





Accordingly, the underlying proceeding and this Final Decision are limited by statute to resolving only the questions of whether: 1) the violations precipitating action by the Department occurred, and 2) whether those violations remain ongoing.

### **III. PROCEDURAL BACKGROUND**

The hearing in this matter was held on November 8, 2023<sup>1</sup> via the Zoom teleconferencing platform.<sup>2</sup> The following persons were present: Attorney Brendan Schain, Attorney Sarah Solarz, and Lori Saliby for the Department and Attorney John Kennelly and Nural Alam (“Owner”) on behalf of the Respondent, Food Land, LLC (Site ID #17-553). The Department offered 15 proposed exhibits: documentation of DEEP inspections and enforcement against Site ID #17-553 spanning 2015 to the present (Exhibits DEEP-1 through DEEP-10; DEEP-15); the Commissioner of DEEP’s June 22, 2016 approval of Alternative Life Expectancy for Certain Underground Storage Tanks (DEEP-12); other documentation pertaining to the underground storage tanks at the site (DEEP-11; DEEP-13) and the Pre-Filed Testimony of Lori Saliby (DEEP-14). The Respondent offered 12 proposed exhibits: records of underground storage tank testing performed at the site (RESP-1 through RESP-11) and a City of Bristol Property Listing Report identifying Food Land, LLC as the owner of the site (RESP-12). With the exception of proposed exhibits DEEP-1 through DEEP-4, all of the proffered documents were admitted into evidence either by stipulation among the parties or evidentiary rulings of the Hearing Officer. Following the close of the evidentiary record, the

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<sup>1</sup> The initial opportunity for a hearing on this matter was provided to the Respondent on September 11, 2023, at which time the Respondent purported to waive his right to a hearing and enter discussions with Department staff for the purpose of developing a compliance plan that would resolve the violations of law associated with the underlying site. Ultimately, such discussions ended without any agreement between the parties. On September 26, 2023, the Respondent filed with the Office of Adjudications a Request for Hearing, arguing that he did not understand that he had waived his initial right to a hearing. The Department objected on October 2, 2023 and the Request for Hearing was subsequently denied on October 3, 2023. The Respondent thereafter filed a Petition for Reconsideration on October 17, 2023 to which the Department responded on October 24, 2023, indicating its willingness to appear at a hearing, but without waiving its prior objection, as a means of expediting resolution of the present matter. Accordingly, notice of the November 8, 2023 hearing was provided to the parties on October 25, 2023 and the parties filed their proposed exhibits and witnesses with this Office on November 6, 2023.

<sup>2</sup> A recording of this hearing is on file with the Office of Adjudications and serves as the official record of this proceeding. All references herein to testimony and rulings from the Hearing Officer are from the hearing held on November 8, 2023 via Zoom.



Respondent requested the opportunity to submit post-hearing briefs, which request was granted and the parties subsequently filed post-hearing briefs on November 20, 2023.

#### **IV. FINDINGS OF FACT**

1. The Respondent, Food Land, LLC, is the owner of the facility identified as Site ID #17-553 and located at 44 South Street, Bristol, Connecticut, 06010. Ex. DEEP-10; Testimony of N. Alam (Tr. at 1:46) (Nov. 8, 2023). The Respondent has owned the site since August 7, 2018. Ex. RESP-12.

2. The USTs at Site ID #17-553 consist of three single-walled fiberglass reinforced plastic tanks that were installed on May 1, 1989. Ex. DEEP-14. The standard 30-year life expectancy for these USTs would have been reached on May 1, 2019. *Id.*

3. Pursuant, however, to the Commissioner’s June 22, 2016 “Alternate Life Expectancy for Certain Underground Storage Tanks,” UST systems, such as those located at the Respondent’s facility, may remain in service an additional 10 years beyond the default 30-year life expectancy so long as certain conditions and eligibility criteria are met and adhered to, namely that such UST systems remain in significant operational compliance. Ex. DEEP-12.

4. “Significant operational compliance” constitutes a scenario where all UST systems are operating properly, the Owner/Operator has performed all requisite testing and inspections, and all other financial responsibilities and regulatory requirements have been adhered to. Testimony of L. Saliby (Tr. at 1:35) (Nov. 8, 2023).

5. An Owner/Operator’s failure to adhere to any of the conditions, terms, or criteria of the Alternate Life Expectancy may result in the life expectancy of a UST reverting back to the standard 30-year life expectancy as set forth in Regs., Conn State Agencies § 22a-449(d)-111(c). Exs. DEEP-12 (Section C.2).

