Level D personal protection. Real-time air monitoring will be performed to document air quality conditions for VOCs pursuant to the CAMP. If VOCs are detected in the ambient air above 5 parts per million, work will be temporarily suspended to allow continued monitoring. If levels remain elevated then work will only proceed after additional procedures/safeguards (personal protective equipment, work area enclosures, etc.) are implemented.

7.0 Emergency Response/Evacuation Plan

The most likely incidents for which an emergency call or evacuation will be required are as follows:

- heavy equipment or drill rig physical accident,
- slip/trip/fall injury, and
- sudden release of hazardous gases/vapors during drilling or excavation.

Emergency procedures established to deal with these potential incidents include escape routes and mustering locations, calling the emergency contacts, and re-evaluation of work scope. The emergency contact list will be with the safety officer/PM throughout all site activities.

CPI ENVIRONMENTAL SERVICES, INC.

GEOLOGIC AND ENVIRONMENTAL CONSULTING

**Community Air Monitoring Plan
253 Osborne Road
Loudonville, New York**

Prepared For:

253 Osborne Road Associates, LLC
c/o D'Agostino, Krackler, Baynes & McGuire, P. C.
16 Sage Estates
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Continental Placer Inc.
II Winners Circle
Albany, New York 12205

July 9, 2008

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APPENDICES

Appendix A: NYSDOH Generic Community Air Monitoring Plan

1.0 Introduction

Any additional soil remediation at the 253 Osborne Road site will have a community air monitoring requirement to protect the off-site community from exposures to particulate matter (dust), vapors, or odors that may be generated by the work. A Community Air Monitoring Plan (CAMP) requires real-time air monitoring for dust and chemical contaminants and recommends common-sense measures (e.g., water misting, smaller work areas, slower truck speeds, temporary work stoppage) to keep airborne releases at a minimum around the work areas. The CAMP also helps confirm that work activities did not spread contamination off-site through the air. Soil cleanups performed under the oversight of the New York State Department of Health (NYSDOH) and New York State Department of Environmental Conservation (NYSDEC) help to ensure that all possible measures are taken to protect nearby residents.

This CAMP was prepared by Continental Placer Inc. for the 253 Osborne Road property in association with work to be performed prior to, during, and after demolition of an existing site building and subsequent re-development of the property. This CAMP outlines the air quality monitoring procedures to be followed to protect the downwind community (i.e., off-site receptors including residents, off-site workers, shoppers, and clientele) from potential airborne contaminant releases that may be a direct result of excavation activities at 253 Osborne Road. This CAMP is consistent with the NYSDOH Generic Community Air Monitoring Plan (included as Appendix A). It is an addendum to the June 17, 2008 Revised Post-Demolition Site remediation Work Plan, which provides details regarding the site background and proposed site work activities.

253 Osborne Road is located in a commercial/residential area of the Town of Colonie. The property is bounded by Osborne Road to the southeast, a former Citgo gas/service station to the southwest (now vacant), a former food distribution warehouse to the west (now vacant), an office building with restaurants, retail, and office space to the northwest, and a strip mall to the northeast. 253 Osborne Road is currently vacant. It is comprised of an abandoned single- and two-story concrete-block building with a partial basement under the two-story portion. The single story portion of the building is along Osborne Road and was used for retail space; one of the retail spaces was occupied by a dry cleaner reportedly from 1965 to 1995. The two-story portion of the building was used for office space.

Previous sampling at 253 Osborne Road had identified the presence of tetrachloroethene-impacted soil and groundwater, which resulted in the removal of 425 tons of soil for off-site disposal/treatment. During the demolition and re-development of the 253 Osborne Road site, tetrachloroethene-impacted soil and groundwater may be encountered and require management (e.g., sampling, removal, and off-site disposal/treatment). This CAMP will be implemented in the event that additional soil

and/or groundwater removal and disposal/treatment is required following the demolition of the existing building.

