

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Violation of Article 27 of the New York
State Environmental Conservation Law and Title 6, Part 375
of the Official Compilation of Codes, Rules, and Regulations
of the State of New York,

by

John W. Payne Enterprises LLC

Respondent.

ORDER ON CONSENT

Index No. CO 7-20260204-7
Site No. 709001

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WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the administration and enforcement of law and regulations related to inactive hazardous waste disposal sites, pursuant to Article 27, Titles 13 and 14 of the New York State Environmental Conservation Law ("ECL") and may issue orders thereunder.
2. The Department is authorized to administer the inactive hazardous waste disposal sites as set forth in ECL Article 27, Titles 13 and 14 and 6 NYCRR Part 375 and may issue orders under it.
3. This Order on Consent (the "Order") is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.

PARTIES

4. Respondent John W. Payne Enterprises LLC is a limited liability company with a principal place of business at PO Box 340, 1 Pruyn Street, Bainbridge, NY 13733 and is the owner of the Borden Chemical Site (Site No. 709001) (the "Site").

PROVISIONS OF LAW

5. The Department is responsible for remedial programs pursuant to Article 27, Title 13 and 14 of the ECL and 6 NYCRR Part 375 and may issues orders consistent with the authority granted to the Commissioner of the Department by such statute.
6. The Department enacted 6 NYCRR Part 375 pursuant to Titles 13 and 14

of Article 27 to provide for the orderly and efficient administration of inactive hazardous waste disposal sites, including sites in the State Superfund and Brownfield Cleanup Programs. See 6 NYCRR 375-1.1 (a).

7. The regulations state that all workplans, including a site management plan, shall be implemented in accordance with the requirements of all applicable laws, rules and regulations. See 6 NYCRR 375-1.6(a)(1)(i).

8. The statute and regulations state that it is a violation to engage in any activity that will or is reasonably anticipated to prevent or interfere significantly with any proposed, ongoing, or completed remedial program. See 6 NYCRR 375-1.11(b)(2)(i).

9. The regulations state that it is a violation to engage in any activity that will, or that is reasonably foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site. See NYCRR 375-1.11(b)(2)(ii).

10. Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by Article 27, Title 13 or any rule or regulation promulgated thereto, may be liable for penalties of up to \$65,000 per day per violation.

FACTS

11. The Borden Chemical site, number 709001, (the "Site") is located at 108-112 North Main Street in the Village of Bainbridge, Chenango County, New York. From the 1940s until 1981 the site was the location of a synthetic resin manufacturing facility. During those operating years, hazardous wastes or hazardous constituents were released into the environment. In 1981, the owner of the facility at the Site implemented facility closure in conjunction with the Environmental Protection Agency ("EPA") and the Department.

12. In November 1990, the owner of the Facility entered into an Order on Consent with the Department, Index No. A7-0121-87-09, to investigate and remediate contamination at the Site under the State's inactive hazardous waste disposal site remedial program.

13. John W. Payne Enterprises LLC, the current owner (the "Respondent") acquired title to the Site by tax deed dated November 19, 2015.

14. The Site is currently in the Site Management phase and remains subject to the Site Management Plan (the "SMP") for the continued monitoring and maintenance of the remedy. As a site in active Site Management, it must undergo a periodic progress review to ensure that the selected remedy continues to be protective. This process and resulting report, referred to as the Periodic Review Report ("PRR"), documents the implementation of site specific site management requirements, in particular ensuring that activities of the owner do not interfere with the SMP, and particularly, the groundwater

monitoring wells at the site.

15. The 2022-2024 PRR stated that during site inspections performed between October 15th and 17th, 2024, Monitoring Well 103 (“MW 103”) was observed to be destroyed, likely due to the movement and use of heavy machinery on site.

16. The Department and the Respondent agree that the Department will undertake the work to replace MW-103 at the Site, and that the Respondent will pay the associated costs.

