

STATE OF CONNECTICUT

v.

Sterling Property LLC

:
:
:

CONSENT ORDER No. [2019003DEEP](#)

Date of Issuance:

A. With the agreement of Sterling Property LLC (“Respondent”), the Commissioner of Energy and Environmental Protection (“the Commissioner”) finds:

1. The Respondent is a Delaware limited liability company currently registered to do business in Connecticut. The Respondent’s business address is One Rockefeller Plaza, 10th Floor, New York, NY, 10020 and its mailing address is 27 Stillman Road, Glen Cove, New York, 11542.
2. On or about July 15, 2019, the Respondent purchased the assets of Empireco Limited Partnership. Those assets include a parcel of real property located at 10 Exeter Drive, in Sterling, Connecticut (“the Site”). The Respondent is now the owner of the Site.
3. A facility formerly used for producing electricity from discarded tires and other fuel sources (“the Facility”) is located on the Site now owned by the Respondent. On or about October 2013, years before its purchase by the Respondent, the Facility suspended operations and has not operated since.
4. Despite the cessation of operations, the Facility is not closed and remains subject to a number of environmental requirements, including, but not limited to, requirements regarding wastewater discharges, management of stormwater, maintenance of a dam and closure of areas, including ancillary equipment that came in contact with hazardous waste and solid waste. (As required by Conn. Gen. Stat. § 22a-6o, within thirty days of the Respondent’s acquisition of the Site, the following licenses will be transferred to the Respondent: NPDES Wastewater Discharge Permit No. CT0026972; Solid Waste Facility Permit to Construct #1360133, and Solid Waste Facility Permits to Operate #1360203 and #136-IRR. The Respondent will also need to file a new registration for the dam located on the Site). In addition, the Commissioner has issued three administrative orders to the prior owner/operators of the Site. The findings in Modified Consent Order No. CO WR

IN 14001 and Consent Order No. 1272 are hereby incorporated by reference into and made a part of this Consent Order.

5. Among other permits, the former operators of the Facility were issued the following Solid Waste Permits: Solid Waste Facility Permit to Construct #1360133, and Solid Waste Facility Permits to Operate #1360203 and #136-IRR. While the Facility is no longer operating, it has not been closed as required by these permits and Conn. Agencies Regs. § 22a-209-13.
 6. On or about October 1997, the former operators of the Facility submitted a notification to the Department of Energy and Environmental Protection indicating that 1000 kilograms or more of hazardous waste, or one (1) kilogram or more of acute hazardous waste, per month was generated at the Facility. Similar to the areas used for managing solid waste, the areas used for accumulating and managing hazardous waste have not been properly closed as required by the Connecticut Hazardous Waste Management Regulations § 22a-449(c)-100 through 119.
 7. The Respondent acknowledges and agrees that the Facility, as purchased by the Respondent, is not closed and remains subject to a number of environmental requirements.
 8. In addition to the above, there is a Hazard Class B or Significant Hazard dam on the Site. This dam must comply with and be maintained in compliance with applicable requirements and the Respondent is the certifying party under the Conn. Gen. Stat. 22a-134 et seq. ("the Transfer Act") and as such is required to comply with all applicable requirements of that Act.
- B. With the agreement of Respondent, the Commissioner, acting under Sections 22a-6, 22a-208, 22a-225, 22a-424, 22a-425, 22a-427, 22a-430, 22a-432 and 22a-438 of the Connecticut General Statutes, orders Respondent to comply with the following:
1. Consultant Retention. Respondent has retained TRC Environmental Corporation to prepare the documents and implement or oversee the actions required by this Consent Order. Respondent shall continue to retain one or more qualified consultants acceptable to the Commissioner until full compliance with this Consent Order has been achieved. Within five (5) days of retaining any consultant other than one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant. The consultant(s) retained by Respondent to perform the studies, draft reports and oversee any remedial measures shall be a professional engineer licensed to practice in Connecticut. Respondent shall submit to the Commissioner a description of each consultant's education, experience and training that is relevant to the work required by this Consent Order within ten (10) days after a request for such description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

2. Discharge Related Requirements.

- a. Discharge from Retention Basin. Respondent shall ensure that there are no discharges from the retention basin except for discharges authorized pursuant to: (i) an approved registration under the General Permit for Miscellaneous Discharges of Sewer Compatible (MISC) Wastewater ("MISC General Permit"); (ii) NPDES Permit No. CT0026972, provided the Site continues to qualify as an "inactive industrial site" as that term is used in the permit; or (iii) a written authorization from the Commissioner, other than item (i) or (ii) of this paragraph. Any discharge pursuant to the MISC General Permit shall be subject to the following conditions:
- I. Respondent shall discharge the wastewater to the Town of Plainfield (North) Water Pollution Control Facility ("WPCF");
- II. In addition to the conditions, terms, and limitations provided in the MISC General Permit, the discharge shall comply with the following:
- (a) The average monthly concentration limit for zinc is equal to 1.0 mg/l using composite samples and the maximum daily limit for zinc is equal to 2.0 mg/l using composite samples;
 - (b) The minimum monitoring frequency for both aluminum and zinc is weekly;
 - (c) The minimum monitoring frequency for barium, iron, manganese, and nitrogen (ammonia) is monthly;
 - (d) The maximum daily flow limit is equal to 150,000 gallons per day. However, the discharge shall not be discharged at a level greater than 100,000 gallons per day on days the Respondent has received notification from either the Superintendent or Chief Operating Officer of the WPCF that Respondent should reduce its discharge to 100,000 gallons or less for such day;
 - (e) The maximum instantaneous flow limit shall be 105 gallons per minute;
 - (f) The Respondent shall coordinate with personnel at the WPCF during any periods of discharge to ensure that the pump station located in the Town of Sterling is operating effectively without overflow or bypass. In the event such pump station is not operating effectively, Respondent shall cease the discharge immediately and not reinitiate such discharge until such pump station is capable of operating effectively; and
 - (g) The Respondent shall provide the WPCF copies of Discharge Monitoring Reports no later than the last day of the month following the month in which samples are taken.

