



STATE OF CONNECTICUT

V.

METRO-NORTH COMMUTER RAILROAD COMPANY

CONSENT ORDER

Date of Issuance: August 3, 2012

Order No.: CO WR SW 12 004

- A. With the agreement of Metro-North Railroad Company (“Respondent”), the Commissioner of Energy and Environmental Protection finds:
1. Respondent is a corporation which operates rail service at facilities located at **2 Brewery Street in New Haven, CT and 18 Cherry Street in Stamford, CT**. These facilities discharge stormwater associated with industrial activities (“stormwater discharge”).
 2. Since July 12, 2000, the stormwater discharges have been covered under the General Permit for the Discharge of Stormwater Associated with Industrial Activity issued on October 1, 1997 and as subsequently reissued (“Stormwater General Permit”), pursuant to Connecticut General Statute 22a-430b.
 3. Respondent is required to monitor the stormwater discharge annually between October 1st and September 30th in accordance with Subsection 5(c) of the Stormwater General Permit. Since October 1, 2005, Respondent failed to monitor the stormwater discharge at both the Stamford and New Haven locations in accordance with the permit during the following periods: 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009.
 4. On April 7, 2010, Department staff issued Notice of Violation WR SW 10 DMS 023 to the Stamford location for failure: to prepare and implement an adequate Stormwater Pollution Prevention Plan (“plan”), monitor stormwater, and to provide chemical and dumpster coverage and containment. Staff issued WR SW 10 DMS 024 to the New Haven location for failure to: prepare and implement an adequate plan, provide chemical and dumpster coverage and containment and monitor stormwater.
 5. 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-427, §22a-428, §22a-430, §22a-430b, and §22a-438 of the Connecticut General Statutes, orders Respondent as follows:
1. On or before sixty (60) days after the date of issuance of this consent order, Respondent shall evaluate the stormwater discharge locations at both the Stamford and New Haven locations in accordance with Section 5(e) of the Stormwater General Permit. The plan must be updated as necessary.
 2. On or before one-hundred-twenty (120) days after the date of issuance of this consent order, Respondent shall review its plan and perform a Comprehensive Site Inspection in accordance with Section 5(d) 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 in writing, 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 plan necessary to make such plan complete or to otherwise comply with the 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. Penalty. Respondent agrees to the assessment of a civil penalty of \$55,000 as the total civil penalty to be sought by the Commissioner for past violations described in paragraph A.3., A.4., and A.5. of this consent order to be satisfied by the following:
 - (a) Supplemental Environmental Project.

Respondent has agreed to undertake the following supplemental environmental project (“SEP”) expenditure of at least fifty-five thousand dollars (\$55,000), or make payment(s) as follows:

 - i. On or before sixty (60) days after the date of issuance of this consent order, Respondent shall submit, for the Commissioner’s review and written approval, a proposal and schedule to install water quality retrofits (i.e. treatment units to improve the quality of the stormwater discharges) at both the Stamford and New Haven Rail Yards. Within six (6) months of the issuance of this consent order, Respondent shall undertake such SEP and shall obtain any federal, state or local permits or approvals necessary to carry out such SEP.
 - ii. If Respondent fails to undertake the SEP in accordance with paragraph B.5.a.i. above, Respondent shall immediately notify the Commissioner

in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment in the amount of \$55,000 plus \$5,500 (10% of the cost of the SEP). Within fourteen (14) days after the date of the Commissioner's written request, Respondent shall make such payment in accordance with the remittance procedures of paragraph B.5.(a) iv. of this consent order.

- iii. On or before thirty (30) days after completion of such 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 narrative history of the project, detailed explanation of its design and implementation, summary of any data collected, complete final accounting of actual project costs including receipts for out-of-pocket costs, and a discussion of environmental benefits resulting from the SEP.
- 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, Consent Order No. CO WR SW 12 004." Respondent shall mail or personally deliver such payment to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.
- v. 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.
- vi. 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.

6. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Energy and 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 Civil Penalty, Consent Order No. CO WR SW 12 004."

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 Energy and 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 Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance
Water Permitting and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

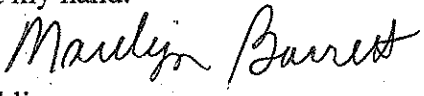
Respondent consents to the issuance of this Consent Order without further notice. The undersigned Certifies that he is Vice President and General Counsel of Metro-North Commuter Railroad Company; Secretary of Metro-North Commuter Railroad Company; and an Officer of Metro-North Commuter Railroad Company, and as such 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:) 
Seth Cummins
Metro-North Commuter Railroad Company
Vice President and General Counsel
Secretary

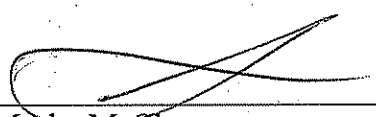
State of New York
County of New York

On this *11* day of *July*, 2012, Seth Cummins, personally appeared to me, who acknowledged himself as Vice President and General Counsel and Secretary of Metro-North Commuter Railroad Company, and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand.