2.0 Scope of 253 Osborne Road Remediation Activities

The building at 253 Osborne Road will be demolished. During and after the demolition, evidence of any potential sources of tetrachloroethene (tanks, dry wells, drains, etc.) will be investigated. After demolition, six to ten soil borings will be advanced within the former building footprint and at any potential tetrachloroethene source areas. Soil samples from these borings will be field screened for the presence of tetrachloroethene. Based on the field screenings and visual inspections, two soil samples will be collected from each boring for laboratory analyses for volatile organic compounds (VOCs). In addition, a test pit will be excavated in the vicinity of a concrete pad northwest of the existing building, and soil will be sampled from the excavated soil and the excavation. These soil samples will also be field screened and laboratory analyzed for VOCs. Further, if soil needs to be excavated to construct the new building, then this soil will be field screened and sampled for laboratory analysis for VOCs. If tetrachloroethene is detected in any site soil at concentrations of 1.3 milligram per kilogram (mg/kg) or higher then soil exhibiting such tetrachloroethene levels will be removed and disposed/treated off-site.

Groundwater will also be sampled from existing wells and the new borings. Purged groundwater will be generated in the process of collecting those samples. The purged groundwater will be contained and appropriately disposed of off-site.

A sub-slab de-pressurization system will be designed, installed, and operated (if necessary) in any future building built at 253 Osborne Road. Environmental easements will also be established to prohibit groundwater use and for ongoing site management.

3.0 Air Monitoring Procedures for Intrusive Activities

3.1 Particulate Monitoring

The air at the perimeter of the work zone will be monitored in real-time during the excavation of site soil in connection with investigative excavations or soil removal actions. Air monitoring for particulates (i.e., dust) will be performed using both dust monitoring equipment and through visual observation. Monitoring equipment capable of measuring particulate matter smaller than 10 microns (PM-10) and capable of integrating (averaging) over periods of 15 minutes or less will be set-up at one upwind (background) location and one downwind location at heights of approximately 5 feet above land surface. This equipment will log the 15-minute average concentrations for subsequent downloading and reporting. An audible alarm on the downwind particulate

monitor will be set at 90 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) above the background level (i.e., the upwind location). Upwind concentrations will be measured at the start of each work day and periodically throughout the day thereafter to establish background.

Wind direction and relative speed will be routinely monitored. These readings will allow the CAMP coordinator to ensure that CAMP equipment is located appropriately based upon the wind direction. The particulate monitoring equipment will be calibrated at the start of each day and as necessary throughout the day.

The monitoring results will be compared to the following:

- If the downwind PM-10 particulate level is $100 \mu\text{g}/\text{m}^3$ greater than background (upwind perimeter) for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques shall be employed. Work may continue with dust suppression techniques, provided that downwind PM-10 particulate levels do not exceed $150 \mu\text{g}/\text{m}^3$ above the upwind level and provided that no visible dust is migrating from the work area.
- If, after implementation of dust suppression techniques, downwind PM-10 particulate levels are greater than $150 \mu\text{g}/\text{m}^3$ above the upwind level, work shall be reevaluated and changes initiated to reduce particulate levels to less than $150 \mu\text{g}/\text{m}^3$ above background conditions and to prevent visible dust migration, including work stoppage if necessary.

Wind Data - Wind direction and relative strength will be noted and recorded at a minimum of three times each day. These results will be utilized to position the particulate monitoring equipment in appropriate upwind and downwind locations.

Potential Suppression - If the integrated particulate level at the downwind location exceeds the upwind level by more than $100 \mu\text{g}/\text{m}^3$ at any time during intrusive activities, then dust suppression techniques will be employed. Dust suppression will be performed by applying a water spray on the soil being excavated and on the road surfaces over which equipment (backhoe, dump truck, etc.) is being driven. Work may continue with dust suppression techniques, provided that downwind PM-10 levels are not more than $150 \mu\text{g}/\text{m}^3$ greater than the upwind levels; all measures necessary to ensure PM-10 levels of less than $150 \mu\text{g}/\text{m}^3$ above background will be utilized.

There may also be situations where visible dust is generated by excavation activities and migrates to downwind locations but is not detected by the monitoring equipment at or above the action levels. Therefore, if visible dust is observed leaving the working area, dust suppression techniques will be employed. If dust suppression techniques do not lower particulates to below $150 \mu\text{g}/\text{m}^3$ or visible dust persists, additional measures, including work suspension, if necessary, will be implemented to remedy the situation.

All air monitoring data and the locations of monitoring equipment will be recorded and will be available for NYSDEC and NYSDOH review.