- b. Operation and Maintenance of Retention Basin.
- i. Unless otherwise approved in writing by the Commissioner, Respondent shall: (i) maintain the retention basin water level at a level at or below 508.5 feet above the National Geodetic Vertical Datum of 1929 ("NGVD 1929"); (ii) direct the stormwater coming from the Site at which the Facility is located to the retention basin; and (iii) not allow such stormwater to bypass the retention basin other than during a rainfall event greater than a 100-year, 24-hour rainfall event. Respondent shall immediately notify the Commissioner of any conditions that may operate to prevent Respondent from maintaining the level of the water in the retention basin at or below 508.5 feet NGVD 1929.
 - ii. In the event of a discharge that results from a bypass of the retention basin, Respondent shall: (i) immediately notify the Commissioner of the bypass; and (ii) sample the bypass discharge for all the parameters in the NPDES Permit, including aquatic toxicity, zinc, aluminum, flow, and duration of bypass. Respondent shall submit the results of this sampling to the Commissioner within thirty (30) days of the bypass. Respondent shall operate and maintain at the Facility equipment that is fully capable of accurately measuring the parameters required. Respondent shall ensure that any such bypass does not cause erosion as it flows towards the Moosup River. In addition, any discharge during any such bypass shall comply with the limitations (except flow), terms, and conditions of the NPDES Permit, including those associated with aquatic toxicity and zinc.
- c. Source Control Plan. On or before thirty (30) days after the date of issuance of this Consent Order by the Commissioner, the Respondent shall submit for the Commissioner's review and written approval a Source Control Plan, including an implementation schedule, designed to evaluate and implement measures to eliminate or minimize stormwater pollutant loading or pollutant loading sources from the Facility or from the Site if the Facility is demolished. Where applicable, the Source Control Plan shall address the issues identified in the Department's August 20, 2015 Letter to ReEnergy Sterling Limited Partnership, attached and incorporated herein as Attachment D. Stormwater pollutant loading sources include, but are not limited to: (i) ash deposits and residuals remaining on-site; and (ii) zinc and other pollutant containing deposits remaining within the retention basin after completion of the interim removal of solids that took place prior to October 9, 2014. The Respondent shall implement the Source Control Plan, as approved by the Commissioner in accordance with the approved schedule. Upon completion of the work, Respondent shall submit to the Commissioner a certification that the work detailed in the Source Control Plan has been completed as approved by the Commissioner.

Commencing during the fourth quarter (October – December) 2019, and until such time as Respondent shall have cleaned the retention basin of all zinc and other pollutant containing deposits that the Commissioner determines can reasonably be expected to create a source of pollution to the waters of the state, Respondent shall, annually, or more or less frequently as the Commissioner may direct in writing, remove visible solids containing zinc and other pollutants that have accumulated above the crushed stone layer in the retention basin. Unless approved by the Commissioner under this Consent Order, until such time as the Respondent has removed all the pollutant loading sources from the Facility or the Site if the Facility is removed, the Respondent shall maintain the integrity of the buildings' roof and wall structures to prevent stormwater from entering the buildings, contacting pollutants inside, and transporting them outside.

- d. Decommissioning Plan. On or before thirty (30) days after the date of issuance of this Consent Order by the Commissioner, the Respondent shall submit for the Commissioner's review and written approval a plan for decommissioning the Facility, including an implementation schedule, designed to evaluate and implement measures to: (i) further reduce the amount of stormwater runoff to the retention basin by redirecting clean stormwater using methods such as Low Impact Design technology; and (ii) eliminate or minimize pollutant loading or pollutant loading sources from the Site including, but not limited to, decommissioning the active stormwater treatment system (*i.e.*, pH adjust, chemical flocculation and precipitation, settling, etc.), and cleaning inside the buildings to remove all zinc and other pollutant containing deposits. The Respondent shall implement the Decommissioning Plan, as approved by the Commissioner in accordance with the approved schedule. Upon completion of the work, Respondent shall submit to the Commissioner a certification that the work detailed in the Decommissioning Plan has been completed as approved by the Commissioner.
- e. Retention Basin Redesign Plan. On or before thirty (30) days after the date of issuance of this Consent Order by the Commissioner, the Respondent shall submit for the Commissioner's review and written approval a retention basin redesign plan, including an implementation schedule, to modify the design and operation of the retention basin. Such retention basin shall be modified to serve as a detention basin which will passively maintain the operational level of the stormwater in such basin at or below a level of 508.5 feet above NGVD 1929 within five (5) days after the cessation of a 100-year, 24-hour rainfall event, and remove at least eighty percent (80%) of the annual average total suspended solids (TSS) load and of floatable debris, including oil and petroleum. The Retention Basin Redesign Plan shall also indicate what licenses or approvals will be needed to implement such Plan and maintain the detention basin and provide a schedule for the Respondent to obtain such licenses or approvals. The Respondent shall implement the Retention Basin Redesign Plan, as approved by the Commissioner in accordance with the approved schedule. Upon completion of the work, Respondent shall submit to the Commissioner a certification that the work detailed in the Retention Basin Redesign Plan has been completed as approved by the Commissioner.

