

## Provincial Officer's Order

*Environmental Protection Act*, R.S.O. 1990, c. E.19 (EPA)  
*Nutrient Management Act, 2002*, S.O. 2002, c. 4 (NMA)  
*Ontario Water Resources Act*, R.S.O. 1990, c. O.40 (OWRA)  
*Pesticides Act*, R.S.O. 1990, c. P.11 (PA)  
*Safe Drinking Water Act, 2002*, S.O. 2002, c. 32 (SDWA)

### Order Number

1-66551131

### Order Issued To

1541270 ONTARIO INC.  
238 FENNAMORE TERR , MILTON, ON, L9T 0X7

2418264 ONTARIO INC.  
238 FENNAMORE TERR , MILTON, ON, L9T 0X7

### Site

1129 Highway 5 West, Hamilton, Ontario, L9H 5E2

Refer to the Definitions section in the Provincial Officer's Report, Part B of this Order, for the meaning of all the capitalized terms that are used in this Order.

### PART A - WORK ORDERED

This work is ordered pursuant to my authority under **EPA | 157.1, OWRA | 16.1**, I order you, to do the following:

Item No. 1      **Compliance Date:** 08/25/2021

By August 25, 2021, retain the services of a Qualified Person(s) to complete the following work:

- To contain and clean-up the petroleum hydrocarbon impacted area of the Site;
- To determine the source and extent of the petroleum hydrocarbon product at the Site;
- Steps to return the Site to conditions prior to impact of the petroleum hydrocarbon product

Item No. 2      **Compliance Date:** 08/25/2021

By August 25, 2021, submit to the undersigned Provincial Officer by email at tamara.posadowski@ontario.ca, written confirmation from the Qualified Person(s) that it had, or they have, (1) received a copy of the Order, (2) been retained to carry out the work specified in Work Ordered Item No. 1; and (3) the experience and qualification to carry out the work.

Item No. 3      **Compliance Date:** 08/30/2021

By August 30, 2021, have the retained Qualified Person(s) prepare a written plan on how the work required by Work Ordered Item No. 1 will be completed.

Item No. 4      **Compliance Date:** 08/30/2021

By August 30, 2021, submit to the undersigned Provincial Officer by email at tamara.posadowski@ontario.ca the written plan prepared by the Qualified Person(s) as required in Work Ordered Item No. 3.

Item No. 5      **Compliance Date:** 09/10/2021

By September 10, 2021, submit to the undersigned Provincial Officer by email at tamara.posadowski@ontario.ca a report prepared by the Qualified Person(s) that details the results of the completed plan and if any further work is required at the Site.

## **PART B - PROVINCIAL OFFICER'S REPORT**

This Order is being issued for the reasons set out below.

### **Definitions**

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

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

"Ministry" means the Ontario Ministry of the Environment, Conservation and Parks.

"Order" means this Provincial Officer's Order No. 1-66551131 as it may be amended.

"Orderee" means the corporations listed above in the "Order Issued To" section of this Order.

"OWRA" means the Ontario Water Resources Act, R.S.O. 1990, c. O.40.

"Provincial Officer" means a provincial officer authorized to act pursuant to the EPA or the OWRA.

"Qualified Person" means a person who has obtained the appropriate education and training and has demonstrated experience and expertise in the areas relating to the work required to be carried out in this Order.

"Site" means the property listed above in the Site section on page 1 and further described below.

### **Description of Person(s) Subject to the Order**

1541270 ONTARIO INC. is the corporation that owns the Site.

2418264 ONTARIO INC. is the corporation that owns the business located at the Site.

### **Description of the Site and/or System/Facility**

The Site is located at 1129 Highway 5 West, Hamilton, Ontario, L9H 5E2, and consists of an Esso gas station, a convenience store, an automotive repair shop, a small take-out food vendor, and a mix of asphalt and gravel parking areas.

The legal description of the property is: PT LT 35, CON 3 BEVERLY, AS IN VM225101 ; FLAMBOROUGH CITY OF HAMILTON, being all of PIN 17550-0092 (LT).

Lot Size description: Area: 60,202.49 ft<sup>2</sup> (1.382 ac) Perimeter: 1,000.66 ft; Measurements: 300.59 ft x 200.30 ft x 300.62 ft x 200.39 ft.