3.2 Volatile Organic Compound Monitoring

Volatile organic compounds (VOCs) will be monitored at the downwind perimeter of the immediate work area on a continuous basis. The VOC monitoring component of the CAMP will only be implemented at work areas that are known or suspected to contain VOCs (e.g., tetrachloroethene). Upwind concentrations will be measured at the start of each workday and periodically thereafter (not less than three times per day) to establish background conditions. The monitoring work will be performed using equipment appropriate to measure the types of containments known or suspected to be present (Minirae 2000 Photoionization detector or equivalent). The equipment will be calibrated at least daily for the contaminant(s) of concern for an appropriate surrogate. The equipment will be capable of calculating 15-minute running average concentrations, which will be compared to the levels specified below.

- If the ambient air concentration of total organic vapors at the downwind perimeter of the work area exceeds 5 parts per million (ppm) above background for the 15-minute average, work activities must be temporarily halted in the area of concern and monitoring continued. If the total organic vapor level readily decreases (per instantaneous readings) below 5 ppm over background, work activities can resume with continued monitoring.
- If total organic vapor levels at the downwind perimeter of the work area persist at levels in excess of 5 ppm over background but less than 25 ppm, work activities in the area of concern must be halted, the source of vapors identified, corrective actions taken to abate emissions, and monitoring continued. After these steps, work activities can resume provided that the total organic vapor level at the downwind perimeter of the work area or Site perimeter is below 5 ppm over background for the 15-minute average.
- If the organic vapor level is more than 25 ppm above background at the downwind perimeter of the work area, activities must be halted in the area of concern until corrective measures are identified and implemented to reduce emissions as described above.

All air monitoring data and the locations of monitoring equipment will be recorded in the onsite files and will be available for NYSDEC and NYSDOH review.

Appendix A

NYSDOH Generic Community Air Monitoring Plan

APPENDIX 1A

New York State Department of Health Generic Community Air Monitoring Plan

A Community Air Monitoring Plan (CAMP) requires real-time monitoring for volatile organic compounds (VOCs) and particulates (i.e., dust) at the downwind perimeter of each designated work area when certain activities are in progress at contaminated sites. The CAMP is not intended for use in establishing action levels for worker respiratory protection. Rather, its intent is to provide a measure of protection for the downwind community (i.e., off-site receptors including residences and businesses and on-site workers not directly involved with the subject work activities) from potential airborne contaminant releases as a direct result of investigative and remedial work activities. The action levels specified herein require increased monitoring, corrective actions to abate emissions, and/or work shutdown. Additionally, the CAMP helps to confirm that work activities did not spread contamination off-site through the air.

The generic CAMP presented below will be sufficient to cover many, if not most, sites. Specific requirements should be reviewed for each situation in consultation with NYSDOH to ensure proper applicability. In some cases, a separate site-specific CAMP or supplement may be required. Depending upon the nature of contamination, chemical-specific monitoring with appropriately-sensitive methods may be required. Depending upon the proximity of potentially exposed individuals, more stringent monitoring or response levels than those presented below may be required. Special requirements will be necessary for work within 20 feet of potentially exposed individuals or structures and for indoor work with co-located residences or facilities. These requirements should be determined in consultation with NYSDOH.

Reliance on the CAMP should not preclude simple, common-sense measures to keep VOCs, dust, and odors at a minimum around the work areas.

Community Air Monitoring Plan

Depending upon the nature of known or potential contaminants at each site, real-time air monitoring for volatile organic compounds (VOCs) and/or particulate levels at the perimeter of the exclusion zone or work area will be necessary. Most sites will involve VOC and particulate monitoring; sites known to be contaminated with heavy metals alone may only require particulate monitoring. If radiological contamination is a concern, additional monitoring requirements may be necessary per consultation with appropriate NYSDEC/NYSDOH staff.

Continuous monitoring will be required for all ground intrusive activities and during the demolition of contaminated or potentially contaminated structures. Ground intrusive activities include, but are not limited to, soil/waste excavation and handling, test pitting or trenching, and the installation of soil borings or monitoring wells.