- f. Discharges. Until the Commissioner determines that the requirements of section B.2.a to B.2.e, inclusive of this Consent Order have been completed to the satisfaction of the Commissioner, the Respondent shall ensure that there are no discharges from the Site, except those authorized by and in compliance with the terms and conditions of this Consent Order or those authorized by the Commissioner to implement Section B.2.a to B.2.e of this Consent Order.
 - g. Financial Assurance. No later than fifteen (15) days after the date of issuance of this Consent Order by the Commissioner, to support the work required by section B.2.a to B.2.e, inclusive, of this Consent Order, the Respondent shall provide financial assurance in the form of an irrevocable Letter of Credit in the amount of \$799,023.00. The wording of the Letter of Credit shall be identical to that in Attachment A to this Consent Order. The Respondent shall maintain this letter of credit in effect until the Commissioner notifies the Respondent, in writing, of the Commissioner's determination that the requirements of section B.2.a to B.2.e, inclusive, of this Consent Order have been satisfactorily completed, after which the letter of credit may be terminated with the written consent of the Commissioner.
- 3. Remediation. The Respondent shall comply with the requirements in Attachment B, the Remediation Requirements. The requirements in Attachment B shall be deemed satisfied by compliance with the requirements of the Transfer Act, Conn. Gen. Stat. § 22a-134 et seq., such that if the Respondent successfully achieves compliance with the requirements of the Transfer Act, the Remediation requirements of section B.3 of this Consent Order shall be deemed satisfied.
- 4. Waste Related Requirements.
 - a. No Operations. Until the Commissioner determines that the requirements of section B.4 of this Consent Order have been completed to the satisfaction of the Commissioner, other than actions approved by the Commissioner pursuant to this Consent Order, the Respondent shall not conduct any activities or operations at the Facility, including, but not limited to, (i) stripping, removing or recovering items of value, including but not limited to metal, from the Site; or (ii) bringing or allowing hazardous or solid waste to be brought to the Site.
 - b. Closure Plan. Within thirty (30) days after the date of issuance of the Consent Order by the Commissioner, the Respondent shall submit, for the Commissioner's review and written approval, a closure plan that meets the applicable regulatory standards, for hazardous waste areas is in accordance with the "Draft RCRA Closure Guidance for Generators Who Store Less Than 90 Days Container Storage Areas and Tank Systems," and identifies the steps necessary for closing all of the areas at the Site that were used for receipt, processing, storage and off-site transport of solid or hazardous waste, including ancillary equipment used for such activities. At a minimum, the Closure Plan shall:

- (i) Identify constituents of concern at or emanating from the Site and methods for sampling;
- (ii) Include an inventory of solid and hazardous waste areas and a site plan identifying the location of such areas;
- (iii) Include a detailed description of how closure will be accomplished, including, but not limited to, how the nature, degree and extent of any contamination at the Site will be evaluated and addressed;
- (iv) A detailed description of the steps needed to remove waste and waste residues, decontaminate system components, equipment, and structures, and address underlying contaminated soils, including, but not limited to, any hazardous waste determinations, as appropriate, and identification of where any waste removed from the Site will be disposed;
- (v) Criteria for determining closure has been achieved as well as how and where confirmation sampling will be conducted;
- (vi) Include detailed cost estimate to implement the Closure Plan as well as three independent bids to undertake the work specified in the Closure Plan; and
- (vii) Include an implementation schedule.

After approval by the Commissioner, the Respondent shall implement the Closure Plan, as approved by the Commissioner in accordance with the approved schedule. Upon completion of the work, Respondent shall submit to the Commissioner a certification, with supporting documentation that the work detailed in the Closure Plan has been completed as approved by the Commissioner.

c. Financial Assurance

- (i) No later than fifteen (15) days after the issuance of this Consent Order, to support the work required by section B.4 of this Consent Order, the Respondent shall provide financial assurance in the form of a Payment Bond in the amount of \$100,000.00. The wording of the Payment Bond shall be identical to that in Attachment C to this Consent Order. The Respondent shall maintain this payment bond in effect until the Commissioner notifies the Respondent, in writing, of the Commissioner's determination that the requirements of section B.4 of this Consent Order have been satisfactorily completed, after which the payment bond may be terminated with the written consent of the Commissioner.

- (ii) If the cost estimate in the Closure Plan approved by the Commissioner is greater than \$100,000.00, then Respondent shall, within thirty (30) days of the Commissioner's approval of such cost estimate, increase the Payment Bond to the amount of the approved cost estimate.
- (iii) Any replacement payment bond authorized under section B.4.d.ii of this Consent Order shall comply with the requirements of section B.4.d.i of this Consent Order and the Commissioner shall not consent to release a payment bond until a new payment bond meeting the requirements of this Consent Order has been provided to and accepted by the Commissioner.

5. Dam Related Requirements:

- a. Dam Registration. No later than ten (10) days after the Respondent becomes the owner of the Site, in accordance with Conn. Gen. Stat. § 22a-409(b), the Respondent shall complete the Transfer of Ownership section of the Certificate of Dam Registration, found in Attachment F to this Consent Order.
 - b. Notification. No later than sixty (60) days after the date of issuance of this Consent Order by the Commissioner, pursuant to Conn. Gen. Stat. § 22a-409 (a), the Respondent shall complete and submit to the Commissioner and cause to be recorded on the land records for the Town of Sterling, the Notification of a High Hazard Dam or a Significant Hazard Dam form prescribed by the Commissioner.
 - c. Emergency Action Plan. No later than one hundred, eighty (180) days after the date of issuance of this Consent Order by the Commissioner, the Respondent shall prepare and submit to the Commissioner an Emergency Action Plan required by Conn. Gen. Stat. § 22a-411a.
 - d. Inspection and Other Requirements. The Respondent shall comply with all applicable requirements regarding the dam located on the Site, including, but not limited to, the inspections required by Conn. Gen. Stat. § 22a-409(c).
6. Progress reports: On or before the last day of March, June, September, and December of each year after issuance of this Consent Order, and continuing until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction, Respondent shall submit a progress report to the Commissioner describing the actions which Respondent has taken to date to comply with this Consent Order.
7. Full compliance. Respondent shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction.
8. Sampling and sample analyses. All sampling and sample analyses which are required by this Consent Order and all reporting of such sample analyses shall be conducted by a laboratory certified by the U.S. Environmental Protection Agency and/or the

Connecticut Department of Public Health to conduct such sampling and analyses. All sampling and sample analyses performed under this order shall be performed in accordance with procedures specified or approved in writing by the Commissioner, or, if no such procedures have been specified or approved, in accordance with 40 CFR 136 or EPA document SW-846, as applicable. Unless otherwise specified by the Commissioner in writing, the value of each parameter shall be reported to the maximum level of precision and accuracy specified in the applicable protocol, and if no such level is specified, to the maximum level of precision and accuracy possible.

