

Director's Order

DRAFT

Environmental Protection Act, R.S.O. 1990, c.E 19 (EPA)
Ontario Water Resources Act, R.S.O. 1990, c. O. 40 (OWRA)
Pesticides Act, R.S.O. 1990, c. P11 (PA)
Safe Drinking Water Act, S.O. 2002, c.32 (SDWA)
Nutrient Management Act, 2002, S.O. 2002, c.4 (NMA)

Order Number
4260-BHDQHR

Incident Report No.
6105-AEHL9L

To: Tamlann Investments Limited
85 Lancing Dr Unit Q
Hamilton, Ontario, L8W 2Z9
Canada

Ambi Corporation
5658 Barbara Cres
Burlington, Ontario, L7L 6X3
Canada

7069367 Canada Inc.
757 Victoria Park Ave Suite 1605
Toronto, Ontario, M4C 5N8
Canada

Geoin Investments Limited [REDACTED]
Unit 9 - 33 Oakburn Cres
Toronto, Ontario, M2N 2T5
Canada

C & 3S Investments Limited [REDACTED]
Unit A - 740 Lakeshore Dr E
Mississauga, Ontario, L5E 1C7
Canada

Site: 587 Third Line
Oakville, Regional Municipality of Halton

Part 1: Legal Authority and Reasons

REFER TO PART 2 FOR THE MEANING OF ALL DEFINED CAPITALIZED TERMS THAT APPLY TO THIS ORDER.

This Order is made under the authority of Sections 18 and 196 of the EPA which provide as follows:

18 (1) The Director, in the circumstances mentioned in subsection (2), by a written order may require a person who owns or owned or who has or had management or control of an undertaking or property to do any one or more of the following:

1. To have available at all times, or during such periods of time as are specified in the order, the equipment, material and personnel specified in the order at the locations specified in the order.
2. To obtain, construct and install or modify the devices, equipment and facilities specified in the order at the locations and in the manner specified in the order.
3. To implement procedures specified in the order.
4. To take all steps necessary so that procedures specified in the order will be implemented in the event that a contaminant is discharged into the natural environment from the undertaking or property.
5. To monitor and record the presence or discharge of a contaminant specified in the order and to report thereon to the Director.
6. To study and to report to the Director on,
 - i. the presence or discharge of a contaminant specified in the order,
 - ii. the effects of the presence or discharge of a contaminant specified in the order,
 - iii. measures to control the presence or discharge of a contaminant specified in the order,
 - iv. the natural environment into which a contaminant specified in the order may be discharged.
7. To develop and implement plans to,
 - i. reduce the amount of a contaminant that is discharged into the natural environment,
 - ii. prevent or reduce the risk of a spill of a pollutant within the meaning of Part X, or
 - iii. prevent, decrease or eliminate any adverse effects that result or may result from a spill of a pollutant within the meaning of Part X or from any other discharge of a contaminant into the natural environment, including,
 - A. plans to notify the Ministry, other public authorities and members of the public who may be affected by a discharge, and
 - B. plans to ensure that appropriate equipment, material and personnel are available to respond to a discharge.
8. To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order. R.S.O. 1990, c. E.19, s. 18 (1); 2005, c. 12, s. 1 (8, 9).

Grounds for order

(2) The Director may make an order under this section if the Director is of the opinion, on reasonable and probable grounds, that the requirements specified in the order are necessary or advisable so as,

(a) to prevent or reduce the risk of a discharge of a contaminant into the natural environment from the undertaking or property; or

(b) to prevent, decrease or eliminate an adverse effect that may result from,

(i) the discharge of a contaminant from the undertaking, or

(ii) the presence or discharge of a contaminant in, on or under the property.

196 (1) The authority to make an order under this Act includes the authority to require the person or body to whom the order is directed to take such intermediate action or such procedural steps or both as are related to the action required or prohibited by the order and as are specified in the order.

(2) A person who has authority under this Act to order that a thing be done on or in any place also has authority to order any person who owns, occupies or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing.