Periodic monitoring for VOCs will be required during non-intrusive activities such as the collection of soil and sediment samples or the collection of groundwater samples from existing monitoring wells. "Periodic" monitoring during sample collection might reasonably consist of taking a reading upon arrival at a sample location, monitoring while opening a well cap or overturning soil, monitoring during well baling/purging, and taking a reading prior to leaving a sample location. In some instances, depending upon the proximity of potentially exposed individuals, continuous monitoring may be required during sampling activities. Examples of such situations include groundwater sampling at wells on the curb of a busy urban street, in the midst of a public park, or adjacent to a school or residence.

VOC Monitoring, Response Levels, and Actions

Volatile organic compounds (VOCs) must be monitored at the downwind perimeter of the immediate work area (i.e., the exclusion zone) on a continuous basis or as otherwise specified. Upwind concentrations should be measured at the start of each workday and periodically thereafter to establish background conditions. The monitoring work should be performed using equipment appropriate to measure the types of contaminants known or suspected to be present. The equipment should be calibrated at least daily for the contaminant(s) of concern or for an appropriate surrogate. The equipment should be capable of calculating 15-minute running average concentrations, which will be compared to the levels specified below.

- If the ambient air concentration of total organic vapors at the downwind perimeter of the work area or exclusion zone exceeds 5 parts per million (ppm) above background for the 15-minute average, work activities must be temporarily halted and monitoring continued. If the total organic vapor level readily decreases (per instantaneous readings) below 5 ppm over background, work activities can resume with continued monitoring.
- If total organic vapor levels at the downwind perimeter of the work area or exclusion zone persist at levels in excess of 5 ppm over background but less than 25 ppm, work activities must be halted, the source of vapors identified, corrective actions taken to abate emissions, and monitoring continued. After these steps, work activities can resume provided that the total organic vapor level 200 feet downwind of the exclusion zone or half the distance to the nearest potential receptor or residential/commercial structure, whichever is less - but in no case less than 20 feet, is below 5 ppm over background for the 15-minute average.
- If the organic vapor level is above 25 ppm at the perimeter of the work area, activities must be shutdown.

All 15-minute readings must be recorded and be available for State (DEC and DOH) personnel to review. Instantaneous readings, if any, used for decision purposes should also be recorded.

Particulate Monitoring, Response Levels, and Actions

Particulate concentrations should be monitored continuously at the upwind and downwind perimeters of the exclusion zone at temporary particulate monitoring stations. The particulate monitoring should be performed using real-time monitoring equipment capable of measuring particulate matter less than 10 micrometers in size (PM-10) and capable of integrating over a period of 15 minutes (or less) for comparison to the airborne particulate action level. The equipment must be equipped with an audible alarm to indicate exceedance of the action level. In addition, fugitive dust migration should be visually assessed during all work activities.

- If the downwind PM-10 particulate level is 100 micrograms per cubic meter (mcg/m^3) greater than background (upwind perimeter) for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques must be employed. Work may continue with dust suppression techniques provided that downwind PM-10 particulate levels do not exceed 150 mcg/m^3 above the upwind level and provided that no visible dust is migrating from the work area.
- If, after implementation of dust suppression techniques, downwind PM-10 particulate levels are greater than 150 mcg/m^3 above the upwind level, work must be stopped and a re-evaluation of activities initiated. Work can resume provided that dust suppression measures and other controls are successful in reducing the downwind PM-10 particulate concentration to within 150 mcg/m^3 of the upwind level and in preventing visible dust migration.

All readings must be recorded and be available for State (DEC and DOH) personnel to review.

Citizen Participation Plan
253 Osborne Road
Spill #07-02543

1. Updated Name and Addresses of Interested Public:
 - a. Town of Colonie Supervisor - Paula A. Mahan
Town of Colonie
Colonie Town Hall
534 Loudon Road
Newtonville, New York 12128
(518) 783-2700
 - b. Current Owner - 253 Osborne Road Associates, LLC
c/o D'Agostino, Krackler, Baynes & McGuire, P. C.
16 Sage Estates
Menands, New York 12204
 - c. Local news media is the Times Union newspaper
 - d. Town of Colonie provides public water and sewer
 - e. See attached Site Contact List
 - f. The location of a document repository is the William K. Sanford Library
at 629 Albany-Shaker Road, Loudonville, New York 12211
2. Potential Issues of Public Concern Related to 253 Osborne Road Site:
 - a. Scope of remedial action and soil vapor mitigation for future commercial re-development
 - b. Off site migration of contaminated groundwater and potential soil vapor intrusion
3. Description of Citizen Participation Activities already performed:
 - a. Prior submissions to NYS DEC - Investigation and Remediation work plans and reports have been provided to the DEC for review and approval. Coordination with DOH has been conducted by the DEC.
 - b. Notice to the Public:
 - i. Notice will be published in the Times Union
 - ii. All investigation and remediation will be conducted with DEC and DOH oversight

