

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT
V.
ExxonMobil Oil Corporation

: Date of Issuance August 30, 2010
:
:
: ORDER NO. COWSUST 09-002

CONSENT ORDER

A. With the agreement of ExxonMobil Oil Corporation ("Respondent"), the Commissioner of Environmental Protection ("the Commissioner") alleges:

- 1. Respondent owns and operated a service station with three (3) petroleum underground storage tank systems ("USTs") located at 249 Oakland Road, South Windsor, CT ("the site")...
2. Beginning on or around May 22, 2007, and continuing through June 5, 2007, the product level physical inventory records, generated and maintained at the service station...
3. Respondent failed to immediately investigate and correct the source of the apparent abnormal loss of regular grade unleaded gasoline...
4. Respondent failed to report to the Commissioner within twenty-four (24) hours the suspected release of regular grade unleaded gasoline...
5. On June 5, 2007, the Commissioner received Emergency Incident Report No. 2007-03565 regarding a report of gasoline odors inside the service station...

6. On June 6, 2007, the Commissioner received Emergency Incident Report No. 2007-03574 regarding the discovery of gasoline in a catch basin and stream adjacent to the service station referenced in Paragraph A.1. above.

7. Subsequent to filing the Emergency Incident Reports referenced in Paragraphs A.5. and A.6. above, environmental investigations conducted by Respondent determined that approximately four thousand (4,000) gallons of regular grade unleaded gasoline had been released to the environment through failed dispensing equipment located at the top of the tandem regular tank referenced in Paragraph A.1. above.

8. Accordingly, Respondent discharged regulated substances to the waters of the State without first obtaining a permit for such discharge pursuant to Section 22a-430 of the Connecticut General Statutes ("CGS"), constituting a violation of RCSA Section 22a-449(d)-106(b)(1).

9. By virtue of the above, Respondent has created or maintained conditions which reasonably can be expected to create sources of pollution to the waters of the State.

10. Respondent neither admits nor denies the alleged violations described herein, and agrees to enter into this Consent Order to perform the activities set forth in Paragraph B.3. Except in relation to the responsibilities set forth in this Consent Order, the existence of this Consent Order or Respondent's execution of, or compliance with, this Consent Order, including all documents and reports prepared therewith, shall not be construed as an admission of liability, fault or wrongdoing by Respondent, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. With the agreement of Respondent, the Commissioner, acting under CGS Sections 22a-6, 22a-424, 22a-432, 22a-438 and 22a-449, orders Respondent as follows:

1. Nothing in this Consent Order shall be deemed or construed to affect any requirement or obligation specified in RCSA Section 22a-449(d)-101 et seq.

2. Retain licensed environmental professional. Respondent shall retain a licensed Environmental Professional ("LEP") that is acceptable to the Commissioner to prepare documents and implement and oversee the remediation of environmental contamination in soils and groundwater at the site, and to provide professional services in accordance with RCSA Section 22a-133v-1 through 8. Respondent shall retain said LEP until soil and groundwater contamination has been fully remediated in accordance with the Remediation Standard Regulations, RCSA Section 22a-133k-1 through 3 ("the RSRs"). In the event that Respondent decides to no longer retain and use the services of the LEP identified under this Paragraph, Respondent shall:

(a). On or before five (5) days after deciding to change LEPs, notify the Commissioner in writing of such decision and change, and;

(b). On or before twenty-five (25) days after notifying the Commissioner in accordance with Paragraph B.2.(a). above, Respondent shall retain one or more LEPs acceptable to the Commissioner to prepare documents and implement and oversee the remediation of environmental contamination in soils and groundwater at the site, and shall, by that date, notify the Commissioner in writing of the identity of such LEP(s). Respondent shall retain one or more qualified LEPs acceptable to the Commissioner until compliance with the RSRs has been achieved. Within ten (10) days of retaining any LEP other than the LEP originally identified under this subparagraph, Respondent shall notify the Commissioner in writing of the identity of such other LEP. The LEPs retained under this subparagraph to prepare documents and perform all investigation and remediation activities in response to this Consent Order shall provide professional services in accordance with RCSA Section 22a-133v-1 through 8. Nothing in this subparagraph shall preclude the Commissioner from finding a previously acceptable LEP unacceptable.