Part 2: Definitions

For the purposes of this Order, the following capitalized terms shall have the meanings described below:

“Contaminants of Concern” means PHCs, including benzene, toluene, ethylbenzene and xylene and other chemical compounds typically associated with fuels including polycyclic aromatic hydrocarbons, lead and methyl-tert-butyl ether.

“Director” means the district manager of the Ministry’s Halton-Peel district office, Tina Dufresne, or others acting in this role.

“EPA” means the Environmental Protection Act, R.S.O. 1990, c. E.19.

“MECP 2017 TSS Memo” means the November 6, 2017 memorandum addressed to provincial officer, Alisha Benjamin, written by Luciana Rodrigues, P.Geol., regional hydrogeologist Technical Support Section, Central Region, a copy of which is attached to, and forms part of, the Provincial Officer’s Report.

“MECP 2019 TSS Memo” means the July 9, 2019 memorandum addressed to provincial officer, Alisha Benjamin, written by Luciana Rodrigues, P.Geol., regional hydrogeologist Technical Support Section, Central Region, a copy of which is attached to, and forms part of, the Provincial Officer’s Report.

“Ministry or MECP” means the ministry of the government of Ontario responsible for the administration of the EPA currently named the Ministry of the Environment, Conservation and Parks and previously the Ministry of the Environment and Climate Change or Ministry of the Environment.

“Order” means this Director’s Order No. 4260-BHDQHR, as it may be amended.

“Orderees” means the persons named in the Order who are required to carry out the work.

“PHCs” means petroleum hydrocarbon fractions F1 to F4 or one or more of benzene, toluene, ethylbenzene and xylene.

“Provincial Officer’s Report” means the provincial officer’s report prepared by Alisha Benjamin which is attached to and forms part of the Order.

“**Qualified Person**” means a person who has obtained the appropriate education and training and has demonstrated experience and expertise in the areas relating to work required to be carried out by the Order. For the purposes of the Order, the person must also meet the qualifications set out in Section 5 of O. Reg. 153/04 for conducting a phase two environmental site assessment.

“**Residential Neighbourhood**” means the residential properties and the municipal roadways and rights of way located hydraulically down gradient and cross gradient of the Site in the vicinity of Weynway Court and Third Line in Oakville.

“**Site**” means the property municipally described as 587 Third Line, Oakville, Ontario and legally referred to as Part of Lots 4 & 5, Plan 785, Oakville, Regional Municipality of Halton, Instrument No. 487506; S/T 487506; S/T 119957, being all of PIN 24844-0009 (LT).

Part 3: Background and Reasons

3.1 Provincial Officer’s Report

The Provincial Officer’s Report summarizes the factual background and the events leading up to the Order which I have reviewed and accepted.

3.2 Request for Review

Between May 27, 2019 and June 15, 2019 each ordered party submitted a request for review to the Director, in response to provincial officer’s order No. 0868-BBYRCR. Requests for review outlined parties’ concern for financial hardship, should the work outlined in provincial officer’s order No. 0868-BBYRCR be required. Each orderee opposed the assessment that contamination was present at the Site during their ownership or opposed the claim that a contaminant was discharged to the environment during their ownership of the Site. Tamlann Investments Ltd. provided environmental site assessment reports from 2006 and 2007, which included soil and groundwater testing. Tamlann Investments Ltd. also suggested that any one of the five gasoline service stations in the area may have caused the petroleum contamination identified at the Site in 1986/ 1987.

The MECP hydrogeologist reviewed the additional reports provided by Tamlann Investments Ltd. and concluded [in the MECP 2019 TSS Memo] that “... petroleum impacted groundwater and soil were likely present at the Site during the time that the 2006 and 2007 investigations were carried out”.