4. Description and Schedule of Public Participation Activities:

- a. Maintain the document repository at the William K. Sanford Library at 629 Albany-Shaker Road, Loudonville, New York 12211
- b. Distribute Notice of project progress to those listed on the Site Contact List at project milestones (i.e., construction completion, issuance of certifications)
- c. Signed Consent Order and investigative and remedial reports will be available for review in the Document Repository at the William K. Sanford Library
- d. Attend public meeting if requested by NYSDEC and NYSDOH.

253 Osborne Road
Site Contact List

Document Repository

William K. Sanford Library
629 Albany-Shaker Road
Loudonville, New York 12211
(518) 458-9274

Regulatory Managers

Mr. Christopher O'Neill, P. E.
Project Manager
NYSDEC Region IV
1130 North Westcott Road
Schenectady, New York 12306

Michael Lesser, Esq.
NYSDEC
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-0001

Maureen E. Schuck
Public Health Specialist
Bureau of Environmental Exposure
NYSDOH
Flanigan Square, Room 300
547 River Street
Troy, New York 12180-2216

Public Notice

Times Union
News Plaza
P. O. Box 15000
Albany, New York 12212

Volunteer Stakeholder

Anthony V. Cardona, Esq.
253 Osborne Road Associates, LLC
c/o D'Agostino, Krackler, Baynes & McGuire, P. C.
16 Sage Estates
Menands, New York 12204

253 Osborne Road
Site Contact List

Public Officials

Paula A. Mahan
Supervisor
Town of Colonie
Colonie Town Hall
534 Loudon Road
Newtonville, New York 12128

John Frazer
Superintendent
Public Operations Center
347 Old Niskayuna Road
Latham, NY 12110-2290

James B. Crucetti
Commissioner
Albany County DOH
175 Green Street
Albany, New York 12202