9. Approvals. Respondent 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 shall correct the deficiencies and resubmit it within the 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. In approving any document or other action under this Consent Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.
10. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
11. Dates. The date of "issuance" of this Consent Order is the date the Consent Order is deposited in the U.S. mail or personally delivered, whichever is earlier. 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 by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
12. 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 or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."

13. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondent to an injunction and penalties.
14. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
15. Notice of transfer; liability of Respondent. Until Respondent has fully complied with this Consent Order, Respondent shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the Facility, the operations, the site or the business which is the subject of this Consent Order or after obtaining a new mailing or location address. Respondent's obligations under this Consent Order shall not be affected by the passage of title to any property to any other person or municipality.
16. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or 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 violations or pollution.
17. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
18. 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 pursuant to this Consent Order will result in compliance or prevent or abate pollution.
19. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the Facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.

20. No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons or municipalities that are not parties to this Consent Order.
21. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondent 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 shall submit the correct or omitted information to the Commissioner.
22. Notification of noncompliance. In the event that Respondent becomes aware that it 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 shall immediately notify by telephone the individual identified in the next paragraph 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. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and 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 shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent 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.
23. Submission of documents. Any notice or document of any kind required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in this Consent Order or in writing by the Commissioner:

- (i) Regarding Section 2 of this Consent Order, be directed to:

Melissa Blais, Supervising Sanitary Engineer
Department of Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance
Water Permitting and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127;

- (ii) Regarding Section 3 of this Consent Order, be directed to:

William Warzecha
Supervising Environmental Analyst
Department of Energy and Environmental Protection
Bureau of Water Protection and Land Reuse
Remediation Division
79 Elm Street
Hartford, Connecticut 06106-5127; and

- (iii) Regarding Section 4 of this Consent Order, be directed to:

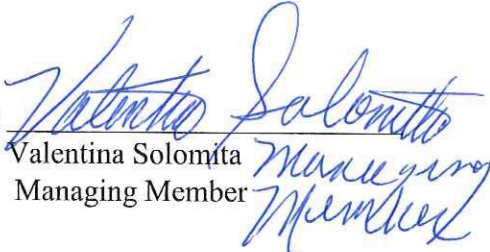
Katherine Faust
Department of Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance
Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

- (iv) Regarding Section 5 of this Consent Order, be directed to:

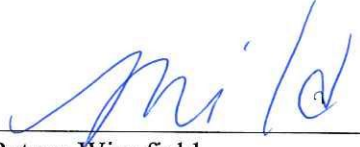

Kartik Parekh
Dam Safety Section
Department of Energy and Environmental Protection
Bureau of Water Protection and Land Reuse
Water Planning & Management Division
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that he/she is fully authorized to enter into this Consent Order and to legally bind the Respondent to the terms and conditions of the Consent Order. A signed and dated certified resolution from the Respondent is attached hereto as Attachment E.

Sterling Property LLC

BY:  7-15-19
Valentina Solomita *Managing Member* Date
Managing Member

Issued as a Final Order of the Commissioner of Energy and Environmental Protection.

 
Betsey Wingfield Date
Deputy Commissioner

cc: Town of Sterling Land Records

ATTACHMENTS: STERLING PROPERTY, LLC

CONSENT ORDER NO. 2019003DEEP

Attachment A – Form of Irrevocable Letter of Credit Financial Assurance Required by
Section B.2.g of this Consent Order

Attachment B– Remediation Requirements from CO 1272

Attachment C – Form of Payment Bond/Standby-Trust Financial Assurance Required by
Section B.4.c of this Consent Order

Attachment D - DEEP August 20, 2015 Disapproval Letter to Mark Sussman, Esq., Re:
ReEnergy Source Control Plan comments

Attachment E – Form for Certified Resolution, Sole Member Limited Liability Companies

Attachment F – Certificate of Dam Registration



ATTACHMENT A TO CONSENT ORDER NO. 2019003DEEP
FORM FOR IRREVOCABLE LETTER OF CREDIT

Page 1

Date: July 11th 2019

Irrevocable Letter of Credit No. 00101509

Applicant: Sterling Property LLC
27 Stillman Road
Glen Cove, NY 11542

Beneficiary: Commissioner, Connecticut Department of Energy
and Environmental Protection
79 Elm Street,
Hartford, CT 06106-5127

Amount: US\$799,023.00

Commissioner, Connecticut Department of Energy
and Environment Protection
79 Elm Street, Hartford, CT 06106-5127

We hereby establish our Irrevocable Standby Letter of Credit No. 00101509 in your favor, at the request and for the account of the Applicant, Sterling Property LLC, 27 Stillman Road, Glen Cove 11542 up to the aggregate total amount of Seven Hundred Ninety Nine Thousand, and Twenty Three U.S. Dollars (\$799,023.00). We hereby authorize the Commissioner of the Connecticut Department of Energy and Environmental Protection to draw at sight on us, Sterling National Bank, 1 Jericho Plaza, Suite 304, Jericho, New York 11753-1635 attention Trade Services Department, an aggregate amount up to the total amount, available upon presentation of:

(1) Your sight draft, bearing reference to this Letter of Credit No. 00101509 and
(2) Your signed dated statement reading as follows: "I certify that the amount of the draft is payable because I have determined one or more of the following:

(A) one or more violations of Consent Order 2019003 DEEP has occurred or
(B) stormwater at or emanating from the property located at 10 Exeter Drive, Sterling, Connecticut has become a potential source of pollution (as that term is defined in Conn. Gen. Stat. § 22a-423) which the Applicant has been unable to remedy to my satisfaction within five (5) business days of receipt of a written notice from me that a pollution condition exists, or

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(C) the Applicant no longer owns/leases or is conducting any operations at 10 Exeter Drive, Sterling, Connecticut, or

(D) the issuing bank has notified me that it has decided not to extend this letter of credit beyond the current expiration date."

