

**From:** Paulette Bach  
**To:** Cullen, Thomas; Georgeson, Rick; Goertz, Keith  
**Date:** 8/17/2010 3:51 PM  
**Subject:** Fwd: Consent Order  
**Attachments:** Document.pdf

The attached consent order was signed by Gene on 8/17/10

>>> "[PABACH@GW.DEC.STATE.NY.US](mailto:PABACH@GW.DEC.STATE.NY.US)" <[PAbach@gw.dec.state.ny.us](mailto:PAbach@gw.dec.state.ny.us)> 8/17/2010 3:25 PM >>>

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device.

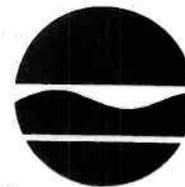
**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

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

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

Website: www.dec.state.ny.us



Alexander B. Grannis  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7010 0290 0000 2287 9407

August 16, 2010

Mr. Curtis Cappellano  
Evergreen Testing & Environmental  
Services, Inc.  
594 Broadway  
Watervliet, New York 12189

Re: Order on Consent  
R4-2010-0802-80

Dear Mr. Cappellano:

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

This will also acknowledge receipt of \$1,000 of the civil penalty pursuant to Paragraph I.

Sincerely,

Jill Phillips  
Assistant Regional Attorney  
Region 4

Enclosure

cc: K. Goertz

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

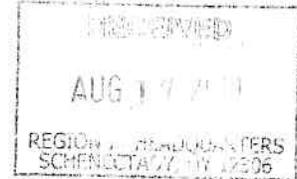
**ORDER ON  
CONSENT**

-by-

File No.  
R4-2010-0802-80

Evergreen Testing and Environmental Services, Inc.

RESPONDENT



WHEREAS:

Jurisdiction

1. DEC is an executive department of the State of New York with jurisdiction over the environmental policy and laws of this state, pursuant to, inter alia, ECL Section 3-0301. In particular, DEC has jurisdiction over the maintenance and enhancement of the purity of the waters of the State pursuant to Article 17 of the New York State Environmental Conservation Law ("ECL").
2. Respondent, Evergreen Testing and Environmental Services, Inc., prepared a Modified Phase I Environmental Site Assessment Report dated October 2005 ("Report") for a building known as the V&O Press Building located at 177 Union Turnpike (a.k.a. 255 Route 66), in the Town of Greenport, New York (Columbia County) ("site").
3. Respondent is a "person" as defined in Section 17-0105 of the ECL.

Facts

4. A copy of the Report was submitted to the Department in July 2010 by the current owner of the site in regards to entering the site into the Brownfield Cleanup Program.
5. In or about July 2005 Respondent was retained by the former property owner to conduct a Phase I environmental assessment ("ESA") of the property. Thereafter Respondent conducted the ESA.
6. During the course of the ESA, Respondent determined that the property had, at some point, been registered as a Petroleum Bulk Storage ("PBS") facility, although Respondent noted that it was unclear whether there were still storage tanks on the property.

7. Upon inspection of the property, Respondent noted surface staining that, in the opinion of Respondent, constituted a reportable release and Respondent so notified the owner of the property. Respondent was advised by the owner that the owner would notify the Department. Respondent, thereafter issued the Report which described the spill condition and further provided the number of the DEC spill hotline to the owner. However, Respondent did not directly report the spill condition to the Department.

8. The Report identifies the presence of petroleum in the ground at the site. Page 38 of the Report cites that "Based on the soil sampling results, one of the stained areas represents a reportable release."

9. Department staff have reviewed its records and determined that the discharge of petroleum on the site was never reported to the Department.

#### Violation

10. 6 NYCRR 613.8 requires that "any person with knowledge of a spill, leak and discharge of petroleum must report the incident to the Department within two (2) hours of discovery. The results of any inventory record, test or inspection which shows a facility is leaking must be reported to the Department within tow (2) hours of the discovery."

11. Respondent's failure to report the discharge of petroleum at the site to the Department is a violation of 6 NYCRR 613.8.

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

#### Waiver of Hearing

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

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

I. In respect of the aforesaid violation, a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

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

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

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

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

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

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

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

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

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

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

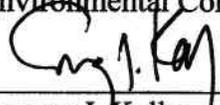
D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes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

IX. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations contained herein.

DATED: 8/17, 2010  
Rotterdam, New York

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

BY:

  
\_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4

Consent by Respondent

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

Evergreen Testing and Environmental Services, Inc.

SIGNED: [Signature]

TITLE: PRESIDENT

DATE: 8-13-2010

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the 13 day of August in the year 2010, before me, the undersigned, personally appeared FRED A. DENTE,  
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at 6 BRADFORD DRIVE, SARATOGA SPRINGS, N.Y. 12866  
(Full mailing address)

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

of the EVERGREEN TESTING & ENVIRONMENTAL SERVICES, INC.  
(Full legal name of corporation)

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

[Signature]  
Notary Public, State of New York

Brian J. Donohue  
No. 01D08150503  
Notary Public, State of New York  
Qualified in Albany County  
My commission expires JULY 31st. 2014