3. Final closure report. Upon completion of the remediation of environmental contamination in soils and groundwater at the site, including completion of post closure groundwater monitoring, Respondent shall submit for the Commissioner's review and written approval a comprehensive final closure report that certifies under Paragraph B.13. of this Consent Order compliance with the RSRs. Such final closure report shall be prepared by the LEP approved under Paragraph B.2. or B.2.(b). of this Consent Order.

4. RSR compliance, progress reports. On or before the last day of each quarter following the date of issuance of this Consent Order, and continuing until the remediation of environmental contamination in soils and groundwater at the site has been completed as approved and to the satisfaction of the Commissioner, Respondent shall submit a progress report to the Commissioner describing the remedial actions Respondent has taken to date to comply with this Consent Order and to remove petroleum contamination from soils and groundwater at the site. Such progress reports shall include, but not be limited to, an evaluation of current environmental conditions in soils and groundwater at the site with respect to RSR compliance.

5. Payment of penalties. Within thirty (30) days of the issuance of this Consent Order, Respondent shall pay a penalty of \$90,000 to the Commissioner for the violations alleged in Paragraphs A.3, A.4 and A.8 of this Consent Order. 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 check payable to "Treasurer, State of Connecticut". The check shall state on its face, "Storage Tank and PCB Enforcement Unit, Civil Penalty, Consent Order No. COWSUST 09-002". A copy of the check shall be mailed or personally delivered to the program and individual specified in the paragraph of this Consent Order entitled Submission of documents.

6. Supplemental environmental project. In addition to the penalty payment referenced in Paragraph B.5. above, Respondent has agreed to undertake a supplemental environmental project ("SEP") requiring the installation of environmentally contained Submersible Turbine Pumps in twenty-nine (29) Service Stations in Connecticut, or make payments as follows:

(a). Respondent shall perform the SEP identified and described in the attachments to this Consent Order, the first entitled Supplemental Environmental Project, prepared and signed by Paul J. Bettencourt, Operations Integrity Management Systems Advisor, ExxonMobil Fuels Marketing, dated January 19, 2009 and the second entitled Supplemental Environmental Project-Update, prepared and signed by Mr. Bettencourt dated September 21, 2009. Respondent shall perform the SEP described in the abovementioned attachments within a reasonable period of time, estimated to be one hundred and eighty (180) days, weather permitting, and shall obtain any federal, state or local permit or approval necessary to carry out the SEP.

(b). If Respondent fails to fully perform the SEP in accordance with Paragraph B.6.(a). above, Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to: the lesser of the total estimated cost of the portion of the SEP Respondent failed to perform, or \$704,824. Within fourteen (14) days after the date of the Commissioner's written request, Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in Paragraph B.6.(e). of this Consent Order.

(c). On or before ninety (90) days after the issuance of this Consent Order, Respondent shall submit written Progress Reports to the Commissioner on a quarterly basis. Each Progress Report shall include the following information: Respondent's progress in performing the SEP including the site number and location of the stations completed, the actual project costs incurred to date, the expected time for the completion of the work at the remaining stations, and any other reasonable information requested by the Commissioner for the purpose of

evaluating Respondent's progress in performing the SEP.

(d). On or before thirty (30) days of completion of the SEP, Respondent shall submit for the Commissioner's review and written approval a comprehensive Final Report that certifies completion of the SEP. Such Final Report shall include, at a minimum, a narrative history of the project, detailed explanation of its design and implementation, complete final accounting of actual project costs, including receipts for out-of-pocket costs, and a discussion of environmental benefits resulting from the SEP.

(e). The Commissioner shall notify Respondent in writing of the amount of any payments that are due pursuant to Paragraph B.6.(b). Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the payment due. Payment shall be by check payable to "Treasurer, State of Connecticut" and the check shall state on its face "Statewide SEP Account, Consent Order No. COWSUST 09-002." Respondent shall mail or personally deliver such payment to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.