6. On April 10, 2019, the Respondent filed with the Department a “Notice of Alternate Life Expectancy for Underground Storage Tanks” which conditionally extended the life expectancy of the Respondent’s



UST systems until May 1, 2029 pursuant to the requirements set forth in the Commissioner’s June 22, 2016 “Alternate Life Expectancy of Underground Storage Tanks.” Ex. DEEP-13. The Respondent’s certification of the Notice included the Respondent’s acceptance of the terms and conditions necessary to maintain the Alternate Life Expectancy, including that any failure to comply with any term, condition, or criteria of the Alternate Life Expectancy may result in its reversion to the UST systems’ original life expectancy. Ex. DEEP-13.

7. Department staff conducted a field inspection of the Respondent’s UST systems at Site ID #17-553 on September 6, 2023. Ex. DEEP-8.

8. The Department’s inspection identified multiple ongoing violations of applicable regulatory requirements and the UST systems were accordingly “red tagged” and the Respondent was issued a Notice of Disabled UST Systems and Notice of Violation (NOVUST-MC223-0141) on September 6, 2023. Exs. DEEP-9; DEEP-10; DEEP-11.

9. Specifically, the UST systems are not in significant operational compliance because:

- a. Three of the UST systems’ spill containment devices were not maintained in good working order as required by Regs., Conn. State Agencies § 22a-449(d)-103(a)(1). Exs. DEEP-8; DEEP-10; DEEP-15.
- b. The Respondent did not conduct compliant automatic tank gauge and inventory reconciliation testing indicating that the UST systems were subject to a 0.2 gallon per hour leak detection test and that each UST system passed such a test, as required by Regs., Conn. State Agencies § 22a-449(d)-104(a)(1)(A). Testimony of L. Saliby (Tr. at 56:24-57:03) (Nov. 8, 2023); Exs. RESP-4 through RESP-11 (indicating absence of compliant testing results).
- c. There was no evidence that the Respondent conducted a line leak test every six months, as is required of UST systems operating under Alternate Life Expectancy. Ex. DEEP-12 (Section B.1).
- d. There was no evidence that the Respondent conducted an annual tank tightness test for the years 2020 and 2022 as is required of single-walled tanks operating under Alternate Life Expectancy. Ex. DEEP-12 (Section B); Testimony of L. Saliby (Tr. at 50:00-50:20) (Nov. 8, 2023). The Respondent did conduct annual tank tightness testing for the years 2021 and 2023. Exs. RESP-2; RESP-3.

10. The Respondent acknowledged that violations occurred at Site ID #17-553 and the Respondent’s testimony at the hearing indicated that the violations remain ongoing. Testimony of N. Alam (Tr. at 1:57:40-1:58:43; 1:59:36-1:59:48; 2:02:11-2:02:21; 2:02:34-2:02:54) (Nov. 8, 2023).



11. Given these violations and the resultant failure to maintain significant operational compliance during the period of time in which Alternate Life Expectancy was claimed by the Respondent, the 30-year life expectancy for the USTs at Site ID #17-553 therefore reverted back to May 1, 2019, consistent with Section C.2 of the Commissioner’s June 22, 2016 “Alternate Life Expectancy for Certain Underground Storage Tanks.” Ex. DEEP-12.

12. The reversion of the Alternate Life Expectancy due to failure to maintain significant operational compliance served as one of the grounds for the Department’s placement of disabling devices on the Respondent’s UST systems. Exs. DEEP-8; DEEP-10.

9. Accordingly, the Respondent’s UST systems at Site ID #17-553 remained in operation beyond their 30-year operation and were not permanently closed, through removal or proper in-place abandonment, in violation of Regs., Conn. State Agencies § 22a-449-110(c). This violation served as a basis for the Department staff’s disabling of the UST systems and the violation has not yet been resolved and is currently continuing. Exs. DEEP-8; DEEP-10; DEEP-14.

## **V. CONCLUSION**

Based on the above Findings of Fact, there was probable cause to support and sustain the enforcement action taken by Department staff on September 6, 2023 with regard to the UST systems at Site ID #17-553. The testimony and documentary evidence provided by the Department demonstrate and confirm that the violations in question occurred and are continuing at this time. *See* General Statutes § 22a-449(g)(2). Given the Respondent’s failure to maintain significant operational compliance, the Alternate Life Expectancy reverted back to the standard 30-year term, which was reached on May 1, 2019. Accordingly, the red tagged UST systems have exceeded their life expectancy established by Regs., Conn. State Agencies § 22a-449(d)-110(c). The red tags shall therefore remain in place and in effect so long as the violation continues, and the UST systems shall be permanently closed. *See* General Statutes § 22a-449(g)(3).



**Connecticut**  
Department of Energy &  
Environmental Protection

*/s/ Andrew W. Minikowski*

Andrew W. Minikowski, Esq.  
Hearing Officer

Dated: November 28, 2023

cc: Service List



**SERVICE LIST**

***In the Matter of Food Land, LLC – Final Decision (Site ID #17-553)***

**SERVICE VIA ELECTRONIC MAIL**

***November 28, 2023***

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