VIOLATIONS

16. Respondent violated 6 NYCRR 375-1.11(b)(2)(i) by engaging in activities that were reasonably anticipated to interfere significantly with any proposed, ongoing or completed remedial program at any site by destroying active monitoring wells associated with the Site’s remedial program.

17. In settlement of Respondent’s liability for the aforesaid violations, Respondent admits the violation set forth herein, waives its right to a hearing as provided by law, and consents to the issuing and entering of this Order on Consent pursuant to the provisions of ECL Articles 27 and 71, and agrees to be bound by the provisions, terms, and conditions herein. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees 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. Payment of State Costs

Invoices shall be sent to Respondent at the following address:

John W. Payne Enterprises LLC
PO Box 340
1 Pruyne Street
Bainbridge, NY 13733

Respondent must pay future state costs associated with the violation, in an amount not to exceed \$10,000. The payment shall be made payable to “Commissioner of NYSDEC” and shall be sent to:

Division of Management and Budget, 10th Floor
New York State Department of Environmental Conservation
625 Broadway, Albany, New York 12233-4900

II. Communications

A. This Order on Consent, along with any applicable submissions, shall be sent to:

1. Communication from Respondent shall be sent to:

Department of Environmental Conservation
Office of General Counsel
Attention: Juliann Petkov, Remediation Bureau
625 Broadway, 14th Floor
Albany, NY 12233-1500
juliann.petkov@dec.ny.gov

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

John W. Payne Enterprises LLC
PO Box 340
1 Pruy Street
Bainbridge, NY 13733

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph I.

III. ENTIRETY OF ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondents, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the modification provisions of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondents shall be construed as relieving the Respondents of their obligations to obtain such formal approvals as may be required by this Order.

IV. RELEASE

This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondents, their trustees, officers, employees, successors and assigns for the above-referenced

violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur after the effective date of this Order.

V. RESERVATION OF RIGHTS

The Department reserves the right to require that the Respondents undertake any additional measures required to protect human health or the environment and shall reserve the Department's rights to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law. This Order does not bar, diminish, adjudicate, or in any way affect the Department's rights or authorities, except as set forth in this Order, including but not limited to, exercising summary abatement powers.

VI. BINDING EFFECT

The provisions, terms and conditions of this Order shall be deemed to bind Respondents and the Respondents' heirs, legal representatives, receivers, trustees in bankruptcy, successors, and assigns, employees, and all persons, firms, and business entities acting under or for them.

VII. FAILURE, DEFAULT, AND VIOLATION OF ORDER

Respondents' failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to the Respondents by the Department.

VIII. DEFAULT OF PAYMENT

The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the terms of this Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order on Consent will constitute a debt owed to the State of New York when and if such penalty becomes due.

IX. MODIFICATION

No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of the Respondents, or upon the Commissioner's own findings after notice and

opportunity to be heard have been given to the Respondents. The Respondents shall have the burden of proving entitlement to any modification requested.

X. INDEMNIFICATION

The Respondents shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs resulting from the acts and/or omissions of the Respondents, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by the Respondents or its employees, servants, agents, successors, or assigns.

XI. NOT A PERMIT

This Order is not a permit, or a modification of a permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondents' compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein. The Department does not warrant or aver that the Respondents' compliance with this Order will result in compliance with any laws, regulations or permits.

XII. FORCE MAJEURE

If Respondents cannot comply with a deadline or requirement of this Order, because of natural disaster, pandemic, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of Respondents and which could not have been avoided by Respondents through the exercise of due care, Respondents shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondents shall include in such application the measures taken by Respondents to prevent and/or minimize any delays. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order pursuant to this Article.

XIII. EFFECTIVE DATE AND TERMINATION

This Order shall take effect when it is signed by the Commissioner of the Department of Environmental Conservation or his designee. This Order shall terminate when all requirements imposed by this Order are completed to the Department's satisfaction.

DATED: Albany, New York

March 2, 2026

Amanda Lefton
Commissioner, NYSDEC

By: Andrew Guglielmi
Andrew O. Guglielmi, Director
Division of Environmental Remediation

