



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT

V.

**Fleming Enterprises Inc.**

CONSENT ORDER

Date of Issuance July 12, 2011

Order No. CO WR SW 11 002

A. With the agreement of Fleming Enterprises Inc. ("Respondent"), the Commissioner of Energy and Environmental Protection finds:

1. Respondent is a corporation, which discharges stormwater associated with industrial activity ("stormwater discharge") from its facility located at 720 Thompsonville Road, Suffield, CT ("site").
2. Since **February 2, 1998**, Respondent's stormwater discharge has been regulated by the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("Stormwater General Permit"), issued on October 1, 2002, modified July 15, 2003, reissued October 1, 2007, reissued October 2, 2008, reissued on April 14, 2009, and as subsequently reissued, pursuant to Connecticut General Statute 22a-430b.
3. Respondent is required to monitor its stormwater discharge annually between October 1<sup>st</sup> and September 30<sup>th</sup> in accordance with Subsection 5(c) of the Stormwater General Permit. Since October 1, 2005, Respondent failed to monitor its stormwater discharge in accordance with the Stormwater General Permit during the following periods. **2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009.**
4. By virtue of the above, Respondent has violated a permit issued under §22a-430b of the Connecticut General Statutes.

B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-424, §22a-425, §22a-430, §22a-430b, and §22a-438 of the Connecticut General Statutes, orders Respondent as follows:

1. On or before ninety days (90) days after issuance of this consent order, Respondent shall monitor its stormwater discharge(s) and submit the monitoring data to the Commissioner to meet the requirements of Section 5 of the

Stormwater General Permit for the sample year beginning October 1, 2009, ending September 30, 2010.

2. On or before one-hundred-twenty (120) days after the date of issuance of this consent order, Respondent shall review its SWPPP and perform a Comprehensive Site Compliance Evaluation in accordance with Section 5 of the Stormwater General Permit. Respondent shall use the form included in Attachment A to this consent order (“form”) to assist in performing such review and evaluation.
3. Within thirty (30) days after the date Respondent performs the review and evaluation required under paragraph B.2., Respondent shall submit, for the Commissioner’s review, the completed form, a summary of findings from Respondent’s review and evaluation, and a discussion of corrective actions required and taken, including any updates or amendments to the SWPPP necessary to make such SWPPP complete or to otherwise comply with the Stormwater General Permit.
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. Civil penalty. On or before *fourteen (14) days* after the date of issuance of this consent order, Respondent shall pay a penalty of \$6,100 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in A.3 of this consent order.
6. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to “Treasurer, State of Connecticut.” The check shall state on its face, “**Materials Management and Compliance Assurance, Water Permitting and Enforcement Division, consent order #CO WR SW 11 002**.”
7. Sampling and sample analyses. All 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 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. 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. 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. 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.
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 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 is 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. 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.
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 Respondent pursuant to this consent order will result in compliance or prevent or abate pollution.
18. Access to site. Any representative of the Department of Environmental Protection may enter Respondent's site or 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 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.

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 shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Donna Seresin, Sanitary Engineer 3  
 Department of Environmental Protection  
 Bureau of Materials Management and Compliance Assurance  
 Water Permitting 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."

BY: (Signature:)  
 Shaun Fleming  
 President



6-29-11

Date

Issued as a final order of the Commissioner.

*Robert E. Kaliszewski*  
for Daniel C. Esty *Robert E. Kaliszewski*  
Commissioner *Director, Planning & Program Development*

*7/11/11*  
Date

\*Department of Energy & Environmental Protection

Order No. CO WR SW 11 002  
DEP/WPC No.

Town of **Suffield**  
Land Records

\*Public Act 11-80, effective July 1, 2011, established the Department of Energy & Environmental Protection as the successor agency to the Department of Environmental Protection.