(f). If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding the SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.

(g). Respondent shall not claim or represent that any SEP payment made pursuant to Paragraph B.6.(b) 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. Distribution of groundwater quality data. Respondent agrees to supply all quarterly groundwater monitoring data, generated in response to the unpermitted discharge of regulated substances referenced in Paragraph A.8. above, to the following address:

Christine H. Farber, PhD
Aletheia Psychological Services, LLC
Wentworth Park #301
225 Oakland Road
South Windsor, CT 06074

8. **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 satisfaction of the Commissioner.

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 a reasonable 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. Nothing in this Paragraph shall excuse noncompliance or delay.

10. **Definitions.** As used in this Consent Order, "Commissioner" means the Commissioner of Environmental Protection or an agent of the Commissioner. The date of "issuance" of this Consent Order is the date the fully executed Consent Order is deposited in the U.S. Mail or is personally delivered, whichever is earlier. "Underground storage tank system" shall be defined as that term is defined in RCSA subdivision 22a-449(d)-101(d)(63). "Petroleum" shall be defined as that term is defined in RCSA subparagraph 22a-449(d)-101(d)(48)(b) and shall include all of the items included as a "Regulated substance" in RCSA subdivision 22a-449(d)-101(d)(48).

11. **Dates.** 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 on or before the next day which is not a Saturday, Sunday or Connecticut or federal holiday.

12. **Notification of noncompliance.** In the event that Respondent becomes 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, Respondent shall immediately notify the Commissioner 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. In so notifying the Commissioner, Respondent shall state in writing 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.

13. 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, as those terms are defined in RCSA Section 22a-430-3(b) and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."

14. 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 under CGS Chapters 439, 445 or 446k.

15. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense under CGS Sections 22a-438 or 22a-131a, or, in accordance with CGS Section 22a-6, under CGS Section 53a-157.

16. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with this Consent Order, Respondent shall notify the Commissioner in writing no later than fifteen (15) days after transferring all or any portion of the operations which are the subject of this Consent Order, the site, or the business, 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 other person or municipality. Any future owner of the site may be subject to the issuance of an order from the Commissioner.

17. Commissioner's powers. 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 violations of law, including but not limited to violations of any permit issued by the Commissioner. If at any time the

Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not fully characterized the extent and degree of pollution or have not 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 pollution.

18. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.

19. 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.

20. Access to site. Any representative of the Connecticut Department of 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.

21. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.

22. 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.

23. Submission of documents. Any document or notice to the Commissioner under this Consent Order shall, unless otherwise specified in writing by the Commissioner, be directed to:

Philip G. Wilde
Department of Environmental Protection
Emergency Response and Spill Prevention Division
79 Elm Street
Hartford, Connecticut 06106-5127

Any document or notice to the Respondent under this Consent Order shall, unless otherwise specified in writing by the Respondent, be directed to:

Paul J. Bettencourt
ExxonMobil Fuels Marketing
20575 Courier Ridge Place
Ashburn, VA 20147

With a copy to:

Paul G. McCusker, Esq.
McCusker, Anselmi, Rosen & Carvelli, PC
210 Park Avenue, Suite 310
Florham Park, NJ 07932

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that Richard W. Hilchey is fully authorized to enter into this Consent Order and to legally bind Respondent to the terms and conditions of the Consent Order.

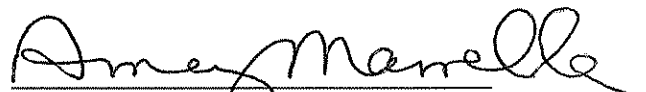
Respondent ExxonMobil Oil Corporation

BY: 
Richard W. Hilchey
Americas Asset Management, Manager

DATE: 6/22/10

ORDER NO. COWSUST 09-002
Issued as a final order of the Commissioner of Environmental Protection.

8/27/10
Date


Amey W. Marrella
Commissioner