This letter of credit is effective as of July 11th 2019 and shall expire on July 11th 2020 at 3PM E.S.T., but such expiration date shall be automatically extended for a period of one year on (date at least one year later) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and Applicant, Sterling Property LLC, by certified mail or nationally recognized courier service that we have decided not to extend this letter of credit beyond the current expiration date(the "non-renewal notice"). In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for a period ending 120 days after the date of your receipt of the non-renewal notice as shown on the signed return receipts or evidence of courier delivery.

Multiple and partial draws on this letter of credit are expressly permitted, up to an aggregate amount not to exceed the total amount. Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into a Connecticut Department of Energy and Environmental Protection dedicated account in accordance with your instructions.

All banking and other charges under this letter of credit are for the account of the Applicant.

This letter of credit is issued subject to the edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce, in effect on the date this Letter of Credit is issued.

By signing, the signatory below certifies, under penalty of law, that the issuing institution is an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.


Authorized Signatory

Althea Blackman, Trade Services Supervisor

ATTACHMENT B TO CONSENT ORDER NO. 2019003DEEP
REMEDATION REQUIREMENTS FROM CONSENT ORDER NO. 1272

4. a. On or before ten (10) days after issuance of this Consent Order, Respondent shall retain one or more qualified consultants acceptable to the Commissioner to prepare the documents and implement or oversee the actions required by Paragraph B(4) of this Consent Order, and notify the Commissioner in writing of the identity of such consultants. Respondent shall retain one or more qualified consultants acceptable to the Commissioner until this Consent Order is fully complied with, and, within ten days of retaining any consultant other than the one originally identified under this paragraph, Respondent 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 a qualified professional engineer licensed to practice in Connecticut. The Commissioner may require Respondent to submit to the Commissioner a description of the education, experience and training of a consultant which is relevant to the work required by this Consent Order within ten days after a request for such a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
- b. On or before forty-five (45) days after issuance of this Consent Order, Respondent shall submit to the Commissioner for his review and written approval: (1) a short-term remediation plan; (2) a revised "Stormwater Treatment System Operation and Maintenance Plan" and a revised "Ash Residue Handling Plan," which revised plans shall provide for more frequent cleaning and monitoring of the ash residue handling area and stormwater treatment system; and (3) a site operations log for recording the time and frequency of all site operation activities and Best Management Practices. The short term remediation plan shall include interim actions to be taken to address the violations identified in subparagraphs A(4)(c) and A(4)(d) of this Consent Order, and a schedule for performing these interim actions. Respondent shall perform all approved interim actions in accordance with the approved schedule, and, within ten (10) days of the Commissioner's approval of the revised plans and the site operations log, Respondent shall commence recording site operation activities and Best Management Practices in the approved log, and shall maintain such records thereafter.
- c. On or before sixty (60) days after issuance of this Consent Order, Respondent shall submit to the Commissioner for his review and written approval a scope of study for an investigation of the activities identified in subparagraphs A(4)(c) and A(4)(d) of this Consent Order, the potential impact of such activities on the environment both on-site and off-site, including but not limited to the existing and potential extent and degree of soil and surface water pollution. Such scope of study shall include at least the proposed location of soil and surface water sampling, a proposed sampling and analytical program including at least the parameters to be tested, proposed sampling and analytical methods, and quality assurance and quality control procedures, and a schedule for conducting the investigation. The schedule shall provide for completion of the investigation as soon as possible, but in no event later than one hundred eighty (180) days after issuance of this Consent Order.

- d. If the investigation carried out under an approved scope of study does not fully characterize the extent and degree of soil and surface water contamination to the satisfaction of the Commissioner, additional investigation shall be performed in accordance with a supplemental plan and schedule approved in writing by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted to the Commissioner for his review and written approval on or before thirty days after notice from the Commissioner to the Respondent that they are required.
- e. Respondent shall perform the investigation and other actions specified in the approved scope of study and in any approved supplemental plan(s) in accordance with the approved schedule(s), but in no event shall the initial investigation be completed by later than one hundred eighty (180) days after issuance of this Consent Order. Respondent shall notify the Commissioner of the date and time of each soil and water sampling event at least five full business days prior to such sampling.
- f. Except as may be provided in the investigation schedule approved by the Commissioner, on or before thirty days after the approved date for completion of the investigation, Respondent shall submit to the Commissioner for his review and written approval a comprehensive and thorough report which describes in detail the investigation performed; defines the existing and potential extent and degree of soil and surface water pollution which is on, is emanating from or has emanated from the site; and evaluates the alternatives for remedial actions, and proposes a preferred alternative with supporting justification therefore, and proposes a detailed program and schedule to carry out the preferred remedial actions. Such report shall also include but not be limited to a monitoring program to determine the degree to which the approved remedial actions have been effective, and a schedule for performing the approved monitoring program.
- g. Unless another deadline is specified in writing by the Commissioner, on or before sixty days after approval of the report described in the preceding paragraph, Respondent shall (1) submit to the Commissioner for his review and written approval contract plans and specifications for the approved remedial actions, a revised list of all permits and approvals required for such actions, and a revised schedule for applying for and obtaining such permits and approvals, and (2) and submit applications for all permits required for such actions. Respondent shall use best efforts to obtain all required permits.
- h. Respondent shall perform the approved remedial actions in accordance with the approved schedule(s), and, within fifteen (15) days of completing such actions, shall certify to the Commissioner in writing that the actions have been completed as approved.
- i. Respondent shall perform the approved monitoring program to determine the effectiveness of its remedial actions in accordance with the approved schedule(s). If the approved remedial actions do not result in compliance with NPDES Permit No. CT0026972 or in the prevention and abatement of soil and surface 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 approved by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted to the Commissioner for his review and written approval on or before thirty days after notice from the Commissioner to the Respondent that they are required.

- j. On a schedule established by the Commissioner or, if no such schedule is established, on a quarterly basis beginning no later than ninety days after initiation of the approved remedial actions or, as applicable, supplemental remedial actions, Respondent shall submit to the Commissioner for his review and written approval a report describing the results to date of the monitoring program to determine the effectiveness of the remedial actions.
- k. Respondent may request that the Commissioner approve, in writing, revisions to any document approved hereunder in order to make such document consistent with law or for any other appropriate reason.

