

Office of Adjudications

IN THE MATTER OF : ***ORDER NO. AOWSUST 11-001***

DRAKE PETROLEUM CO., INC. : ***JUNE 6, 2012***


FINAL DECISION

This hearing resulted from a unilateral order issued by the Department of Energy and Environmental Protection¹ (DEEP/department) to the respondent, Drake Petroleum (Drake) on January 11, 2011. Drake appealed the order and Hammonasset Holdings, LLC (Hammonasset Holdings) petitioned for and was granted intervening party status. During the course of the prehearing process, Drake and DEEP proposed to enter into a consent order to resolve the appeal of the unilateral order. As an intervening party, Hammonasset Holdings objected to the proposed consent order on the grounds that it would cause or is reasonably likely to cause unreasonable impairment, pollution, or destruction of the air, water, or other natural resources of the state. General Statutes § 22a-19. A hearing was held on the objection to the proposed consent order and post-hearing briefs were filed after the collection of evidence. Regs., Conn. State Agencies § 22a-3a-6(1)(2)(B).

The parties have reached a settlement in this matter. As result of this settlement, Hammonasset Holdings, through its counsel, has withdrawn as an intervening party. Drake and DEEP staff have indicated their concurrence with the proposed consent order (Attachment A) and request that I adopt it as my final decision. As Hammonasset Holdings is no longer an intervening party in this matter, there is no other party to lodge an objection to the proposed consent order.

¹ At the time the order was issued, the department was still called the Department of Environmental Protection. For consistency and ease of reference, the department will be referred to as the existing Department of Energy and Environmental Protection throughout this decision.

The department's Rules of Practice indicate that I must review the proposed consent order and either accept the proposed consent order and adopt it as my decision or reject it and continue with the proceeding. §22a-3a-6(1)(2)(B). I have thoroughly reviewed the proposed consent order. It requires Drake to remediate the petroleum contamination caused by a release or releases at its retail petroleum facility in Westbrook in accordance with applicable regulatory criteria and a DEEP-approved remediation plan, including any contamination that has migrated off-site. Therefore, I accept the proposed consent order and adopt it as my final decision in this matter. The proposed consent order shall be finalized, promptly executed by the parties, and issued as a final order of the Commissioner.



Kenneth M. Collette
Kenneth M. Collette, Hearing Officer

SERVICE LIST

In re Drake Petroleum Company, Inc.
Order #AOWSUST 11-001
(130 Boston Post Road, Westbrook, CT)

PARTY

Drake Petroleum Company, Inc.
221 Quinebaug Road
North Grosvenordale, CT 06255

DEEP
Emergency Response & Spill Prevention
79 Elm Street
Hartford, CT 06106

Hammonasset Holdings, , LLC

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STATE OF CONNECTICUT

DRAKE PETROLEUM COMPANY, INC.

ORDER NO. COWSUST 11-002

DATE ISSUED:

PROPOSED CONSENT ORDER

A. The Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. Drake Petroleum Company, Inc. ("Respondent Drake") is a Massachusetts corporation registered in the State of Connecticut.

2. Respondent Drake has a business address of 221 Quinnebaug Road, North Grosvenordale, Connecticut 06255.

3. Respondent Drake is the owner of 130 Boston Post Road, Westbrook, Connecticut, taking title to the property on October 27, 2010 ("the Westbrook Site"). Such property is further described in a deed dated October 27, 2010 and recorded October 28, 2010 at volume 305, Pages 116-118 of the Westbrook land records.

4. Respondent Drake is the owner and/or operator of a gasoline underground storage tank facility located at the Westbrook Site.

5. Respondent Drake has operated a retail gasoline service station and convenience store at the Westbrook site since at least 1992.

6. Respondent Drake owns and operates a service station at the Westbrook site that consists of three 8,000 gallon capacity gasoline underground storage tanks (USTs), one of which is divided into two 4,000 gallon capacity compartments containing gasoline in one compartment and diesel fuel in another. This UST system and associated connected piping were installed at some time in May 1992, with the piping upgraded by Drake in 2008.

