

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **UNDERGROUND STORAGE  
TANK ENFORCEMENT**

**BEARD SAND AND GRAVEL** : **JUNE 25, 2008**

**FINAL DECISION**

**JURISDICTION**

Subdivision (2) of §22a-449(g) provides:

“Not later than two business days after placing a notice or disabling device on a nonresidential underground storage tank system pursuant to subdivision (1) of this subsection, the commissioner shall provide the owner or operator of the affected underground storage tank system with an opportunity for a hearing. Any such hearing shall be limited to whether the violation upon which the commissioner took action under subdivision (1) of this subsection occurred and whether such violation is continuing.”

**FINDINGS OF FACT**

1. This hearing was held on June 25, 2008 in the DEP Welch Room, 79 Elm Street in Hartford. The following persons were present and sworn: James Beard for Beard Sand and Gravel (facility); and Lori Saliby and Robert Shuler (staff) for the DEP Storage Tank Enforcement Unit.
2. The Department disabled (“red tagged”) two underground fuel storage tanks at the facility on June 23, 2008. The red-tagged tanks include one, 3000-gallon gasoline tank and one, 10,000-gallon diesel fuel tank. DEP staff served a “Notice of Disabled UST Systems” on Mr. Beard, and he accepted service on behalf of the facility. General Statutes §22a-449(g). This Notice, which included the date, time and place of the hearing, was placed into evidence, along with a copy of the

facility summary information on file with the DEP, the Department's UST Inspection Checklist, the UST Compliance Evaluation, and several photos of the facility. (Test. DEP staff.)<sup>1</sup>

3. The DEP conducted an unannounced compliance inspection on June 23, 2008. The tanks were found to lack an automatic tank gauging (ATG) system to monitor for leakage or other problems, the facility's inventory reconciliation did not comply with regulations, and there was no three-year tightness test for the piping. The facility does not contest that these violations occurred and are continuing and that it is out of compliance with relevant regulations. Regs., Conn. State Agencies §§22a-449(d)-1; 22a-449(d)-101 through 22a-449(d)-113. (Test. DEP staff; test. J. Beard; Notice of Disabled UST Systems; UST Inspection Checklist; UST Compliance Evaluation)
4. Most of the product remaining in the tanks has been pumped out of the tanks. The remaining product will be pumped out in a time period that is satisfactory to DEP. The facility intends to connect both tanks to an ATG system and has contacted Northeast Tank Services to evaluate the system and provide a quote for the installation of equipment necessary to bring the facility into compliance. Mr. Beard will remain in contact with Mr. Shuler regarding the final pump-out of the tanks and the timeframe for installation of the ATG system and other necessary equipment. (Test. DEP staff; test. J. Beard.)

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<sup>1</sup> All references to testimony are from the hearing held on June 25, 2008 at DEP Headquarters in Hartford. The recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

***CONCLUSION***

There was probable cause to support and sustain this enforcement action taken by the DEP with regard to the two disabled tanks owned and operated by Beard Sand and Gravel.

/s/ Kenneth M. Collette  
Kenneth M. Collette, Hearing Officer

**APPENDIX A**  
**PARTY LIST**

***FINAL DECISION***  
***In the Matter of Beard Sand and Gravel***

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**PARTY**

**REPRESENTED BY**

Beard Sand and Gravel  
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James Beard

**Department of Environmental Protection**

UST Enforcement  
79 Elm Street  
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Lori Saliby  
Robert Shuler