Attachment C

Form of Payment Bond/Stand-By Trust - Financial Assurance Required by
Section B.4.c of Consent Order No. 2019003DEEP

**State of Connecticut
Solid Waste Management Facility
Financial Guarantee (Payment) Bond for
Closure and/or Post-Closure Care**

Date bond executed: 5/15/19

Effective date: 5/15/2019

Principal: Sterling Property LLC
27 Stillman Road
Glen Cove, N.Y. 11542

Type of Organization: Limited Liability Company

State of incorporation: Delaware

Surety(ies): RLI Insurance Company
9025 N. Lindbergh Drive
Peoria, IL 61615

For each facility guaranteed by this bond:

Facility Permit Number: 136-1RR, 1360133, 1360203

Name: Sterling Property, LLC

Address: 10 Exeter Dr Sterling CT 06377-1820

Closure amount: \$ Post-closure amount: \$ 100,000.00

Total penal sum of bond: \$ 100,000.00

Surety's bond number: RCB0021775

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the commissioner of Energy and Environmental Protection (hereinafter called commissioner), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under section 22a-208(a) of the Connecticut General Statutes, to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the commissioner or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in subpart H of 40 CFR part 264, as applicable, and obtain the commissioner's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the commissioner from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the commissioner.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the commissioner, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the commissioner.

[The following paragraph is an optional rider that may be included but is not required.]

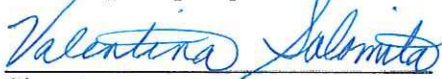
Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the commissioner.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(b), as such regulations were constituted on July 1, 1984, with certain wording changes made for consistency with the terms and requirements applicable to the Connecticut solid waste facility pursuant to section 22a-209-4(i) of the Regulations of the Connecticut State Agencies.

Sterling Property LLC

Principal



Signature

Valentina Solomita

Managing Member

[PROVIDE ALL SIGNATURES, NAMES AND TITLES FOR THE PRINCIPAL BY COPYING AND PASTING THE ABOVE FIELDS HERE.]

[Corporate seal]

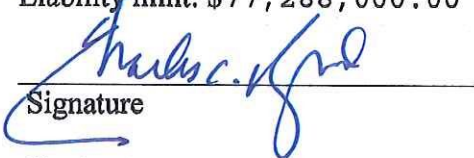
Corporate Surety(ies)

RLI Insurance Company

9025 N. Lindbergh Drive, Peoria, IL 61615

State of incorporation: Illinois

Liability limit: \$77,288,000.00


Signature

Charles A. Byrne

Attorney-in-Fact

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above BY COPYING AND PASTING THE ABOVE FIELDS HERE.]

Bond premium: \$

POWER OF ATTORNEY

RLI Insurance Company Contractors Bonding and Insurance Company

9025 N. Lindbergh Dr. Peoria, IL 61615
Phone: 800-645-2402

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each an Illinois corporation, (separately and together, the "Company") do hereby make, constitute and appoint:

David J. Byrne III, Charles A. Byrne, Denise Chianese, Russell Corner II, jointly or severally

in the City of East Providence, State of Rhode Island its true and lawful Agent(s) and Attorney(s) in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds and undertakings in an amount not to exceed Twenty Five Million Dollars (\$25,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon the Company as if such bond had been executed and acknowledged by the regularly elected officers of the Company.

RLI Insurance Company and/or **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of a Resolution adopted by the Board of Directors of each such corporation, and is now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 7th day of December, 2018.



**RLI Insurance Company
Contractors Bonding and Insurance Company**

By: B. W. Davis
Barton W. Davis Vice President

State of Illinois }
County of Peoria } SS

On this 7th day of December, 2018, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

By: Gretchen L. Johnigk
Gretchen L. Johnigk Notary Public



CERTIFICATE

I, the undersigned officer of **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 15th day of May, 2019.

**RLI Insurance Company
Contractors Bonding and Insurance Company**

By: Jean M. Stephenson
Jean M. Stephenson Corporate Secretary

**STATE OF CONNECTICUT
SOLID WASTE MANAGEMENT FACILITY
TRUST AGREEMENT FOR CLOSURE AND/OR POST CLOSURE CARE**

Trust Agreement, the "Agreement," entered into as of July **25th**, 2019 by and between Sterling Property, LLC, a Delaware [Limited Liability Company] (choose one), the "Grantor," and Sterling National Bank, a National Banking Association, the "Trustee."

Whereas, the state of Connecticut Department of Energy and Environmental Protection, "DEEP", a state agency, has established certain regulations applicable to the Grantor, requiring that a permittee of a solid waste facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the permittee who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of DEEP. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the

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amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by DEEP.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the commissioner shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the commissioner from the Fund for closure and post-closure expenditures in such amounts as the commissioner shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the

commissioner a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the commissioner shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the commissioner, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the commissioner to the Trustee shall be in writing, signed by the commissioner, or the commissioner's designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or DEEP hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or DEEP, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the commissioner, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the commissioner, or by the Trustee and the commissioner if the Grantor ceases to exist.


Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the commissioner, or by the Trustee and the commissioner, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Connecticut.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(a)(1) as such regulations were constituted on July 1, 1984, with certain wording changes made for consistency with the terms and requirements application to the Connecticut solid waste facility pursuant to section 22a-209-4(i) of the regulations of Connecticut State Agencies.


Signature of Grantor

Valentina Solomita, Managing Manager of Sterling Property LLC


Attest:



MARY R. O'NEIL
NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 28, 2022

Notary Public/Commissioner of Superior Court

[Seal]


Signature of Trustee

Attest:



Notary Public/Commissioner of Superior Court

[Seal]

NOEL R CASILLAS
State of New York
NOTARY PUBLIC
Qualify in Suffolk County 01CA6351561
MY COMMISSION EXPIRES 12/05/2020

Trust Agreement Schedule A

Pursuant to Section 2 of this Agreement, the following are the facilities for which financial assurance is being provided through the Trust established by this Agreement:

Facility Permit Numbers 136-IRR, 1360133, 1360203

Former Sterling Tire Facility

10 Exeter Drive, Sterling, Connecticut 06377

Closure Cost Estimate: \$100,000.00.