7. Respondent Drake, as an owner and/or operator of the UST system at the Westbrook site must comply with the Regulations of Connecticut State Agencies (RCSA) Sections 22a-449(d)-1 et seq. governing the management of the UST systems and the Remediation Standard Regulations, Sections 22a-133k-1 et seq. (collectively, the Regulations).

8. The soil and groundwater at the Westbrook site has been and is polluted with petroleum constituents, including but not limited to benzene.



9. Respondent Drake has created a condition which has resulted in a source of pollution to the waters of the state, which pollution has been undergoing remediation and which will continue to be remediated in accordance with this Consent Order.
10. Respondent Drake is responsible for the pollution and the clean-up associated with the pollution at the site and emanating from the site.
11. Respondent Drake installed certain components for a Soil Vapor Extraction and Air Sparge (SVE/AS) remediation system on the Westbrook site in 2003.
12. Respondent Drake has been conducting natural attenuation and groundwater monitoring at the site since at least 2004.
13. Respondent Drake has been submitting quarterly groundwater monitoring reports to DEEP.
14. Respondent Drake submitted a Phase III Investigation Report to the predecessor of DEEP on April 7, 2009.
15. Respondent Drake submitted a Remedial Action Plan (RAP) to the DEP on November 12, 2009.
16. Respondent Drake submitted a RAP addendum to the DEEP on February 15, 2010 ("First RAP Addendum").
17. The First RAP Addendum was approved by the DEEP on February 24, 2010.
18. Respondent Drake submitted a second RAP addendum to the DEEP on June 18, 2010 ("Second RAP Addendum").
19. The Second RAP addendum supersedes the RAP and the First RAP addendum and the Second RAP Addendum was verbally approved by the DEEP on May 7, 2010.
20. Pursuant to the Second RAP Addendum, Drake modified the SVE/AS remediation components on the Westbrook site in July and August 2010 and initiated the SVE/AS system on August 31, 2010 and Drake has been operating the SVE/AS system as set forth in the Second RAP Addendum since the installation of the modifications.
21. Respondent Drake currently retains Environmental Compliance Services, Inc. ("ECS") as its environmental consultant to oversee and manage the remediation activities at the Westbrook site.
22. Certain pollution at the Westbrook site has migrated offsite.
23. Respondent Drake is responsible for remediating any pollution on its property, preventing pollution from migrating off its property and remediating pollution that has migrated offsite.

24. Based on the information provided to DEEP by ECS, the operation of the SVE/AS system shows a trend that the pollution at the Westbrook site is declining.

25. On January 21, 2011, the Commissioner issued Order No. AOWSUST 11-001 to Drake regarding the pollution at the Westbrook site.

26. Drake appealed the issuance of the order and a contested case proceeding commenced.

B. Without making any admission of fact or law with respect to any findings of the Commissioner set forth in (A) above or any matter asserted herein, and specifically denying such findings of fact and all such conclusions of law set forth herein, Drake agrees for purposes of settlement to investigate and remediate pollution in and emanating from the Westbrook Site in accordance with this Consent Order. Therefore, with the agreement of Drake, the Commissioner, acting under sections 22a-6, 22a-424, 22a-432 and 22a-449 of the Connecticut General Statutes, orders Respondent Drake, consistent with the applicable statutes and regulatory scheme applicable to the pollution at the Westbrook site, as follows:

1. Respondent Drake shall retain one or more qualified consultants acceptable to the Commissioner until this Consent Order is fully complied with. Drake has retained Environmental Compliance Services, Inc. (ECS) which is a consultant acceptable to the Commissioner and, within ten days after retaining any consultant other than ECS, Respondent Drake shall notify the Commissioner in writing of the identity of such other consultant. The consultant(s) retained to prepare the documents and implement or oversee the actions required by this Consent Order shall be qualified environmental professionals licensed to practice in Connecticut. Respondent Drake shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this order within ten days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable environmental consultant unacceptable.

