



STATE OF CONNECTICUT

v.

THE CONNECTICUT LIGHT AND
POWER COMPANY
DBA EVERSOURCE ENERGY

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ORDER NO. COWSPCB 16-002

Date of Issuance December 26, 2018

CONSENT ORDER

A. With the agreement of The Connecticut Light and Power Company dba Eversource Energy ("Respondent"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:

1. Respondent has used a stormwater settlement basin ("Settling Basin") for the collection of storm water from the adjacent parking lot to the west. The Settling Basin is located at the southeast portion of 107 Selden Street in Berlin, Connecticut ("the Site"), more fully described in a deed which is recorded in Book 95 on Page 608 in the Town of Berlin Land Records.
2. Respondent used the Settling Basin at the Site for collection of storm water conveyed from the adjacent parking lot to the west.
3. Respondent submitted a Remedial Investigation Sampling Plan ("the Plan") to the Commissioner dated February 27, 2012 pertaining to the Settling Basin at the Site.
4. The Plan documented PCBs in sediments at up to 550 ppm.
5. Respondent submitted to the Department of Energy and Environmental Protection ("Department") a Notification of Significant Environmental Hazard on October 1, 2012 for sediment contamination in the Settling Basin at up to 63 ppm PCBs in the uppermost two feet below ground surface.

6. Respondent submitted to the United States Environmental Protection Agency a Self-Implementing and Risk-Based Hybrid Clean-up Plan ("SIP") dated September 30, 2015 pertaining to the Settling Basin at the Site.
 7. The SIP documented PCBs in sediments at up to 770 ppm.
 8. Respondent submitted to the Department a Screening Level Ecological Risk Assessment dated January 13, 2015.
 9. By virtue of the above, Respondent created and maintained, without a permit, a condition which reasonably could be expected to create a source of pollution to the waters of the state and created and maintained pollution to the waters of the state in violation of Connecticut General Statutes ("CGS") §22a-427 and §22a-430; has disposed of PCBs in a manner other than that specified in violation of CGS §22a-467.
 10. The documents identified in Paragraphs A.3., A.5. and A.6. satisfy Paragraphs B.1.a. through B.1.e of this Consent Order.
 11. 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 Paragraph A.1.
- B.** With the agreement of Respondent, the Commissioner, acting under CGS §22a-6, §22a-424, §22a-425, §22a-430, §22a-432, §22a-438 and §22a-469, orders Respondent as follows:
1. a. On or before thirty (30) days after issuance of this Consent Order, Respondent shall 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 and shall, by that date, notify the Commissioner in writing of the identity of such consultants. 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, Respondent shall submit to the Commissioner a description of a consultant's education, experience and training which is relevant to the work required by this Consent Order within ten (10) days after a request for such description. Nothing in this Paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

- b. On or before thirty (30) days after issuance of this Consent Order, Respondent shall submit for the Commissioner's review and written approval a Scope of Work for investigating the potential impact of pollution on human health and the environment at the Site, including but not limited to, the existing and potential extent and degree of soil, ground water and surface water pollution both on and emanating from the Site from known discharges and/or releases. Such Scope of Work shall include, at a minimum, the proposed locations and depths of ground water monitoring wells and soil and surface water sampling; a proposed sampling and analytical program, including at least the parameters to be tested, sampling and analytical methods, and quality assurance and quality control procedures; and a schedule for conducting the investigation required by this Paragraph.
- c. On or before thirty (30) days after written approval of the Scope of Work, Respondent shall perform the investigation and other actions specified in the approved Scope of Work in accordance with the approved Scope of Work and the approved schedule. Respondent shall notify the Commissioner in writing of the date and time of installation of monitoring wells and of each soil and ground water sampling event at least six (6) business days prior to such installation or sampling.
- d. If the investigation carried out under the approved Scope of Work does not fully characterize the extent and degree of soil, sediment, surface water and ground water pollution to the satisfaction of the Commissioner, additional investigation(s) shall be performed in accordance with a supplemental plan and schedule approved in writing by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted for the Commissioner's review and written approval on or before thirty (30) days after notice from the Commissioner that they are required.
- e. On or before thirty (30) days after completion of the investigation and other activities performed in accordance with the approved Scope of Work and any supplemental plan performed pursuant to Paragraph B.1.d. above, Respondent shall submit for the Commissioner's review and written approval a comprehensive and thorough report which describes in detail the investigation(s) performed pursuant to Paragraphs B.1.c. and B.1.d. above, and which defines the existing and potential extent and degree of soil, sediment, surface water and ground water pollution which is on, is emanating from or has emanated from the Site; and which evaluates the alternatives for remedial actions to abate such pollution in accordance with the standards adopted pursuant to RCSA Sections 22a-133k-1, *et seq.* This evaluation shall include, but not be limited to, any

alternative specified or approved by the Commissioner; shall state in detail the recommended schedule for performing each alternative; shall list all permits and approvals required for each alternative, including, but not limited to, any permits required under CGS Sections 22a-32, 22a-42a, 22a-342, 22a-361, 22a-368, or 22a-430; shall propose a preferred alternative with supporting justification therefore; and shall propose a detailed remedial action plan and schedule to perform the preferred remedial actions. The schedule required by this Paragraph shall also include a schedule for applying for and obtaining all permits and approvals required for such remedial actions. Such report shall also include but not be limited to a soil, sediment, surface water and ground water monitoring program to determine the degree to which the approved remedial actions have been effective, and a schedule for performing the approved monitoring program.