The Site was purchased by the current owners in January 2021 and a Phase 2 Site Assessment was also completed.

The Site is bordered by Highway 5 to the south, and by NVK Nurseries property to its north, west and east sides. The impacted irrigation pond on NVK property is located directly west of the Site.

## Events Leading up to Order

- 1 On July 27, 2021, myself and Provincial Officer Jessica Foo attended at NVK Nurseries (herein referred to as "NVK") located at 1155 Highway 5 West, Hamilton, ON L9H 5E2, to follow up on a report of a spill of a petroleum hydrocarbon product to their irrigation pond. NVK had reported the spill to the Spills Action Centre and had the Hamilton Fire Department attend, with spill response contractor Quantum Murray on the way. NVK representatives and the Hamilton Fire Department believe the petroleum hydrocarbon product came from the Site. The irrigation pond was covered in a dark petroleum hydrocarbon product floating on top (suspected to be diesel) and was fed from an inlet pipe from the Highway 5 roadside ditch. The petroleum hydrocarbon product was also in the ditch and led back to the Site, where it was seeping out of a depression in the ground.

We both then met with Pawandeep Gill, who identified himself as the owner of the Site. Pawandeep Gill is a director and officer of the two Orderees associated with the Site. P. Gill advised us that there were no sudden changes in tank volumes and did not believe there are any leaks. P. Gill was told that the petroleum product appeared to be coming from his property and that he was responsible for containing and cleaning up the petroleum product. P. Gill then arranged for Quantum Murray to start cleanup and containment of the petroleum product.

On July 28, 2021 I attended the Site and observed the ditch to be partially excavated with booms in place and an earthen dam to contain the petroleum hydrocarbon product. Quantum Murray had also brought in Agile Response Consulting as a consultant.

On July 29, 2021, I attended the Site and observed the three cell weir containment system with underflow dams that had been installed in the roadside ditch. There was still petroleum product seeping into the ditch but it was contained within the weir system and captured by booms. TSSA arrived at the Site and Inspector Mary Ferrari ordered a Precision Test on the diesel tanks and lines to check for leaks. A water pump was also installed to divert clean stormwater from the ditch around the weir system, to not interrupt water flow and to ensure that the weir system was not flooded.

From July 30 to August 9, 2021, Provincial Officer Jessica Foo monitored the Site while I

was away on vacation.

On July 30, 2021 Provincial Officer Jessica Foo observed the Precision Test completed on the diesel tanks and lines, and no leaks were identified. The petroleum product was still contained to Site, but the source is still unknown. P. Gill agreed to monitor the ditch on an hourly basis to ensure the petroleum product is contained and not migrating off Site. In addition, if there is a rain event, then P. Gill agreed to contact a Qualified Person(s) to assess the containment and determine if additional measures need to be implemented.

On August 10, 2021 I returned from my vacation. I was updated by Provincial Officer Jessica Foo, and I attended the Site on August 11, 2021. Aside from monitoring the containment of petroleum product in the ditch, no further work had occurred at the Site, and it was unclear who the Qualified Person(s) overseeing the work was. To date, the initial release of petroleum product has been contained to the weir system in the roadside ditch. Additional work in determining the source of the petroleum hydrocarbon product and delineating its extent has been met with delays. The issuance of this Preventive Measures Order will ensure the Orderes have a clear understanding of the work that is required.

### **Authority to Issue the Order**

I am issuing this Order under my authority as a Provincial Officer under the following legislation, including the applicable sections providing for consequential authority, namely EPA 196, OWRA 104, and/or SDWA 162:

This Order is issued pursuant to EPA s. 157.1 (1).

I reasonably believe that the requirements specified in this Order are necessary or advisable so as to prevent or reduce the risk of a discharge of a contaminant, namely petroleum hydrocarbon product, into the natural environment from the undertaking or the property.

This Order is also issued pursuant to OWRA s. 16.1 (1).

I reasonably believe that the requirements in this Order are in the public interest in order to prevent a discharge of the petroleum hydrocarbon product into the Highway 5 roadside ditch that ultimately discharges to Spencer Creek, that may impair the quality of water.

### **Attachments**

The attachments listed below form part of this Order:

See attached Site map.