3.3 Orderees

- i. 7069367 Canada Inc., a corporation incorporated under the laws of Canada, having Ontario Corporation Number 3038280, that has owned the Site since April 6, 2010.
- ii. Ambi Corporation, a corporation incorporated under the laws of Ontario, having Ontario Corporation Number 2170373, that owned the Site from June 4, 2008 to April 6, 2010.
- iii. C & 3S Investments Limited, a corporation incorporated under the laws of Ontario, having Ontario Corporation Number 2153276, that owned the Site from January 22, 2008 to June 4, 2008 and voluntarily dissolved on March 14, 2013. [REDACTED]
- iv. Geoin Investments Inc., a corporation incorporated under the laws of Ontario, having Ontario Corporation Number 2119555, that owned the Site from January 25, 2007 to January 22, 2008 and voluntarily dissolved on March 23, 2012. [REDACTED]
- v. Tamlann Investments Limited, a corporation amalgamated under the laws of Ontario, currently Ontario Corporation Number 1770438, that owned the Site from September 7, 1978 to January 25, 2007 under the names of previous amalgamating companies, Lenalex Holdings Limited and Tamlann Investments Limited.

3.4 Dissolved Corporations

Section 242 of the Ontario Business Corporations Act states that despite the dissolution of a corporation a proceeding may be brought against the corporation as if it had not been dissolved and that the service of any process on a corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the records of the Ministry as being a director or officer of the corporation before the dissolution. I understand that case law has held that a dissolved corporation remains capable of taking certain actions after it is dissolved, without first being revived, and does not cease to exist for all purposes upon dissolution.

3.5 Need for Delineation

As indicated in the MECP 2017 TSS Memo and the MECP 2019 TSS Memo there is a need to better understand the environmental impacts that may have been created by the discharge of fuel-related contaminants from the Site to the Residential Neighbourhood. I have determined that the following work should be completed by a Qualified Person(s) to assess the extent of groundwater impacts on and off-Site, and to assess the potential risk of Contaminants of Concern to receptors in the Residential Neighbourhood:

- A. Taking into consideration the MECP 2017 TSS Memo, a delineation work plan must be submitted for work to be conducted on Site and within the Residential Neighbourhood, including but not limited to, the following:
 - i. Installation of monitoring wells to assess the horizontal limits of Contaminants of Concern;
 - ii. Installation of deep monitoring well(s) to assess the vertical limits of Contaminants of Concern;
 - iii. Collection and analysis of soil samples for Contaminants of Concern and collection and description of rock cores;
 - iv. Development and sampling of monitoring wells for Contaminants of Concern;
 - v. Hydraulic conductivity testing of monitoring wells;
 - vi. Assessment of groundwater flow direction; and,
 - vii. Development of a communication strategy, in conjunction with the MECP and the applicable local health unit, for the Residential Neighbourhood.
- B. Following acceptance by the Ministry of the delineation work plan required in paragraph A above, the plan must be undertaken and one report submitted thereon. The report must include, but not limited to, the following:
 - i. Installation details of monitoring wells including borehole logs and photographic logs of soil and rock stratigraphy, where applicable;
 - ii. Description of soil and groundwater sampling methodology including a sampling and analysis plan;
 - iii. Description of soil and groundwater quality including figure(s) describing the interpreted extent of contamination, including exceedance tables where applicable;
 - iv. Description of hydrogeological conditions including a figure with interpreted groundwater flow directions;
 - v. Signature and seal of the Qualified Person; and,
 - vi. Laboratory certificates of analysis.
- C. A work plan outlining the proposed next steps, including any additional data collection required to wholly assess the risk to off-Site receptors must be prepared and submitted. This evaluation must take into consideration the information collected as part of paragraphs A and B above and assess all potential exposure pathways and receptors.

It is the Ministry's expectation that further assessment of the groundwater plume in the Residential Neighbourhood, including further assessment of risk, if identified, and preparation of a monitoring plan and contaminant management plan may be required following completion of the work outlined in this Order.

The MECP 2017 TSS Memo is a broad assessment of recommended work to be completed at the Site and within the Residential Neighbourhood. The delineation requirements above are the first phase of steps to begin to assess the potential risk to downgradient receptors. The following areas discussed in the MECP 2017 TSS Memo are not required, in the work to be carried out in this Order: forensic analysis, conceptual site model, long term groundwater monitoring program and contaminant management plan.