2. Performance of the Second RAP Addendum (a) The approval of the Second RAP Addendum is affirmed by the Commissioner. Respondent Drake shall perform the approved remedial actions set forth in the Second RAP Addendum, in accordance with the approved schedule(s) Drake may submit another schedule, that shall include justification why a new schedule is necessary, for review and approval by the DEEP. The revised schedule may be implemented by Drake unless DEEP disapproves the schedule within 60 days from the date of submission.

(b) Except for the scheduled quarterly monitoring events and any ordinary maintenance and repair that require the systems to be shut down, Respondent Drake agrees to implement the Second RAP Addendum continuously. If both components of the remedial system operation are not operating for any reason other than for monitoring or ordinary maintenance and repair, Respondent Drake shall notify the Commissioner within 24 hours of discovering that both components of the system are not operating and inform the Commissioner of the efforts that will be made by Respondent Drake to get the full system operational and the system shall be operational not later than five (5) business days from the notice to the DEEP unless Respondent

Drake sets forth in writing the reasons why additional time is needed. However, if half the system remains inoperable for longer than five (5) consecutive days then Respondent Drake shall notify the Commissioner of the efforts that will be made by Respondent Drake to get the full system operational and the system shall be operational not later than five (5) business days from the notice to the DEEP unless Respondent Drake sets forth in writing the reasons why additional time is needed.

3. Monitoring. The Respondent Drake shall perform the approved monitoring program to determine the effectiveness of the remedial actions in accordance with the Second RAP Addendum and approved schedule(s), unless notice of another schedule is provided in writing by Respondent Drake to DEEP in accordance with paragraph 2(a). The Respondent Drake shall notify the Commissioner of the date and time of each soil or water sampling event at least five (5) business days before such event.

4. Supplemental Plan (a) At this time, no further remedial actions are required to remediate the pollution in accordance with the Regulations except those set forth in the Second RAP Addendum. If the approved remedial actions do not result in prevention and abatement of soil, surface water and ground water pollution to the satisfaction of the Commissioner, additional remedial actions and measures for monitoring and reporting on the effectiveness of those actions shall be performed in accordance with a supplemental plan and schedule prepared by the Respondent Drake and approved in writing by the Commissioner. Any supplemental remedial system selected by Respondent Drake shall demonstrate that the supplemental system will enhance the remedial actions approved in the Second RAP Addendum. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted for the Commissioner's review and written approval on or before thirty (30) days after the notice from the Commissioner that they are required.

(b) To the extent that the monitoring program approved in section 3 above or a supplemental plan requires access to properties offsite, the Commissioner acknowledges that the implementation of the monitoring program or supplemental plan is dependent upon access to properties offsite granted by the property owner. Drake shall make all reasonable efforts to maintain or obtain sufficient access to offsite properties that are impacted by pollution that emanated from the site and the operation of the UST system. Should Drake be denied reasonable and sufficient access to an offsite property, Respondent Drake shall notify the Commissioner within 24 hours and request that performance be excused at that offsite property until such access is provided.

5. Monitoring Program Report On a quarterly basis beginning no later than ninety (90) days after each quarterly groundwater monitoring event, the Respondent Drake shall submit to the Commissioner a report describing the results to date of the Second RAP Addendum remediation and monitoring program.

6. Acknowledgements regarding the Underground Storage Petroleum Cleanup Fund program. Notwithstanding any obligation agreed to by Drake in this Consent Order, the Commissioner and Drake acknowledge that this Consent Order has no affect on any and all

applications submitted by Drake to the Underground Storage Petroleum Cleanup Program established pursuant to Section 22a-449a et. seq., of the Connecticut General Statutes ("UST Program") relating to the Westbrook site and all such applications pending or to be filed are unaffected by this Agreement. Nothing in this Agreement shall be interpreted or understood to preclude Drake from preparing, submitting or recovering any of its costs for the work performed pursuant to the RAP or the Second RAP Addendum from the UST Petroleum Clean-Up Fund Review Board (the "Review Board").