Signature 
Notary Public
Date Commission Expires: *7/24/14*

Issued as a final order of the Commissioner:


Macky McCleary
Deputy Commissioner
Department of Energy & Environmental Protection

MARILYN BARRETT
NOTARY PUBLIC - State of New York
No. 01BA8150300
Qualified in Queens County
Commission Expires July 24, 20*14*

City of New Haven
City of Stamford
Land Records

ATTACHMENT A
 COMPREHENSIVE SITE
 INSPECTION ("CSI") FORM

Facility Name:

SIC Code: _____

Site Address:

Town: _____

ZIP Code: 06 _____

Phone #: _____

Permit #: GSI _____

INSPECTION RESULTS:

Inspection Date: _____

Inspector Name & Title:

Employer Name/Address:

Does facility have a Stormwater Pollution Prevention Plan for the site? ___ Yes ___ No

(If No, √ all applicable)

___ Stormwater discharges only to groundwater

___ Category 10, no exposure

___ Combined Sewer Overflow (CSO)

___ Other (Describe: _____)

Has the facility performed stormwater monitoring at the site? ___ Yes ___ No

STORMWATER POLLUTION PREVENTION PLAN CHECKLIST

A complete Stormwater Pollution Prevention Plan ("plan") must be fully developed, implemented and kept current in accordance with the General Permit for the Discharge of Stormwater Associated with Industrial Activity issued on August 23, 2010 and effective October 1, 2011 ("general permit"). A complete plan shall include, but not be limited to, the following key elements which are described more fully in the general permit. This checklist shall be used in conjunction with the general permit when the Respondent is evaluating the adequacy and completeness of the plan.

1. STORMWATER POLLUTION PREVENTION TEAM [Section 5(c)(2)(C) of the general permit].

Y N

- Team Members are identified in the plan.
- At least one team member is present at the facility or on call during all operational shifts.
- Team Member's responsibilities for plan development, implementation, maintenance and revision are clearly identified in the plan.

2. DESCRIPTION OF POLLUTANT SOURCES [Section 5(c)(2)(D) of the general permit].

A. Site map [Section 5(c)(2)(D)(i) of the general permit] contains the following:

Y N

- North arrow and surveyed or approximate property lines, including the total site acreage.
- Locations of existing buildings and structures.
- Overall site size and amount of impervious coverage as well as an outline of the drainage area, including the extent of the impervious surface, for each stormwater outfall and direction of flow within the drainage area.
- Locations of existing structural control measures installed to reduce pollutants in stormwater runoff.
- Locations of all stormwater conveyances including catchbasins, ditches, pipes, and swales as well as the location of any non-stormwater discharges.
- Areal extent of any wetlands to which stormwater discharges.
- Location of the receiving water body or bodies to which the site discharges including the identification of any impaired waters and whether or not a total maximum daily load (TMDL) has been established for them.
- Locations of all stormwater monitoring points (including latitude and longitude).
- Locations where any drainage run-on enters the site.
- Location of materials exposed to precipitation.
- Location of major spills and leaks.
- Locations of fueling stations.

- Vehicle & equipment maintenance or cleaning areas.
- Loading/unloading areas.
- Waste treatment, disposal or storage areas.
- Locations of liquid storage tanks.
- De-icing material storage areas.
- Processing areas.
- Materials storage areas.

B. Plan contains a description of the stormwater discharge [Section 5(c)(2)(D) of the general permit].

Y N

- Direction of stormwater flow indicated
- Types of pollutants likely to be present in stormwater discharge
- Potential for discharge to cause erosion
- Locations of discharges to a municipal storm sewer system
- Locations of discharges to groundwater through an infiltration system

C. Plan contains an inventory of exposed materials [Section 5(c)(2)(D)(ii) of the general permit]

Y N

- Loading & unloading operations
- Roof areas
- Outdoor storage activities
- Outdoor manufacturing or processing activities
- Dust or particulate generating processes
- On-site waste disposal practices

Additional Inventory Requirements by Sector

D. Plan contains a narrative summary of potential pollutant sources [Section 5(c)(2)(D)(iii) of the general permit].

Y N

- Method and location of on-site storage or disposal
- Materials management practices to minimize stormwater contact (between the time of three years prior to the effective date of this permit and the present)
- Location and description of structural and non-structural control measures to reduce pollutants in stormwater runoff
- Description of existing stormwater treatment

E. Leaks and spills [Section 5(c)(2)(D)(iv) of the general permit].

Y N

- List & location of spills or leaks greater 5 gallons that could affect stormwater quality at the site (that occurred at the facility after the date of three years prior to the date of the certification of the Plan).