3.6 Director's Opinion

I am of the opinion, on reasonable and probable grounds, that the requirements of this Order are necessary or advisable so as to (a) prevent or reduce the risk of a discharge of a contaminant into the natural environment from the Site, and/or (b) prevent, decrease or eliminate an adverse effect that may result from (i) the discharge of a contaminant from the Site, or (ii) the presence or discharge of a contaminant in, on or under the Site.

Since no property boundary controls have been implemented at the Site, contaminants have migrated off the Site towards the downgradient Residential Neighbourhood during the period of time that the Orderes owned and had management and control of the Site.

Part 4: Work Ordered

For the reasons above, and pursuant to the authority vested in me under subsections 18(1) and 196(1) of the EPA, I hereby order all of the Orderes, jointly and severally, to do the following:

Item No. 1 **Compliance Date** (2020/05/15)

By May 15, 2020, retain the services of one or more Qualified Person(s) to complete the work as described in Section 3.5 above.

Work Type: Submit Report / Confirm Compliance to Ministry

Item No. 2 **Compliance Date** (2020/05/15)

By May 15, 2020, submit to the undersigned Director written confirmation from the Qualified Person(s) that it has, or they have, (1) received a copy of the Order; (2) been retained to carry out work required specified in Section 3.5 above; and (3) the experience and qualifications to carry out such work.

Work Type: Submit Report / Confirm Compliance to Ministry

Item No. 3 **Compliance Date** (2020/06/29)

By June 29, 2020, submit to the undersigned Director an electronic copy of the proposed delineation work plan as described in Section 3.5, paragraph A above.

Work Type: Submit Report / Confirm Compliance to Ministry

Item No. 4 **Compliance Date** (YYYY/MM/DD)

No later than forty-five (45) days after receiving written notice of the approved plan from the undersigned Director, have the retained Qualified Person(s) initiate the delineation work plan and notify, in writing, the undersigned Director of the date of such initiation.

Work Type: Conduct Study - Monitoring or Sampling Program

Item No. 5 **Compliance Date** (YYYY/MM/DD)
Upon completion of the field component of the delineation work plan, notify the undersigned Director in writing.
Work Type: Submit Report / Confirm Compliance to Ministry

Item No. 6 **Compliance Date** (YYYY/MM/DD)
No later than ninety (90) days after completion of the field component of the delineation work plan, submit to the undersigned Director an electronic copy of the delineation work plan report, as described in Section 3.5, paragraph B above.
Work Type: Submit Report / Confirm Compliance to Ministry

Item No. 7 **Compliance Date** (YYYY/MM/DD)
No later than ninety (90) days after completion of the field component of the delineation work plan, submit to the undersigned Director an electronic copy of the proposed next steps work plan that meets the requirements outlined in Section 3.5 paragraph C above.
Work Type: Submit Report / Confirm Compliance to Ministry

Part 5: General

- 5.1 The requirements of this Order are severable. If any requirement of this Order or the application of any requirement to any circumstance is held invalid, such finding does not invalidate or render unenforceable the requirement in other circumstances nor does it invalidate or render unenforceable other requirements of the Order.
- 5.2 Subsection 19(1) of the EPA provides that an order of the Director is binding upon the successor or assignee of the person to whom it is directed.
- 5.3 Subsection 186(2) of the EPA provides that failure to comply with the requirements of this Order constitutes an offence.
- 5.4 Any request to change a requirement in this Order must be made in writing to the Director, with reason(s) for the request, prior to any compliance date for that requirement.
- 5.5 The requirements of this Order are minimum requirements only and do not relieve any to whom this Order is issued from complying with the following:
 - i. any applicable federal legislation,
 - ii. any applicable provincial requirements that are not addressed in this Order, and
 - iii. any applicable municipal law.

