



Connecticut Department of

ENERGY &
ENVIRONMENTAL
PROTECTION

STATE OF CONNECTICUT

V.

City of Derby

CONSENT ORDER

Date of Issuance June 30, 2014

Order No. CO WR SW 13 010

A. With the agreement of the City of Derby ("Respondent"), the Commissioner of Energy & Environmental Protection ("Commissioner") finds:

1. Respondent is a municipality which discharges stormwater associated with industrial activity from its Public Works and Transfer Station facilities located at Coon Hollow Road and Pine Street respectively ("industrial stormwater discharges").
2. Respondent's industrial stormwater discharges were regulated by the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("Stormwater General Permit"), issued on October 1, 2002, and as subsequently reissued through September 30, 2011, pursuant to Connecticut General Statute §22a-430b. Respondent's industrial stormwater discharges have been assigned Permit Nos. GSI001731 (Public Works) and GSI001732 (Transfer Station).
3. Since October 1, 2011, Respondent's industrial stormwater discharges have been regulated by the General Permit for the Discharge of Stormwater Associated with Industrial Activity, issued August 23, 2010, effective October 1, 2011 (Industrial Stormwater General Permit with modifications). By June 1, 2011, in order to maintain permit coverage, sites regulated by the Industrial Stormwater General Permit were required to re-register for the Industrial Stormwater General Permit with modifications.
4. Beginning on October 1, 2011, Section 5(e) of the Industrial Stormwater General Permit with modifications required sampling of stormwater discharges on a semiannual basis. Respondent failed to sample its industrial stormwater discharges for the periods of October 1, 2011 – March 31, 2012, April 1, 2012 – September 30, 2012, October 1, 2012 – March 31, 2013, and April 1 – September 30, 2013.

5. On or before June 1, 2011, Respondent failed to re-register its Public Works and Transfer Station facilities for the Industrial Stormwater General Permit with modifications.
 6. Respondent is a municipality which discharges stormwater from a municipal separate storm sewer system in Connecticut ("municipal stormwater discharges").
 7. Respondent's municipal stormwater discharges have been authorized under the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems ("MS4 Permit") issued on January 9, 2004 and most recently reissued January 9, 2013 pursuant to Connecticut General Statute §22a-430b. Respondent's municipal stormwater discharges have been assigned Permit No. GSM000114.
 8. Respondent is required to monitor six of its municipal stormwater discharges annually between January 1st and December 31st in accordance with Subsection 6(h) of the MS4 Permit and submit the results by January 1 of the subsequent year. Respondent failed to submit municipal stormwater discharges monitoring results in accordance with the MS4 Permit for the years 2009, 2011, and 2012.
 9. Pursuant to Subsection 6(i) of the MS4 Permit, Respondent is required to prepare and submit an Annual Report for each year by January 1 of the subsequent year. Respondent failed to submit an Annual Report the years 2011 and 2012.
 10. 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-428, §22a-430, §22a-430b, and §22a-438 of the Connecticut General Statutes, orders Respondent as follows:
1. On or before fifteen (15) days after issuance of this consent order, Respondent shall register its Transfer Station and Public Works facilities at Coon Hollow Road and Pine Street for the Industrial Stormwater General Permit with modifications using the e-form found at www.ct.gov/dep/stormwater.
 2. On or before one-hundred-twenty (120) days after the date of issuance of this consent order, Respondent shall review the Stormwater Pollution Prevention Plans ("SWPPPs") for these facilities and perform Comprehensive Site Inspections pursuant to the requirements of Sections 5(c) and 5(d) of the Industrial Stormwater General Permit with modifications. Respondent shall use the form included in Attachment A to this consent order ("form") to assist in performing such reviews and inspections.
 3. Within thirty (30) days after the date Respondent performs the reviews and inspections required under paragraph B.2., Respondent shall submit, for the Commissioner's review, the completed forms, a summary of findings from Respondent's reviews and inspections, and a discussion of corrective actions required and taken, including any updates or

amendments to the SWPPPs necessary to make such SWPPPs complete or to otherwise comply with the Industrial Stormwater General Permit with modifications.

4. Within sixty (60) days after the date of issuance of this consent order, Respondent shall prepare and submit an Annual Report for the years 2011 and 2012 in accordance with Section 6 of the MS4 Permit issued on January 9, 2013.
5. 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.
6. Penalty. Respondent agrees to the assessment of a civil penalty of \$16,530 as the total civil penalty to be sought by the Commissioner for past violations described in paragraph A.4, A.5., A.8., and A.9. of this consent order to be satisfied by the following:
 - a. Supplemental Environmental Project.
 - i. Respondent has agreed to fund a supplemental environmental project ("SEP") or projects as selected by the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects." Therefore, on or before fourteen (14) days after the date of issuance of this consent order, Respondent shall pay \$16,530 to the MS4 SEP Account. The payment shall be mailed or personally delivered to the Department of Energy & Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut," with notation thereon: "Small Municipal (MS4) Program, SEP Account No. DEPA00003087007" and "Consent Order No. WR SW 13 010."
 - ii. If Respondent fails to fund the SEP in accordance with paragraph B.6.a.i. above, Respondent shall, instead of funding such SEP, immediately pay an additional civil penalty in the amount of \$16,530 plus \$2,500. Respondent shall pay such civil penalty in accordance with the provisions of paragraph B.7. of this consent order.
 - iii. 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.
 - iv. 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.
7. Payment of penalties. Payment of penalties under this consent order shall be mailed or personally delivered to the Department of Energy & 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 No. CO WR SW 13 010."

8. 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.
9. 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.
10. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
11. Dates. The date of "issuance" of this consent order is the date the signed 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.

12. 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:
 - a. "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."
13. 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.
14. 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.
15. 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.
16. 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.
17. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.

18. 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.
19. Access to site. Any representative of the Department of Energy & 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.
20. 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.
21. 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.
22. 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.
23. 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:

Christopher Stone, P.E.
Department of Energy & 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:) Amia Ouzell
Date 6/26/2014

Issued as a final order of the Commissioner:

[Signature]
Macky McCleary
Deputy Commissioner
Department of Energy & Environmental Protection

6/30/14
~~_____~~
Date

Order No. CO WR SW 13 010
City of Derby Land Records