f. Respondent shall perform the approved remedial actions in accordance with the plan and schedule as approved in writing by the Commissioner. On or before fifteen (15) days of completing such remedial actions, Respondent shall certify to the Commissioner in writing that the remedial actions have been completed as approved.

g. Respondent shall perform the monitoring program approved pursuant to Paragraph B.1.e. above to determine the effectiveness of the remedial actions. Such monitoring shall be conducted in accordance with the approved schedule. In addition, on a schedule established by the Commissioner in writing, or, if no such schedule is established, on a quarterly basis beginning no later than ninety (90) days after initiation of the approved remedial actions, Respondent shall submit for the Commissioner's review and written approval a report describing the results of the monitoring program to determine the effectiveness of the remedial actions.

h. If the approved remedial actions do not result in the prevention and abatement of soil, sediment, surface water and ground water pollution to the satisfaction of the Commissioner, additional remedial actions and measures for monitoring and reporting on the effectiveness of those actions shall be performed in accordance with a supplemental plan and schedule approved in writing by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule to implement such plan shall be submitted for the Commissioner's review and written approval on or before thirty (30) days after notice from the Commissioner that such plan and schedule are required.

2. Progress reports. On or before the last day of each quarter following issuance of this Consent Order and continuing until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction, Respondent shall submit

a progress report to the Commissioner describing the actions which Respondent has taken to date to comply with this Consent Order.

3. 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.
4. Civil penalty. Respondent shall pay a penalty of \$70,000 as the total civil penalty to be sought by the Commissioner for those and only those violations described in Paragraph A of this Consent Order. The penalty is payable as follows: On or before sixty (60) days after issuance of this Consent Order, Respondent shall pay \$25,000 in accordance with Paragraph B.5. of this Consent Order and Respondent shall pay \$45,000 as a Supplemental Environmental Project in accordance with Paragraph B.6. of this Consent Order.
5. 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 the "Connecticut Department of Energy and Environmental Protection" The check shall state on its face, "Bureau of Materials Management, Emergency Response & Spill Prevention Division civil penalty, Consent Order COWSPCB 16-002."
6. Supplemental Environmental Project. Respondent shall undertake the following Supplemental Environmental Project ("SEP") requiring an expenditure of at least \$45,000:
 - a. On or before 60 days after the date of issuance of this Consent Order, Respondent shall make payment of \$45,000 to the Town of Wallingford to be applied solely towards the construction of the Hall Avenue Pedestrian Improvements and Senior Center Trail (also referred to as State Project #148-208) and for no other purpose. No later than June 1, 2019, the Respondent shall provide an accounting demonstrating how the Town used the funds consistent with this SEP and shall also provide a letter signed by the Mayor of the Town of Wallingford, indicating that the Town has received \$45,000 from the Respondent and has used the funds only for the construction of the Hall Avenue Pedestrian Improvements and Senior Center Trail project and for no other purpose. The Respondent shall not request that the Commissioner approve the use of the SEP funds for any purpose other than that identified in this Paragraph.
 - b. If Respondent fails to perform the SEP in accordance with Paragraph B.6.a., regardless of the reason, including that the Town did not construct the Hall Avenue

Pedestrian Improvements and Senior Center Trail project, then no later than 7 days after such nonperformance, Respondent shall notify the Commissioner in writing of such noncompliance and shall remit a payment of \$45,000 dollars plus 10% in accordance with payment of penalty procedures in Paragraph B.5.

c. 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.

d. 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. Sampling. All sampling required by this Consent Order shall be performed in accordance with procedures specified or approved in writing by the Commissioner, or, if no procedures have been specified or approved, in accordance with the most recent final version of the U.S. Environmental Protection Agency publication SW-846 entitled, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", the most recent version of the Department's "Site Characterization Guidance Document", and relevant policies and guidelines issued by the Commissioner.

8. 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 and approved to conduct such analyses.

The Reasonable Confidence Protocols shall be used when there is a method published by Department. In all cases where the Reasonable Confidence Protocol method is used, a properly completed laboratory QA/QC certification form, certified by the laboratory shall be provided to the Commissioner with the analytical data.

In cases where a Reasonable Confidence Protocol method has not been published, the analytical data shall be generated using a method approved by the Commissioner, such method shall include and report a level of quality control and documentation equivalent to the Reasonable Confidence Protocols.

The reporting limit shall be established consistent with the Reasonable Confidence Protocols and standard industrial and laboratory practices. The Reporting Limit shall not be set at levels greater than those used in such standard practices, as determined by the Commissioner, in consultation with the Commissioner of Public Health and in no

case shall be greater than the Applicable Criteria or Background Concentration established in 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies. The Reporting Limit for a given sample shall be corrected for specific sample weight or volume, and dilutions, and, for soil and sediment samples moisture content (reported as dry weight).

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 thirty (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 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 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 is 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. Respondents' 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 and Environmental Protection may enter the facility or the Site 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 fifteen (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 or any one or more of them become aware that they 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 individuals 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:

Mr. Gary Trombly
Environmental Analyst 3
Storage Tank & PCB Enforcement Unit
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that 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.

THE CONNECTICUT LIGHT AND POWER COMPANY
DBA EVERSOURCE ENERGY

BY:


Ellen K. Angley
Vice President Supply Chain, Environmental Affairs
& Property Management

DATE:

12/19/18

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

BY:


Robert E. Kaliszewski
Deputy Commissioner

DATE:

12/26/18