**ISSUING OFFICER**

**Name: Tamara Posadowski**

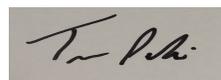
**Badge Number: 1861**

**Address: 119 KING ST W 9TH FLR, HAMILTON, ON, L8P 4Y7**

**Email: tamara.posadowski@ontario.ca**

**Date: 2021/08/20**

**Signature:**



## **REVIEW AND APPEAL INFORMATION**

### **REQUEST FOR REVIEW**

You may request that this Order be reviewed by the Director. Your request must be made in writing or orally with written confirmation. Your written request or written confirmation of your oral request must be served on the Director within 7 days after the date this Order was served on you and must be served on the Director as indicated in the Contact Information below.

In your written request or written confirmation, you must:

- Specify the portions of this Order that you wish to be reviewed.
- Include any submissions to be considered by the Director with respect to issuance of this Order to you or any other person and with respect to the contents of this Order.
- Apply for a stay of this Order, if necessary.
- Provide an address for service by one of the following means, in person, by mail, by commercial courier, by fax, or by email.

In response to your request, the Director may confirm, alter/amend or revoke this Order.

The Director will serve you with a copy (written notice) of the decision to revoke this Order or of an order, a Director's Order, to confirm or alter/amend this Order, together with reasons.

### **DEEMED CONFIRMATION OF THIS ORDER**

If within 7 days of the Director receiving your request for review you do not receive oral or written notice of the Director's decision on your request for review, this Order is considered (deemed) to have been confirmed by order of the Director and deemed to have been served upon you at the expiry of those 7 days.

### **APPEAL INFORMATION (REQUIRE A HEARING)**

- A. If this Order is deemed confirmed as explained above, you may require a hearing by the Ontario Land Tribunal on the deemed confirmed order within 15 days of the deemed service date:
- You must serve written notice of your appeal on the Ontario Land Tribunal and the Director within those 15 days of the deemed service date.
  - Your notice must state the portions of the deemed confirmed order for which a hearing is

required and the grounds on which you intend to rely at the hearing.

- Unless you have permission (leave) of the Ontario Land Tribunal, you are not entitled to appeal a portion of the deemed confirmed order or to rely on grounds of appeal that are not stated in your notice requiring the hearing.
- Unless stayed by the Ontario Land Tribunal, the deemed confirmed order is effective from the deemed service date.
- Written notice requiring a hearing must be served on the Ontario Land Tribunal and the Director as indicated in the Contact Information below.

If this Order is confirmed or altered/amended by the Director by a written order served upon you (as opposed to the deemed confirmation noted above), such Director's Order will include the appropriate instructions for appealing that order to the Ontario Land Tribunal.

## CONTACT INFORMATION

The contact information for the Director and the Ontario Land Tribunal is the following:

Registrar  
Ontario Land Tribunal  
655 BAY STREET, 15<sup>th</sup> FLOOR  
TORONTO, ON M5G 1E5  
OLT.Registrar@ontario.ca

Director (Provincial Officer's Orders)  
Ministry of the Environment, Conservation and Parks  
Hamilton District Office  
119 KING ST W, 9TH FLR  
HAMILTON, ON L8P 4Y7  
Email: MOECC.Hamilton@ontario.ca  
Fax: (905) 521-7820

The contact information of the Ontario Land Tribunal and further information regarding its appeal requirements can be obtained directly from the Tribunal at:

Tel: (416) 212-6349 Toll Free 1 (866) 448-2248 [www.olt.gov.on.ca](http://www.olt.gov.on.ca)

## SERVICE INFORMATION

Service of the documentation referred to above can be made personally, by mail, by fax (in the case of the Director only), 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 and choosing service by mail does not extend any of the above-mentioned timelines.

### ADDITIONAL INFORMATION

Unless stayed by the Director or the Ontario Land Tribunal, this Order is effective from the date of service.

Failure to comply with a requirement of this Order constitutes an offence.

The requirements of this Order are minimum requirements only and do not relieve you from complying with the following:

- any applicable federal legislation;
- any applicable provincial requirements that are not addressed in this Order; and
- any applicable municipal law.

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 the other requirements of this Order.

Further orders may be issued in accordance with the legislation as circumstances require.

**The procedures to request a review by the Director or require a hearing and other information provided above are intended as a guide. The legislation should be consulted for additional details and accurate reference. Further information can be obtained from e-Laws at [www.ontario.ca/laws](http://www.ontario.ca/laws).**