Post- Closure Cost Estimate: 0.

Bank Account No.

Bank as Trustee.

[If this Agreement demonstrates financial assurance for more than one facility, provide the name, address, and closure and/or post-closure estimates for each facility by copying and pasting the above fields here.]

Trust Agreement Schedule B

Pursuant to Sections 3 and 5 of this Agreement, the property to be transferred to the Trustee shall consist of cash or securities in the amount of \$100000.

Trust Agreement Exhibit A

Pursuant to Section 14 of this Agreement, the following person(s) are designated by the Grantor as authorized to provide orders, requests, and instructions to the Trustee:

Valentina Solomita

Managing Manager of Sterling Property LLC

27 Stillman Road
Glen Cove, NY 11542

516 521-7505

[If more than one person has been designated by the Grantor to provide orders, requests, and instructions to the Trustee, provide the name, title, address and telephone number for each person by copying and pasting the above fields here.]

CERTIFICATION OF ACKNOWLEDGEMENT

State of

County of

On this [date], before me personally came [permittee's name] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Signature of Notary Public

If the Grantor is a Limited Liability Company or Partnership, please complete the following certification.

State of *Connecticut* } *ss Norwich*
County of *New London*

On this ⁷⁻²⁵⁻¹⁹[date] before me personally came Valentina Solomita to me known, who, being by me duly sworn, did depose and say that she/he has a place of business at 27 Stillman Road, Glen Cove, NY 11542, that she/he is the Managing Manager of Sterling Property LLC, the limited liability company or partnership described in and which executed the above instrument; that she/he acknowledged to me that she/he executed the same in her/his capacity; and that by her/his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.

MARY R. O'NEIL
NOTARY PUBLIC
MY COMMISSION EXPIRES FEB. 28, 2022

Mary R O'Neil

Signature of Notary Public

Attachment D to Consent Order No. 2019003DEEP
DEEP August 20, 2015 Disapproval Letter to Mark Sussman, Esq.
Re: ReEnergy Source Control Plan comments



79 Elm Street • Hartford, CT 06106-5127

www.ct.gov/deep

Affirmative Action/Equal Opportunity Employer

DISAPPROVAL

August 20, 2015

Mark Sussman
Murtha Cullina LLP
CityPlace I, 185 Asylum Street
Hartford, CT 06103

Re: ReEnergy Sterling CT Limited Partnership, located in Sterling, CT ("Respondent")
Consent Order CO WR IN 14 001, issued September 18, 2014, ("consent order")
Source Control Plan dated November 2014, prepared by Arcadis U.S., Inc. for
Respondent and submitted on November 13, 2014 pursuant to paragraph B.5 of
the consent order ("Source Control Plan")

Mr. Sussman,

On May 13, 2015 in conference room 2A of our offices, you, Respondent, and Respondent's consultants met with me, AAG Krista Trousedale, and members of my staff including Melissa Blais, Toyin Fakilede and Sharon Yurasevecz to discuss Respondent's pending application for an NPDES permit modification. Subsequently, the Department's tentative decision to issue the draft NPDES permit modification was publicly noticed on July 27th. During the May meeting, we also discussed modifying the above-referenced consent order, and we provided comment on the deficiencies of the above-referenced Source Control Plan.

On August 6, 2015, AAG Trousedale sent you a draft modified consent order for your review. The draft modified consent order includes a requirement to submit a revised Source Control Plan. During a conversation last week between you and AAG Trousedale on the draft modified consent order, I understand that you expressed a desire to receive written comments from the Department on the Source Control Plan. This Disapproval Letter is in response to that request.

The Source Control Plan has been reviewed by the Department of Energy and Environmental Protection. It does not comply with the requirements of paragraph B.5 of the consent order (a copy of which is attached) and is hereby disapproved. Unless otherwise specified in writing by the Commissioner, a revised source control plan shall be submitted for the review and approval of the Commissioner on or before thirty days of the date of this letter. The revised source control plan shall, at a minimum, address the deficiencies identified below.

- 1. Provide a schedule to do a final clean-out of all deposits remaining in the retention basin. In the absence of any information to the contrary, the Commissioner has*

determined that these deposits can reasonably be expected to create a source of pollution to the waters of the state. There is no reason to believe the remaining deposits would be less polluted than those removed, nor was there any discussion in the Source Control Plan providing a rationale for leaving deposits behind;

- 2. Provide a schedule and plan to do an annual clean-out of visible solids that have accumulated above the crushed stone layer in the retention basin, until such time that the final clean-out discussed in paragraph 1, above, is completed. The Source Control Plan did not commit to doing any additional solids removal. It only committed to doing annual visual inspections and notifications to the Department;*
- 3. Provide a cost estimate to do the work in paragraphs 1 and 2 above; and*
- 4. Include a provision for additional work to eliminate or minimize stormwater pollutant loading or pollutant loading sources should initial efforts fail to adequately reduce stormwater pollutant levels in the untreated stormwater (i.e., identify other pollutant sources not already explicitly listed in the consent order.) Thus far, analytical results of the untreated stormwater provided to the Department show it is still polluted. Therefore, paragraph B.5 has not been completed to the satisfaction of the Commissioner.*

I also understand from AAG Trousdale that you want to know what the Department thinks are other pollutant loading sources on site, beyond those discussed in the Source Control Plan. It is the Respondent's responsibility to identify and address them.

