

STATE OF CONNECTICUT )  
 )  
 VS. )  
 )  
 BURNS CONSTRUCTION CO., INC )  
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ORDER NO. 2476

CONSENT ORDER

- A. With the agreement of Burns Construction Co., Inc. ("Respondent"), the Commissioner of Energy and Environmental Protection ("Commissioner") finds the following:
  - 1. The Respondent engages in the business of road repair and, for that purpose recycles hot asphalt at 16 North Larkey Road, Oxford, Connecticut ("facility").
  - 2. At the facility, the Respondent maintains and operates two Bagela asphalt recycling units ("Equipment"). The Equipment is designed to use heat to recycle petroleum based road pieces to hot asphalt that is used in road repairs.
  - 3. Pursuant to Section 22a-174-23(a)(1) of the Regulations of the Connecticut State Agencies ("Regulations"), no person shall cause or permit the emission of any substance or combination of substances, which creates or contributes to an odor, in the ambient air, that constitutes a nuisance which term is defined in Section 22a-174-23(a)(2) of the Regulations.
  - 4. In response to a citizen complaint, a representative of the Department of Energy & Environmental Protection ("Department") inspected the facility on April 20, 2016. The Department representative observed nuisance odors at the complainant's property (14 North Larkey Road) and determined that the Respondent violated Section 22a-174-23 of the Regulations. Consequently, the Department issued Notice of Violation ("NOV") No. 17683 on May 17, 2016
  - 5. On September 2, 2016, the Respondent submitted an Odor Evaluation Report in response to NOV No. 17683. The Department deemed this Odor Evaluation Report to be inadequate.
  - 6. On August 22, 2016 and October 5, 2016, representatives of the Department returned to

Issued date: September 20, 2017

the facility in response to odor complaints and observed nuisance odors at the complainant's property (14 North Larkey Road), and determined that the Respondent violated Section 22a-174-23 of the Regulations. Consequently, the Department issued to the Respondent NOV No. 17741 on September 9, 2016 and NOV No. 17761 on October 20, 2016.

7. By virtue of the above, the Department has determined that the Respondent has violated Section 22a-174-23 of the Regulations.
  8. In response to the NOVs, the Respondent has begun using an odor reducing additive called "Ecosorb" in the asphalt recycling operation to mitigate nuisance odors. In addition, the Respondent expanded the facility's boundary line through the acquisition of 14 North Larkey Road.
- B. With the agreement of the Respondent, the Commissioner, acting under §§22a-6, 22a-171, 22a-174, 22a-177, and 22a-178 of the Connecticut General Statutes, orders the Respondent as follows:
1. For one hundred and eighty (180) days after issuance of this Consent Order, the Respondent shall continue to use "Ecosorb" whenever asphalt is being recycled at the facility and keep records, on the daily use of the "Ecosorb"; operation of the Equipment; meteorological conditions; and odor assessment to demonstrate compliance with Section 22a-174-23 of the Regulations. Records on the daily use of the "Ecosorb", operation of the Equipment, meteorological conditions, and odor assessment shall be recorded on forms approved by the Commissioner.
  2. Within seven (7) days after issuance of this Consent Order, the Respondent shall submit for the Commissioner's review and written approval proposed forms to record:
    - a. the daily process that includes, but is not limited to, the date of production, the start and end time of the production, the total amount of asphalt produced in tonnage on each day, the amount of "Ecosorb" applied per tonnage of asphalt produced on each day and the level of "Ecosorb" measured in the drum at the start and end of each day;
    - b. the daily meteorological conditions that include, but are not limited to, data obtained from a nearby weather station or another weather measuring device for each daily forecast including wind speed, wind direction, humidity and temperature; and
    - c. the daily odor assessment(s) that includes, but not limited to, the name(s) of individual who performed the odor assessment, the start and end time of the odor assessment, the characteristic, duration, intensity and frequency of the odor, the location of the odor, and if necessary, the corrective action undertaken to address odors at the facility.
  3. For one hundred and eighty (180) days after issuance of this Consent Order, the Respondent shall submit, on a monthly basis, for the Commissioner's review and

evaluation the records required in paragraph B.2 of this Consent Order. On the fifteen (15) day of each month, the Respondent shall submit the required records created in the previous month.

