



# STATE OF CONNECTICUT

## DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT: Department of Environmental Protection

V.

STATE OF CONNECTICUT: Department of Transportation

### CONSENT ORDER

A. With the agreement of the Commissioner of Transportation ("Respondent"), the Commissioner of Environmental Protection ("the Commissioner") finds:

1. Respondent engages in vehicle servicing and maintenance, equipment storage and maintenance, storage of road deicing materials and fueling activities at its facility located at 239 Miller Avenue in Meriden, Connecticut ("Meriden Facility").
2. a. Respondent was observed discharging vehicle rinsing wastewater from the Meriden Facility to the storm drain without a permit on January 29, 2003, in violation of Section 22a-430 and 22a-430b of the Connecticut General Statutes (CGS). Based on this observation the Department of Environmental Protection (Department) issued Notice of Violation ("NOV") No. WR IN 03 010 to Respondent on February 7, 2003.  
b. In response to the NOV, the Respondent met with DEP on February 28, 2003 where both parties agreed that the Respondent would create a sampling plan involving testing criteria and a schedule to investigate the effects of outdoor rinsing following snow storms. On October 14, 2003, Respondent submitted a sampling plan to DEP for the Meriden facility and two other sites located in Willington and Trumbull. Samples were collected on December 8, 9, and 10, 2003 after a winter snow event. The results of the investigation were submitted to the Department on December 14, 2004 in "Task 241-Final Expanded Water Quality Monitoring Evaluation Vehicle Rinse and Melt Water Analysis", with an addendum submitted on January 21, 2005. The Respondent believed that the results of the investigation demonstrated the effectiveness of the on-site controls and practices to adequately mitigate the vehicle rinse run-off within the discharge quality goals of the Department's General Permit for the Discharge of Stormwater Associated with Industrial Activity.  
c. On or about January 7, 2011, Respondent discontinued the practice of "rinsing" deicing application vehicles and equipment at the Meriden Facility when it was informed that, contrary to its belief as set forth in section A.2.b. of this consent order, it was not in compliance with CGS Section 22a-430 and Section 5(b)(6)(C)(ii) of the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("Industrial General Permit").

Date of Issuance May 3, 2011

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- d. The practice of “rinsing” deicing application vehicles and equipment at the Meriden Facility prior to the timeframe described in paragraph A.2.c of this consent order was in violation of Section 22a-430 and Section 5(b)(6)(C)(ii) of the General Permit for the Discharge of Stormwater Associated with Industrial General Permit.
- 3. Respondent operates a satellite salt storage facility located off Route 15 in Fairfield, Connecticut (“Fairfield Facility”).
- 4. On or about February 13, 2009, Respondent discharged approximately 1,500 gallons of liquid calcium chloride solution from the storage tank at its Fairfield Facility to surface water without a permit in violation of CGS Section 22a-430.
- 5. By virtue of the above, Respondent has created or is maintaining facilities and conditions which reasonably can be expected to create a source of pollution to the waters of the State if not operated and maintained in an approved and prescribed manner.
- 6. By agreeing to the issuance of this consent order, Respondent makes no admission of fact or law with respect to the matters addressed herein other than the facts asserted in paragraphs A.1, A.2.b, A.2.c and A.3, above.

B. With the agreement of Respondent, the Commissioner, acting under CGS Sections 22a-6, 22a-424, 22a-425, 22a-427, 22a-430, 22a-431, 22a-432, and 22a-438 orders the Respondent as follows:

- 1. On or before thirty (30) days after issuance of this consent order, Respondent shall designate staff or retain one or more qualified consultants acceptable to the Commissioner to prepare the documents and implement or oversee the actions required by this consent order. Within five (5) days after such designation or retention, the Respondent shall submit a document to the Commissioner that identifies the designated staff or consultant(s) and the assigned responsibilities of such designated staff or consultant(s). The designated staff, the consultant(s) or combination thereof shall be retained by the Respondent until this consent order is fully complied with. Respondent shall notify the Commissioner in writing within fifteen (15) days of any change in designated staff or consultant(s) other than the ones originally identified under this paragraph.
- 2. Respondent shall take the following actions to prevent future violations described in paragraphs A.2, A.4 and A.5 of this consent order and to bring its facilities into compliance with the requirements of CGS Sections 22a-430 and 22a-430b and the requirements of the Industrial General Permit:
  - a. On or before October 1, 2012, the Respondent shall submit for the Commissioner’s review and written approval a comprehensive and thorough report that, at a minimum, evaluates each of its thirteen (13) vehicle repair garages, forty-four (44) highway maintenance garages and thirty-nine (39) satellite salt storage facilities, and specifies

alternatives that may be utilized to bring each such facility into compliance with the permitting requirements of CGS Sections 22a-430 and 22a-430b and the liquid de-icing materials storage and spill containment requirements of the Industrial General Permit.

- b. On or before October 1, 2012, the Respondent shall submit for the Commissioner's review a comprehensive and thorough report that, at a minimum, summarizes the containment control measures utilized at each of Respondent's eighty-seven (87) facilities that store liquid de-icing material to prevent the release of these materials from containers that were installed prior to the issuance of this consent order. Containment control measures may include, but are not limited to, regular inspection of equipment for spills or leaks and malfunction; replacement of worn or corroded parts of equipment; establishment of a preventative maintenance program; use of dry absorbents or other cleanup practices to collect spills or leaks; installation of protection devices such as low-level alarms or equivalent devices; installation of containment or diversion structures to prevent spills or leaks from entering a storm drainage system; and use of drainage control and other diversionary structures (dikes, impermeable berms, curbing, pits).
- c. (1) On or before ninety (90) days after the date of the Commissioner's approval of the report prepared in accordance with paragraph B.2.a of this consent order, the Respondent shall submit a plan for the Commissioner's review and written approval, which plan shall set forth a priority list for bringing non-compliant facilities into compliance with the requirements of CGS Sections 22a-430 and 22a-430b and the requirements of the Industrial General Permit relative to the liquid de-icing materials storage and spill containment requirements of the Industrial General Permit, and which plan shall set forth preliminary cost estimates associated with the anticipated compliance measures. At a minimum, such plan shall also describe in detail the secondary containment measures to be implemented for liquid de-icing containers installed prior to the issuance of this consent order and what factors were considered and how such factors were weighted in order to develop the priority list.
- (2) Notwithstanding the prioritization set forth in the plan, deviation from the prioritization list may occur when a facility is otherwise in need of repair or upgrade and it is more efficient and less costly to the state to include the work needed to bring the facility into compliance with section 22a-430, 22a-430b and/or the Industrial General Permit at the same time such other work is performed.
- (3) Except as provided in paragraph B.2.c.(2) of this consent order, the Respondent shall seek funding each budget cycle for bringing non-compliant facilities into compliance with section 22a-430, 22a-430b and/or the Industrial General Permit according to the priority list. Within sixty (60) days of approval of the Respondent's budget for a facility or facilities, the Respondent shall submit to the

Commissioner a schedule for completing the improvements at such facility or facilities.

- d. (1) On or before two hundred and seventy (270) days after the date of the Commissioner's approval of the report prepared in accordance with paragraph B.2.a of this consent order, the Respondent shall submit a plan for the Commissioner's review and written approval, which plan shall set forth a priority list for bringing non-compliant facilities into compliance with the requirements of CGS Sections 22a-430 and the requirements of the Industrial General Permit relative to vehicle rinsing, and which plan shall set forth preliminary cost estimates associated with the anticipated compliance measures.  
(2) Notwithstanding the prioritization set forth in the plan, deviation from the prioritization list may occur when a facility is otherwise in need of repair or upgrade and it is more efficient and less costly to the state to include the work needed to bring the facility into compliance with section 22a-430 and the requirements of the Industrial General Permit relative to vehicle rinsing, at the same time such other work is performed.  
(3) Except as provided in paragraph B.2.d.(2) of this consent order, the Respondent shall seek funding each budget cycle for bringing non-compliant facilities into compliance with section 22a-430 and the requirements of the Industrial General Permit according to the priority list. Within sixty (60) days of approval of the Respondent's budget for a facility or facilities, the Respondent shall submit to the Commissioner a schedule for completing the improvements at such facility or facilities.
- e. Respondent shall exercise good faith efforts to perform the actions described in paragraphs B.2.c and B.2.d of this consent order in accordance with plans approved in writing by the Commissioner and the submitted schedules. The Department acknowledges that the Respondent's ability to comply with the plan and the schedules submitted pursuant to paragraphs B.2.c and B.2.d of this consent order is dependent upon the Respondent's available staffing. The notification of noncompliance requirements of paragraph B.20 of this consent order shall not be construed to apply to the schedules submitted pursuant to paragraphs B.2.c.(3) and B.2.d.(3) of this consent order.

3. Progress reports: On or before the last day of January and July of each year after approval of the report specified in paragraph B.2.a, and continuing until all actions required by paragraphs B.2.c and B.2.d of this consent order have been completed to the Commissioner's satisfaction, Respondent shall submit a progress report to the Commissioner describing, at a minimum, the actions taken to date to bring non-compliant facilities into compliance pursuant to this consent order.

4. 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.
5. Status of Notice of Violation. The signing of this Consent Order supersedes and closes the following Bureau of Materials Management and Compliance Assurance, Water Permitting and Enforcement Division Notice of Violation: WR IN 03 010.
6. Respondent agrees to the assessment of a civil penalty of fifteen thousand dollars (\$15,000.00) as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.2, A.4 and A.5 of this consent order, to be satisfied by the following:
  - a. Supplement Environmental Project. Respondent has agreed to undertake the following supplemental environmental project ("SEP") requiring an expenditure of at least fifteen thousand dollars (\$15,000.00), which is the total estimated cost as determined by the Commissioner for the SEP required under this paragraph, or make payment(s) as follows:
    - i. On or before ninety (90) days after issuance of this consent order, Respondent shall provide sand for the replenishment of the beaches at Hammonasset Beach State Park (which sand has already been deemed acceptable by Department staff per the specifications that the Respondent has provided to the Department) at a cost equal to or greater than fifteen-thousand dollars (\$15,000.00) in accordance with the cost schedule attached hereto as Appendix A of this consent order. The unit cost for the sand and the hourly rates for in-kind labor and use of equipment for the loading, transportation and stockpiling of such sand may be included in determining such costs. Respondent shall perform such SEP in accordance with such schedule as approved in writing by the Commissioner.
    - ii. If Respondent fails to fully perform any SEP in accordance with paragraph B.6.a.i. of this consent order, Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to fifteen thousand dollars (\$15,000.00) plus two-thousand five-hundred dollars (\$2,500). Within fourteen (14) days after the date of the Commissioner's written request, Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.6.a.iv of this consent order.
    - iii. On or before thirty (30) days after completion of the SEP, Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of such SEP. Such final report shall include, at a minimum, a complete final accounting of actual project costs including hours of labor and equipment usage.

iv. Should the Commissioner determine that the actual cost to the Respondent of any fully completed SEP is less than the estimated cost , as determined by the Commissioner, of such SEP, Respondent shall pay the difference between such actual cost and the estimated cost to the Commissioner as unexpended SEP funds. The Commissioner shall notify the Respondent in writing of the amount of any such unexpended SEP funds that are due. Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut" and the check shall state on its face "Statewide SEP Account, Bureau of Materials Management and Compliance Assurance, Water Permitting & Enforcement Division - Consent Order No. **[Insert CO Number]**." Respondent shall mail or personally deliver such payment to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.

v. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.

vi. Respondent shall not claim or represent that any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.

7. 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 the Respondent that any document or other action that requires the Commissioner's written approval pursuant to this consent order 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 days of the Commissioner's notice of deficiencies. In approving any document or other action under this consent order that requires the Commissioner's written approval pursuant to 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.

8. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.

9. 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 personally delivered or the date three days after it is mailed by the Commissioner, whichever is earlier. Except as otherwise specified in this consent order, the word "day" as used in this consent order means calendar day. Any document or action which is required by this consent order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday or a Connecticut or federal holiday.

10. 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."

11. 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.
12. 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.
13. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with this consent order, Respondent shall notify the Commissioner in writing no later than fifteen days after transferring all or any portion of the operations which are the subject of this consent order, the site or the business, or 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.
14. 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 fully characterized the extent and degree of pollution or have not successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate pollution.

15. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
16. 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.
17. Access to site. Any representative of the Department of Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
18. No effect on rights of other persons. This consent order shall neither create nor affect any rights of persons who or municipalities which are not parties to this consent order.
19. Notice to Commissioner of changes. Within fifteen 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.
20. 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.

21. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in writing by the Commissioner, be directed to:

Marshall Hoover, Environmental Analyst II  
Department of Environmental Protection  
Bureau of Materials Management and Compliance Assurance  
Water Permitting & 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.

State of Connecticut – Department of Transportation

BY: James Redeker  
James Redeker  
Acting Commissioner, Connecticut Department of Transportation

DATE: 4/4/11

Issued as a final order of the Commissioner of Environmental Protection

Amy Marcellle  
for Daniel C. Esty  
Acting Commissioner AM

5/2/11  
DATE

ORDER NO. CO WR IN 11 001  
DISCHARGE CODE  
DEP/WPC NO. 080-231, 051-133  
PERMIT NO. GSI000957, GSI000020

## APPENDIX A

### Cost Schedule for loading, transporting and stockpiling of sand

#### Transportation Costs

Maintainer 2 Driver (Salary Group 14 Step 5+ Fringe)	\$ 43.70 / hr.
10-Wheel Dump Truck	\$ 25.20 / hr.
Total hourly labor and equipment rate	\$ 68.90 / hr.

#### Loading and Stockpiling Costs

Loader Operator (Salary Group 16 Step 5+ Fringe)	\$ 47.65 / hr.
Loader	\$ 19.61 / hr.
Total hourly labor and equipment rate	\$ 67.26 / hr.

#### Material Costs for Sand

\$50.00 for the first 10 cubic yards, and \$1.50 per 10 cubic yard lots thereafter.