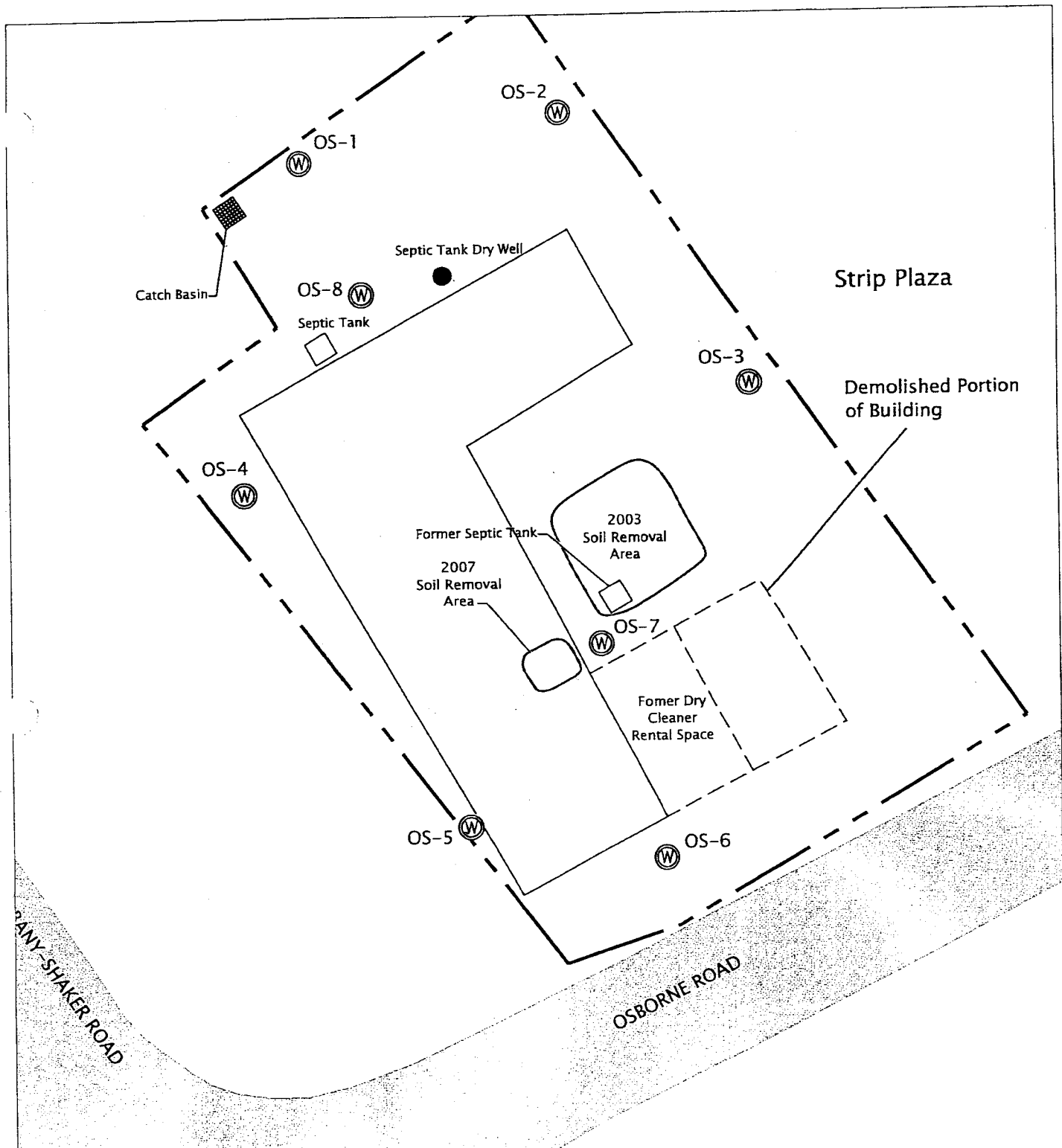
Michael G. Breslin
County Executive
Albany County Office Building
112 State Street Room 200
Albany, New York 12207

Neil D. Breslin
State Senator
46th Assembly District
LOB 606
Albany, New York 12247
breslin@senate.state.ny.us

Timothy D. Nichols
Albany County Legislator
6 Crystal Lane
Latham, NY 12110
518 785 4705
tnichols@nycap.rr.com

**253 Osborne Road
Site Contact List**

Neighbors	
265 Osborne Road 43.3-1-11.1	Gatto Enterprises, LLC 440 Visher Ferry Road Clifton Park, New York 12065
465 Albany Shaker Road 43.3-1-9	Raymond F. Tomlinson 30 First Street Albany, New York 12210-2504
467 Albany Shaker Road 43.3-1-8	Walgreen Eastern Co., Inc. 104 Wilmont Road Deerfield, Illinois 60015
469-471 Albany Shaker Road 43.3-1-7	Dennis H & Sons Development Co., Inc. 506 Albany Shaker Road Loudonville, New York 12211-1554
	Tenants
	C. K. Dennis Architect, PC 469 Albany Shaker Road Loudonville, New York 12211
	Kimberly Square Inc. 469 Albany Shaker Road Loudonville, New York 12211
	Pearl of the Orient Restaurant 471 Albany Shaker Road Loudonville, New York 12211
	Lanie's Cafe 471 Albany Shaker Road Loudonville, New York 12211
	Mr. Subb 469 Albany Shaker Road Loudonville, New York 12211
	State Farm Insurance 471 Albany Shaker Road Loudonville, New York 12211
	Philip Alexander Jewelry 471 Albany Shaker Road Loudonville, New York 12211
	Erica's Tailoring 469 Albany Shaker Road Loudonville, New York 12211



NOTE: RESULTS ARE IN MICROGRAMS PER CUBIC METER OF AIR

Drawn by:
BEW
Date:
12/27/07




CPI Environmental Services, Inc.

Figure 1
Site Features Map
253 Osborne Road
Colonie, NY

253 Osborne Road Associates, LLC

LEGEND

 2007 MONITORING WELL LOCATIONS



NORTH
Scale: 1" = 40'