- 5.6 Notwithstanding the issuance of this Order, further or other orders may be issued in accordance with legislation as circumstances require. In particular, the Director shall issue an order where the approval of the Director is required in respect of a matter under this Order and,
- i. the Director does not grant approval; or
 - ii. the Director does not grant approval because the changes which the Director considers necessary for granting approval have not been agreed to by any person to whom this Order is issued.
- 5.7 In the event that any person to whom this Order is issued is, in the opinion of the Director, rendered unable to perform or comply with any obligations herein because of:
- i. natural phenomena of an exceptional, inevitable or irresistible nature, or insurrections; or
 - ii. strikes, lockouts or other labour disturbances; or
 - iii. inability to obtain materials or equipment for reasons beyond the control of the person; or
 - iv. any other cause whether similar to or different from the foregoing beyond the reasonable control of the person,
- the obligations hereof, as they are affected by the above shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the person to whom this Order is issued must notify the Director immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the compliance dates in question.
- 5.8 Failure to comply with a requirement of this Order by the date specified does not relieve any person to whom this Order is issued from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.
- 5.9 All documentation submitted to the Director pursuant to the requirements of this Order shall be submitted to:
- Director
Tina Dufresne, District Manager
Halton-Peel District Office
Ministry of the Environment, Conservation and Parks
4145 North Service Road, Suite 300
Burlington ON L7L 6A3
Email: tina.dufresne@ontario.ca

Part 6: Request for Hearing

6.1 You may require a hearing before the Environmental Review Tribunal (Tribunal), if, within fifteen (15) calendar days from the date of service of the Order, you serve written notice of your appeal on the Tribunal and the Director. Your notice must state:

- (a) the portion(s) of the Order in respect of which a hearing is required; and
- (b) the grounds on which you intend to rely at the hearing.

6.2 Except with leave of the Tribunal, you are not entitled to appeal a portion of the Order or to rely on a ground that is not stated in the notice requiring the hearing. Unless stayed by the Tribunal, the Order remains in effect from the date of service.

6.3 Written notice requiring a hearing must be served upon:

The Secretary
Environmental Review Tribunal
655 Bay Street, 15th Floor
Toronto ON
M5G 1E5
Fax: (416) 326-5370
Email: ERTTribunalsecretary@ontario.ca

and
Director
Ministry of the Environment, Conservation
and Parks
4145 North Service Rd. Suite 300
Burlington ON L7L 6A3
Fax: (905) 319-9902
email: tina.dufresne@ontario.ca

Further information on the Tribunal requirements for an appeal can be obtained directly from the Tribunal by:

Tel: (416) 212-6349 or 1-866-448-2248 Fax: (416) 326-5370 or 1-844-213-3470 TTY

1-800-855-1155 via Bell Relay Web: www.elto.gov.on.ca

Service of the documentation referred to above can be made personally, by mail, by fax, by commercial courier or by email in accordance with the legislation under which this Order is made and any corresponding Service Regulation.

Please note that where service is made by mail it is deemed to be made on the fifth day after the date of mailing.

6.4 If you commence an appeal to the Tribunal, you are required under section 47 of the Environmental Bill of Rights, 1993 (EBR), to give notice to the public in the Environmental Registry of Ontario. The notice must include a brief description of this Order (sufficient to identify it) and a brief description of the grounds of appeal. The notice must be delivered to the Minister of the Environment, Conservation and Parks who will place it on the Environmental Registry of Ontario. The notice must be delivered to the Minister of the Environment, Conservation and Parks at 777 Bay St., 5th Floor, Toronto, Ontario M7A 2J3 by the earlier of:

6.4.1 two (2) days after the day on which the appeal was commenced;

6.4.2 fifteen (15) days after service on you of a copy of this Order.

6.5 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.

6.6 For your information, under section 38 of the EBR, any person resident in Ontario with an interest in this Order may seek leave to appeal the Order. Under section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:

6.6.1 fifteen (15) days after the day on which notice of the issuance of this Order is given in the Environmental Registry of Ontario; and

6.6.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the Environmental Registry of Ontario.

The procedures and other information provided above are intended as a guide. The legislation and/or regulations should be consulted for additional details and accurate reference. See e- Laws at www.e-laws.gov.on.ca.