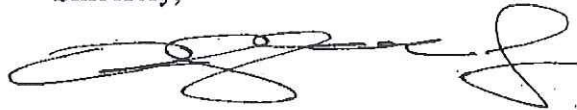
I will, however, repeat information my staff has been told by Respondent or Respondent's consultants:

- During the May meeting, we raised the interior of the building as a possible pollutant loading source. (Respondent's Mike LaPorte had previously told staff he thought that if the building was demolished or had major renovations to it, he would expect to see a negative impact to stormwater quality, as happened last summer during the cleanout of the air pollution control system.) During the meeting, Respondent did not commit to addressing the building interior. Rather, Respondent's consultant, Jay Kulowiec, suggested that maintaining the integrity of the building's roof/structure to prevent the interior from exposure to stormwater would be adequate. In at least one Department inspection report, it is documented that stormwater backed up inside the building. Note that if the building interior is not cleaned and that occurs again, there remains a potential to pollute if any stormwater enters the building. Thus, the draft consent order modification sent to you on August 6th has language added to the Source Control Plan paragraph, requiring Respondent *"...to maintain the buildings' roof and wall structures to prevent stormwater from entering the buildings, contacting pollutants inside, and washing them outside."* If there are additional corrective measures Respondent can identify to mitigate this potential pollutant loading source, please identify them and include them in the revised source control plan.
- In past discussions, additional scraping and/or power washing of the buildings' exterior, and possible demolition of certain buildings were being evaluated. Staff were told a special team from Arcadis was to come in from New York during the spring of 2014 to

evaluate the cost of demolition and how to do it in a way to minimize stormwater pollution. From subsequent discussions, it's our understanding that Respondent chose to re-side at least portions of the buildings' exteriors -- we do not know to what extent -- and decided against demolishing any buildings for now. The Source Control Plan did not discuss any of these items, but it should.

If you have any questions regarding this matter, please contact me at (860) 424-3725 or Melissa Blais at (860) 424-3834.

Sincerely,

A handwritten signature in black ink, appearing to read 'Oswald Inglese, Jr.', with a stylized flourish at the end.

Oswald Inglese, Jr.
Director
Bureau of Materials Management and
Compliance Assurance
Water, Permitting and Enforcement Division

OI:mb

Attachment:
Order No. CO WR IN 14 001, paragraph B.5

cc: DMR Section
AAG Krista E. Trousdale

Attachment

Order No. CO WR IN 14 001, paragraph B.5

5. Source Control Plan. As an interim measure, no later than October 31, 2014, Respondent shall remove visible solids containing zinc and other pollutants that have accumulated above the crushed stone layer in the retention basin. On or before sixty (60) days after the date of issuance of this consent order, the Respondent shall submit for the Commissioner's review and written approval a Source Control Plan, including an implementation schedule, designed to evaluate and implement measures to eliminate or minimize stormwater pollutant loading or pollutant loading sources following suspension of on-site power generation activities utilizing tire derived fuel. Stormwater pollutant loading sources include, but are not limited to: (i) ash deposits and residuals remaining on-site; and (ii) zinc and other pollutant containing deposits remaining within the retention basin after completion of the interim removal of solids required by this section of the consent order. The Source Control Plan shall include an evaluation of the need to eliminate the yard drain sump, along with a schedule for such work determined to be necessary. The Source Control Plan shall include an estimate of the cost to implement the recommended source control measures. The Respondent shall perform the work as detailed in the Source Control Plan, as approved by the Commissioner in accordance with the approved schedule. Upon completion of the work, Respondent shall submit to the Commissioner a certification that the work detailed in the Source Control Plan has been completed as approved. Commencing during the third quarter (July -- September) 2015, and until such time as Respondent shall have cleaned the retention basin of all zinc and other pollutant containing deposits that the Commissioner determines can reasonably be expected to create a source of pollution to the waters of the state, Respondent shall, annually, or more or less frequently as the Commissioner may direct in writing, remove visible solids containing zinc and other pollutants that have accumulated above the crushed stone layer in the retention basin.

Attachment E to Consent Order No. 2019003DEEP
Form for Certified Resolution, Sole Member Limited Liability Companies

CERTIFIED RESOLUTION

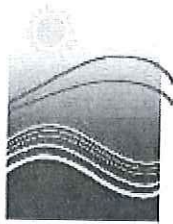
I, VALENTINA SOLOMITA a Managing Member of Sterling property, LLC, a limited liability company organized and existing under the laws of the State of Delaware and registered as a foreign entity with the Connecticut Secretary of State, (hereinafter the "Company"), hereby certifies that:

1. that Sterling Property, LLC is run by its Managing Member;
 2. that I am currently the sole Managing Member of Sterling Property, LLC
- and
3. that as such I am not prohibited from or limited by the Articles of Organization from binding the LLC.

IN WITNESS HEREOF, the undersigned has affixed her signature this 15th day of July, 2019.


Valentina Solomita, Managing Member

Attachment F to Consent Order No. 2019003DEEP
Certificate of Dam Registration



Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

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Employer

www.ct.gov/deep

Affirmative Action/Equal Opportunity

CERTIFICATE OF DAM REGISTRATION

The Commissioner of the Department of Energy and Environmental Protection hereby certifies that the dam described below has been duly registered with the State of Connecticut in compliance with the Regulations of State Agencies section 22a 409-1(b) (Registration of dams and similar structures) and is on file with this agency.

DAM NAME : **EXETER ENERGY STORAGE BASIN DAM**
CT DamID#: LOCATION **13610** Registration#:201505983
Sterling Parcel ID: 03842-017-IP14
OF DAM: HEIGHT: 6.5 feet
OWNER'S NAME: **Empireco Limited Partnership**
OWNER' ADDRESS: 1414 Norwich Road, Latham, CT 06374
DATE OF ISSUE: 2/5/2019
NUMBER OF DAM OWNERS: 1 *(If more than one owner see attached list)*

Charles Lee
Assistant Director
Bureau of Water Protection and Land Reuse

TRANSFER OF OWNERSHIP

The portion below must be completed by the seller and buyer at the time of transfer of the property containing all or part of the above referenced dam and submitted to the Department of Energy and Environmental Protection, Dam Safety Program of the Water Planning and Management Division, 79 Elm Street, Hartford, CT 06106-5127.

DAM NAME: **EXETER ENERGY STORAGE BASIN DAM**
CT Dam ID# / SIMS#: 13610 201505983
LOCATION OF DAM: Sterling Parcel ID: 03842-017-IP14
DATE SOLD:
BUYER'S NAME: PHONE #:
BUYER'S ADDRESS: EMail: