



STATE OF CONNECTICUT :  
V. :  
SOUTHAHAVEN ASSOCIATES, LLC :

**CONSENT ORDER**

Date of Issuance September 12, 2019

Order No.: WR SS 19 001

A. The Commissioner of Energy and Environmental Protection (“the Commissioner”) finds:

1. Southhaven Associates, LLC (“Respondent”) is the owner of the property located at 100 Main Street North in Southbury, Connecticut (“Site”). Domestic sewage is generated by retail and restaurant operations and discharges to the waters of the state through a total of eight separate on-site subsurface sewage disposal systems. Existing System Nos. 1 through 7 each consist of: septic tank(s), grease trap(s), pump chamber(s), and leach field(s) (“Existing System Nos. 1 through 7”). Existing System No. 8 consists of: septic tank(s), grease trap, pump chamber(s), Bioclere Wastewater Treatment System and an engineered leach field (“Existing System No. 8”).
2. The discharges to the waters of the state from Existing System Nos. 1 through 7 were previously subject to local jurisdiction, and have not been authorized by the Commissioner in accordance with Connecticut General Statutes Section 22a-430. Respondent asserts that Existing System Nos. 1 through 7 had been previously authorized under such local jurisdiction.
3. The Commissioner issued Permit No. UI00000120 (“the Permit”) on February 28, 2006 authorizing the discharge of domestic sewage to the waters of the state in accordance with CGS Section 22a-430 for Existing System No. 8. The Permit included a compliance schedule requiring the Respondent to investigate the adequacy of wastewater treatment through Existing System Nos. 1 through 7 by August 31, 2007, propose any necessary remedial actions for the Commissioner’s review and written approval, and perform such approved remedial actions on or before November 15, 2008 (“Compliance Schedule”). The Respondent did not complete all of the requirements of Compliance Schedule.
4. On August 31, 2015, the Respondent submitted an application (Application No. 201505789) for the renewal of the Permit authorizing the discharge of domestic

sewage to the waters of the state through Existing System No. 8. The Commissioner has determined that this application is technically deficient. Specifically, such application fails to include the necessary technical information and a request for authorization to discharge to the waters of the state through Existing System Nos. 1 through 7.

5. On June 29, 2018, the Department issued Notice of Violation NOV WR SS 18 001 ("NOV") to Southhaven Associates, LLC for failure to submit: the Discharge Monitoring Reports for the identified time periods as required by condition no. 4.(E), 4.(F) and 5. of the Permit; the results of the groundwater monitoring for the identified time periods as required by condition no. 4.(G) and 5. of the Permit; results of quarterly inspection, monitoring or maintenance for the identified time periods as required by condition nos. 4.(F) and 5. of the Permit; and reports of violations of the effluent limitations of the Permit for the identified parameters and time periods. The Respondent has submitted the Discharge Monitoring Reports identified in the NOV, but has not addressed elevated nitrogen concentrations in groundwater to the satisfaction of the Commissioner and has not submitted a Compliance Statement.
  6. By virtue of the above, the Respondent is maintaining a discharge to the waters of the State through Existing System Nos. 1 through 7 without obtaining a permit as required by Section 22a-430 of the Connecticut General Statutes and is maintaining a facility or condition which reasonably can be expected to create a source of pollution to the waters of the State in violation of Section 22a-427 of the Connecticut General Statutes.
- B. With agreement of the Respondent, the Commissioner, acting under §22a-6, §22a-424, §22a-425, §22a-427, §22a-430, §22a-431, §22a-432, and §22a-433 of the Connecticut General Statutes, orders the Respondent as follows:
1. On or before thirty (30) days after the date of issuance of this consent order, the Respondent shall retain one or more qualified consultants acceptable to the Commissioner to prepare the documents and implement or oversee the actions required of the Respondent by this consent order and shall, by that date, notify the Commissioner in writing of the identity of such consultants. The Respondent shall retain one or more qualified consultants acceptable to the Commissioner until this consent order is fully complied with and, within ten (10) days after retaining any consultant other than one originally identified under this paragraph, the Respondent shall notify the Commissioner in writing of the identity of such other consultant. The consultant(s) retained to investigate and evaluate the performance of existing systems, evaluate potential impacts to human health and the environment, and prepare the required wastewater discharge permit application shall be a qualified professional engineer with a current and valid license to practice in Connecticut acceptable to the Commissioner. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

2. Upon issuance of this consent order, the requirements of the Notice of Violation No. NOVWRSS18001 issued on June 28, 2018 will be superseded by the requirements of this consent order.
3. On or before sixty (60) days after the date of issuance of this consent order, the Respondent shall submit a complete and sufficient wastewater discharge permit application for modification of the Permit under Section 22a-430 of the Connecticut General Statutes. Such application shall, at a minimum, include the following:
  - (a) a report detailing the investigation and evaluation of the adequacy and effectiveness of wastewater treatment through Existing System Nos. 1 through 7 to: protect human health and the environment, provide effective on-site wastewater treatment and disposal, and meet present and future wastewater treatment and disposal needs. This shall include, but is not limited to, the overall existing system design and performance, and the inspection, monitoring and maintenance requirements for each system;
  - (b) a site-wide nitrogen dilution analysis, a site-wide groundwater monitoring plan, and a remedial plan and schedule to ensure that total nitrogen concentrations in groundwater downgradient of Existing System Nos. 1 through 7 do not exceed ten milligrams per liter (10 mg/l).
  - (c) information identified in the Department's letter dated September 26, 2018 identifying technical deficiencies in Application No. 201505789; and
  - (d) engineered plans and specifications, signed and sealed by a professional engineer with a current and valid license to practice in Connecticut, for the repair or replacement of existing system nos. 3, 5 and 7 developed in accordance with the requirements of the Department's Guidance for Design of Large-Scale On-Site Wastewater Renovation Systems, dated February 2006.
4. Authorization: Until the Commissioner issues a final decision on Application No. 201505789 and any application for modification submitted pursuant to paragraph B.3 of this consent order, Respondent is hereby authorized to continue the discharge of domestic sewage to the waters of the state through the existing systems identified in Appendix A of this consent order provided the Respondent does not discharge domestic sewage beyond the design flow identified in Appendix A for each existing system, and maintains compliance with the terms and conditions of this consent order and with all provisions of local, state and federal laws and regulations that govern the Respondent's activities. This authorization is expressly limited by and conditioned on the Respondent's compliance as described in this paragraph, which compliance the Commissioner deems necessary to assure protection of human health and safety and the environment.

5. Progress reports. On or before the last day of each month following issuance of this consent order, and continuing until all actions required by this order have been completed as approved and to the Commissioner's satisfaction, the Respondent shall submit a progress report to the Commissioner describing the actions the Respondent has taken to date to comply with this consent order.
6. Full compliance. The 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.
7. 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 Connecticut Department of Public Health to conduct such sampling and analyses. 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.
8. Approvals. The 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 any Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and such 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 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 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 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 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 the Respondent or, if a Respondent is not an individual, by such 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."

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 Respondents. Until the Respondent has fully complied with this consent order, the 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. Respondents' 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. Nothing in this 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 violations of law, including but not limited to those described in this consent order. If at any time the Commissioner determines that the actions taken by any Respondent pursuant to this order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented any pollution, the Commissioner may institute any proceeding to require the 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 the 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 the 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 Energy and 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 neither creates nor affects any rights of persons that are not parties to this consent order.
19. Notice to Commissioner of changes. Within fifteen (15) days of the date the 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, the Respondent shall submit the correct or omitted information to the Commissioner.
20. Notification of noncompliance. In the event that the 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, the 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, the 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 Respondents shall comply with any dates which may be approved in writing by the Commissioner. Notification by any 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:

Lauren Jones, Sanitary Engineer III  
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

The 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."

**Southaven Associates, LLC**

BY: 

Christopher Gatto

Manager

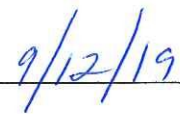


Date

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



Betsey Wingfield  
Deputy Commissioner  
Department of Energy and Environmental Protection

  
Date

Cc: Pomperaug Health District

## APPENDIX A

### EXISTING SUBSURFACE DISPOSAL SYSTEMS AND AUTHORIZED DESIGN FLOW

System No.	Building No.	Unit No.	Design Flow (GPD)
1	3	1A (upper floor) Old Navy	1,360
	3	1A (upper floor) DSW	1,600
	3	1A (upper floor) Ulta	2,700
	3	1B (lower floor) Catalyst	1,340
2	5	24 (Talbots)	4,100
	5	25 (Merrill Lynch)	
	2	17 (TJ Maxx)	
	3	1A (Upper fl Catalyst)	
	3	2 (Southhaven Associates)	
	3	3 (The Paper Store)	
	4	4 (Ken's Custom Tailor's)	
	3	5 (Cost Cutter's)	
	3	6 (Southhaven Associate's)	
	3	7 (Olympia Sports)	
	3	8 (Verizon Wireless)	
	3	9 (B&C International)	
	3	10 (Opticare)	
3	4	22 (Panera Bread)	3,200
	4	22B (Froyo World)	
	4	23 (Webster Bank)	
4	3	11 (Pet Valu)	700
	3	12 (Pet Valu)	
		Maintenance Building	
5	2	14	3,300
	2	15 (Oriental Gourmet)	
6	2	16 (AT&T)	2,800
	2	19 (Nail Salon)	
	2	20A (UPS Store)	
	2	20B (Superior Cleaners)	
	3	Little Ceasars	
7	2	19 (McDonalds)	4,300
8	3	13 (Stop n Shop)	4,800