4. Within sixty (60) days after the completion of the assessment referenced in paragraph B.1. of this Consent Order, the Respondent shall submit for the Commissioner's review and written approval an Odor Abatement Report. The Odor Abatement Report shall include a detailed description of all of the odor abatement actions implemented at the facility and a determination of whether or not nuisance odors are adequately abated at the facility based on the odor assessment required by paragraph B.1 of this Consent Order.
  - a. If the Respondent determines that the implemented odor abatement measures are effectively abating nuisance odors generated from the asphalt recycling operation, the Odor Abatement Report shall include an implementation plan that describes how the odor abatement measures will be implemented going forward during Burns asphalt recycling operations at the facility.
  - b. If the Respondent determines that the implemented odor abatement measures are not effectively abating nuisance odors generated from the asphalt recycling operation, the Odor Abatement Report shall propose additional or alternative odor abatement measures and a proposed schedule for implementation. The revisions shall be subject to the Commissioner's review, written approval and/or amendment. The Respondent shall complete all additional corrective actions according to the schedule approved by the Commissioner and to his satisfaction.
5. Within sixty (60) days after submission of the Odor Abatement Report, the Commissioner will advise the Respondent whether the Odor Abatement Report is approved and whether the Respondent is deemed in compliance with this Consent Order. If the Commissioner approves the Odor Abatement Report and the Respondent completes the activities set forth in paragraphs B.1 through B.4 to the Commissioner's satisfaction and without the Commissioner issuing any new Notices of Violation, the Respondent will be deemed in compliance with this Consent Order.
6. If, during the one hundred eighty (180) day test period, the Commissioner issues a new Notice of Violation for nuisance odors generated from the asphalt recycling operation, the Commissioner may require the Respondent to meet to discuss whether additional or alternative odor abatement measures shall be required. If, after discussion, the Commissioner determines that such measures are required, the Respondent shall submit a written supplemental plan and schedule for implementation of additional corrective action within thirty (30) days after the meeting. The supplemental plan shall be subject to the Commissioner's review, written approval and/or amendment. The Respondent shall complete all additional corrective actions according to the schedule approved by the Commissioner.
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. 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 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.
9. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
10. 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.
11. 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 Respondent or Respondent's chief executive officer 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."
12. Noncompliance. This Consent Order is a final Consent 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.

13. 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.
14. 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 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.
15. Commissioner's powers. 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 Respondents 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 Respondents to undertake further investigation or further action to prevent or abate violations or pollution.
16. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
17. 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 Respondents pursuant to this Consent Order will result in compliance or prevent pollution.
18. 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.
19. 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.
20. Notice to Commissioner of changes. Within 15 days of the date Respondent become 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.
21. 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

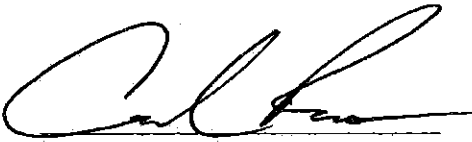
initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates 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.

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

Mr. Seng Phouthakoun  
Department of Environmental Protection  
Bureau of Air Management  
Engineering and Enforcement 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.

Burns Construction Co., Inc.

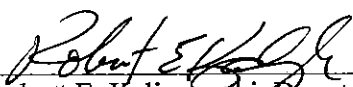
Signature: 

Type Name: Edward Burns

Type Title: Secretary

Date: 9/18/17

Issued as a final Consent Order of the Commissioner of the Department of Energy and Environmental Protection, resolving appeal of Administrative Order No. 2476.

  
 Robert E. Kaliszewski, Deputy Commissioner  
 Department of Energy & Environmental Protection

9/20/17  
 Date

TOWN OF OXFORD  
LAND RECORDS  
MAILED CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

Certified Document No. 94 148 14901585922013369