7. Full compliance. Respondent Drake shall be considered in full compliance with this Consent Order when all actions required by this Consent Order have been completed pursuant to RCSA Sections 22a-449(d)-1 et seq. and 22a-133k-1 et seq. as approved and to the satisfaction of the Commissioner.

8. Approvals. Respondent Drake shall use best efforts to submit to the Commissioner all documents required by this Consent Order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent Drake shall correct the deficiencies and resubmit it within a reasonable time specified by the Commissioner or, if no time is specified by the Commissioner, within thirty (30) days of the Commissioner's notice of deficiencies. Nothing in this Paragraph shall excuse noncompliance or delay.

9. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of Department of Energy & Environmental Protection or an agent of the Commissioner. The date of "issuance" of this Order is the date the executed Consent Order by the Commissioner. "Underground storage tank system" shall be defined as that term is defined in RCSA subdivision 22a-449(d)-101(d)(63). "Petroleum" shall be defined as that term is defined in RCSA subparagraph 22a-449(d)-101(d)(48)(b) and shall include all of the items included as a "Regulated substance" in RCSA subdivision 22a-449(d)-101(d)(48).

10. Dates. The date of submission to the Commissioner of any document required by this Consent Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Consent Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. Mail, or is personally delivered, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Consent Order means calendar day. Any document or action which is required by this Consent Order to be submitted or performed by a date which falls on a Saturday, Sunday, or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

11. Notification of noncompliance. In the event that Respondent Drake becomes aware that they did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, Respondent Drake shall immediately

notify the Commissioner and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, Respondent Drake shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent Drake shall comply with any dates, which may be approved in writing by the Commissioner. Notification by Respondent Drake shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

14. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by Respondent Drake, as those terms are defined in RCSA Section 22a-430-3(b) and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."

15. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense under CGS Sections 22a-438 or 22a-131a, or, in accordance with CGS Section 22a-6, under CGS Section 53a-157.

16. Notice of transfer; liability of Respondent and others. Until Respondent Drake has fully complied with this Consent Order, Respondent Drake shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the operations which are the subject of this Consent Order, the site, or the business, or after obtaining a new mailing or location address. Respondent Drake's obligations under this Consent Order shall not be affected by the passage of title to any other person or municipality unless such transfer of obligations under this Consent Order is approved in writing by the Commissioner. Any future owner of the site may be subject to the issuance of an order from the Commissioner.

17. Commissioner's powers. This Consent Order resolves all allegations made in Order No. AOWSUST 11-001. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate other violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for violations of law, including but not limited to violations of any permit issued by the Commissioner. The Commissioner has the power to institute any proceeding to enforce the terms of this Consent Order. Notwithstanding any other provision of this consent order, if at any time the Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not fully characterized the extent and degree of pollution or have not successfully



abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate pollution.

18. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent Drake of other obligations under applicable federal, state and local law.

19. No assurance by Commissioner. No provision of this Consent Order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent Drake pursuant to this Consent Order will result in compliance or prevent or abate pollution.

20. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.


21. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondent Drake becomes aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent Drake shall submit the correct or omitted information to the Commissioner.

22. Submission of documents. Any document or notice to the Commissioner under this Consent Order shall, unless otherwise specified in writing by the Commissioner, be directed to:

Philip G. Wilde
Department of Energy & Environmental Protection
Emergency Response and Spill Prevention Division
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that Jeffrey A Walker is fully authorized to enter into this Consent Order and to legally bind Respondent Drake Petroleum Company, Inc. to the terms and conditions of the Consent Order.

Respondent Drake Petroleum Company, Inc.

BY: 
Jeffrey A Walker, Secretary, Vice President

DATE August 16, 2011

ORDER NO. _____

Issued as a final order of the Commissioner of Environmental Protection.

BY: _____
Commissioner

DATE: _____

A handwritten signature in black ink, appearing to be the initials 'JR' or similar, located below the date line.