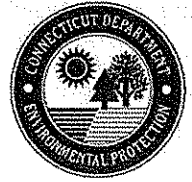


# STATE OF CONNECTICUT

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION  
79 ELM STREET HARTFORD, CT 06106-5127



## ENVIRONMENTAL PROTECTION OFFICE OF ADJUDICATIONS

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

*CHATTERTON MARINA* : *JULY 27, 2011*  
*Facility ID No. 91-6081*

### 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.”

#### *PROCEDURAL BACKGROUND*

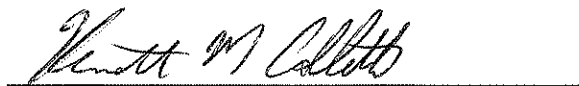
A hearing was held on July 27, 2011 in the Welch Room, 79 Elm Street in Hartford. The following persons were present: Philip Wilde, George Purple, and John Hirschfeld (staff) for the Department of Energy and Environmental Protection (DEEP) Storage Tank Enforcement Unit; no representative of Chatterton Marina (the respondent) appeared. DEEP offered two exhibits: the Notice of Disabled UST Systems (DEP-1) and the UST Compliance Inspection Checklist (DEP-2). These documents are admitted into evidence.

### *FINDINGS OF FACT*

1. On July 25, 2011, the Department disabled ("red tagged") the underground fuel storage tank and associated dispenser at the respondent's facility located at 5 Shore Road in New Milford (the facility). The notice was signed and accepted by Philip Kraska and included a notice of the time and date for the hearing. The notice of disabled UST system was placed due to the facility's lack of acceptable release detection and spill containment equipment. Those conditions were observed during an unannounced compliance inspection conducted by John Hirschfeld on July 19, 2011 and during a follow-up inspection conducted by George Purple on July 25, 2011 at which time the red tags were placed on the UST system. The violations precipitating the red tags have not yet been resolved and continue. (Exs. DEP-1, 2; test. P. Wilde, G. Purple, 7/27/11.)
2. The respondent has contacted a consultant and is actively discussing a compliance plan with staff. The fate of the remaining product in the tank will be determined as part of the compliance plan. (Test. G. Purple, 7/27/11.)

### *CONCLUSION*

There was probable cause to support and sustain the enforcement action taken on July 25, 2011 by the DEP with regard to the UST System at the facility. The testimony and documentary evidence provided by DEP staff confirm that the violations occurred and continue. The respondent failed to appear at the hearing despite being provided with adequate notice and an opportunity to reschedule the hearing as necessary. Based on its failure to appear, the respondent has fourteen (14) days to request a reopening of the hearing. This request must demonstrate a compelling reason for the failure to appear. Regs., Conn. State Agencies §22a-3a-6(u). Otherwise, this decision will become final as of August 11, 2011. The red tags will continue in effect as long as the violations continue.



Kenneth M. Collette, Hearing Officer

*APPENDIX A*

Service List

*FINAL DECISION*

In the Matter of Chatterton Marina

---

PARTY

Philip Kraska  
Chatterton Marina  
5 Shore Drive  
New Milford, CT 06812

REPRESENTED BY

No representative appeared

Department of Environmental Protection

UST Enforcement  
79 Elm Street  
Hartford, CT 06106

Philip Wilde  
George Purple  
John Hirschfeld