F. Stormwater monitoring program [Section 5(c)(2)(J) of the general permit].

Y N

- Description of monitoring program and stormwater sampling data for on-site stormwater discharges.

3. MEASURES AND CONTROLS [Section 5(b) of the general permit].

The plan shall describe stormwater management controls appropriate for the facility including, but not limited to, the following:

Y N

- Good housekeeping; i.e. provisions for maintaining a clean, orderly facility in all areas exposed to rainfall and can be a potential pollutant source [Section 5(b)(1) of the general permit].
- Prohibition against equipment or vehicles washing that would allow washwaters to enter a storm drainage system or a waterbody [Section 5(b)(2) of the general permit].
- Provision that all floor drains connected to storm sewers are either sealed or approved and permitted by a local authority [Section 5(b)(3) of the general permit].

A. Roof areas [Section 5(b)(4) of the general permit].

Y N

- Location of roof areas which may be a source of stormwater pollution (e.g., vent or exhaust).
- Program for inspecting such roof areas.

B. Sediment and erosion control [Section 5(b)(6) of the general permit].

Y N

- Identify potential erosion areas
- Implement erosion control measures

C. Preventive maintenance [Section 5(b)(8) of the general permit].

Y N

- Program for inspecting and maintaining stormwater management devices
- Program for inspecting, maintaining and testing on-site equipment and systems that could, in the event of failure or breakdown, result in a discharge of pollutants to surface waters.
- Program for the appropriate maintenance for these equipment and systems.

D. Spill prevention and response procedures [Section 5(b)(9) of the general permit].

Y N

- Identify areas for potential spills
- Potential spill locations and the accompanying drainage points
- Spill response procedures
- Secondary containment provided for mobile/portable above-ground tanks/containers and storage areas
- Provisions for impervious containment for all chemical storage and roof coverage for each container with a capacity of less than 100 gallons
- Provision for covering dumpsters, trash compactors, and roll-off containers to prevent releases to stormwater drainage systems
- Loading docks covered and protected from rainfall

E. Employee training program and schedule [Section (5)(b)(10) of the general permit].

Y N

- Employee training program, schedule and training topics.
- Training received within ninety days of employment and at least once a year thereafter.

F. Non-stormwater discharges [Section 5(b)(11) of the general permit].

Y N

- Written PE Certification
- Description of all testing and evaluation methods used, the dates and results of any testing/evaluation, and drainage locations tested

G. Management of runoff [Section 5(b)(7) of the general permit].

Y N

- Discussion of the need for stormwater management or treatment beyond source control practices
- Description of management or treatment measures to be implemented

H. Inspections [Section 5(d)(2) of the general permit].

Y N

- List of qualified personnel to inspect designated equipment and areas
- Procedures for corrective action to be undertaken following inspection
- Provision for maintaining inspection records at the facility

4. COMPREHENSIVE SITE COMPLIANCE EVALUATION ("CSCE") [Section 5(d)(1) of the general permit].

Y N

- Provision for conducting a CSCE at least twice a year.
- CSCE shall provide for (List Yes, No, or N.A. where not applicable):
- _____ inspection of material handling areas and other potential sources of pollution.
- _____ operational evaluation of stormwater management measures, erosion control measures, and other pollution prevention measures.

- _____ inspection of equipment needed to implement plan, e.g., spill response
- _____ preparation of an inspection report discussing scope, inspection dates, personnel, observations, action taken, and updates to plan

5. DISCHARGE TO MUNICIPAL SEPARATE STORM SEWER SYSTEMS SERVING A POPULATION OF 100,000 OR MORE [Section 5(c)(2)(G) of the general permit].

- _____ Description of how the site shall comply with applicable municipal stormwater management requirements (List Yes, No, or N.A. if not applicable).

6. CONSISTENCY WITH OTHER PLANS [Section 5(c)(2)(H) of the general permit].

- Y N
- The plan may reference requirements contained in a Spill Prevention Control and Countermeasure ("SPCC") plan or other spill control plan required under federal, state or local law.

List Name and Date of Plan (or N.A. if not applicable)

7. COVERAGE OF SALT STORAGE PILES [Section 5(b)(12) of the general permit].

- _____ Provision for covering salt storage piles, including pure salt or salt mixed with other materials, which may come into contact with stormwater (List Yes, No, or N.A. if not applicable).

8. FUTURE CONSTRUCTION [Section 5(c)(2)(I) of the general permit].

- _____ Provision for proper management and treatment of stormwater for all construction which may impact the on-site stormwater drainage system (List Yes, No, or N.A. if not applicable).

9. PROFESSIONAL ENGINEER CERTIFICATION [Section 5(c)(7) of the general permit].

- Y N
- Plan contains required compliance certification and is signed by a CT licensed professional engineer

10. OBSERVATIONS, RECOMMENDATIONS AND CORRECTIVE ACTIONS TAKEN.
