



STATE OF CONNECTICUT : Date of Issuance June 25, 2012

v. :

MERCURY FUEL SERVICE, INC. :

AND

LAFAYETTE REALTY COMPANY : ORDER NO. COWSUST 11-001

CONSENT ORDER

A. With the agreement of Mercury Fuel Service, Inc. ("Respondent Mercury") and Lafayette Realty Company ("Respondent Lafayette"), hereafter collectively referred to as ("Respondents"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:

1. Respondent Lafayette is the owner of property located at 1598 Saybrook Road, Haddam, Connecticut ("the Site"), more fully described in a deed which is recorded at Page 745 of Volume 208 in the Town of Haddam Land Records, and as Lot 31-A on Map 49 in the Town of Haddam Tax Assessor's Office.

2. Respondent Mercury currently operates a petroleum service station located at the Site referenced in Paragraph A.1. above.

3. On December 29, 1997 the Leaking Underground Storage Tank Program ("LUST"), now the Site Assessment and Support Unit ("SASU"), conducted a limited subsurface investigation at the Site which identified the presence of methyl-tert-butyl-ether ("MTBE") in five (5) groundwater monitoring wells. These data were conveyed via fax to Respondent Mercury on February 18, 1998.

4. On January 21, 1998, LUST staff met with an employee of Environmental Services, Inc. regarding his involvement and recollections of the UST removal project at the Site in the summer of 1990. At that time, this individual was employed by Cassion & Matavia, the contractor who removed the USTs. This individual reported to LUST Staff that the removed USTs were failed, soil contamination existed in the UST grave, and said soil contamination was not completely removed prior to backfilling. A LUST Interdepartmental Memo dated January 26, 1998 was generated and placed in public files.

5. On March 5, 2009, SASU sampled three (3) groundwater monitoring wells at 1610 Saybrook Road, which is adjacent to and hydraulically down gradient from the Site. Groundwater sample data indicated the presence of MTBE.

6. In response to the findings discussed in Paragraph A.5. above, and with Respondent Mercury's permission, SASU gauged, sampled and surveyed two (2) UST tank pad wells at the Site on March 13, 2009. Elevated levels of MTBE and other petroleum constituents were identified, and water table measurements indicated overburden groundwater flow direction to be towards the property at 1610 Saybrook Road.

7. In order to confirm SASU's findings, as discussed in Paragraph A.6. above, Respondent Mercury hired Apex Environmental, Inc. ("Apex"), whose groundwater sampling data substantiated SASU's conclusions regarding groundwater quality in the two (2) tank pad wells at the Site.

8. Based on Apex's data, as described in Paragraph A.7. above, Respondent Mercury reported the presence of groundwater contamination beneath the UST pad at the Site to the Department of Environmental Protection, now the Department of Energy and Environmental Protection ("DEEP"), on April 3, 2009 (refer to ERU Case Number 2009-01614).

9. To date, Respondent Mercury has supplied bottled water or granular activated carbon filters to four (4) properties in the vicinity of the Site where impacts to potable wells have been documented and has undertaken periodic sampling of potable wells in the vicinity of the site, although the source or sources of these impacts has not been determined to date.

10. Documentation and data are possessed by both DEEP and Respondent Mercury indicating that soil and groundwater at the Site has been polluted and is polluted with petroleum constituents, including but not limited to benzene and MTBE. Said documentation and data is referenced in Paragraph A.14. of this Consent Order.

11. Respondents have created or maintained a discharge of petroleum product to the waters of the State without first obtaining a permit, as required by Section 22a-430 of the Connecticut General Statutes ("CGS").

12. By virtue of the above, Respondents have created or have maintained conditions which reasonably can be expected to create sources of pollution to the waters of the State.

13. The Commissioner acknowledges that an UST compliance inspection, performed at the Site on November 10, 2010 by the Storage Tank and PCB Enforcement Unit, following the unpermitted discharge of regulated substances alleged above, indicates that Respondent Mercury is currently in significant operational compliance with applicable UST regulations at the Site.

14. The Commissioner acknowledges that Respondent Mercury has submitted the following documents to DEEP, or has performed the following corrective actions:

- a. a Scope of Work, prepared by Apex, for a Phase II Environmental Site Assessment (“ESA”) dated April 17, 2009;
- b. a Phase II Site Investigation Report including boring logs, a groundwater gradient map, UST tank pad groundwater data, groundwater and soil analytical data, and a site map, prepared by Apex, dated October 15, 2009 and submitted in part on October 21, 2009;
- c. a Significant Environmental Hazard Notification resulting from the Phase I ESA which informs DEEP of the groundwater conditions (per CGS 22a-6u), dated June 19, 2009 and received on June 23, 2009;
- d. Apex installed a soil vapor extraction system at the Site during July 2009;
- e. a summary of soil vapor extraction system operational effectiveness, prepared by Apex, submitted on December 16, 2009;
- f. a Scope of Work for the Phase III ESA, prepared by Apex, submitted on or about December 16, 2009;
- g. a revised Scope of Work for the Phase III ESA, prepared by Apex, submitted on January 22, 2010;
- h. a Phase III ESA report, prepared by HRP Associates, Inc. (“HRP”), dated June 16, 2010 and submitted on June 16, 2010;
- i. a Significant Environmental Hazard Notification, prepared by HRP, dated May 9, 2011 and received May 9, 2011;
- j. a shallow groundwater gradient map and a “draft” of the groundwater analytical results for the November 2010 gauging/sampling event, prepared by HRP, submitted on December 16, 2010;
- k. Respondent Mercury and/or their consultants attended meetings at DEEP Headquarters to discuss possible enforcement, their conceptual site model, well sampling, significant environmental hazard status, and remedial system enhancement options on April 9, 2009, September 9, 2010, May 25, 2011 and September 26, 2011;
- l. a groundwater monitoring report, prepared by Charter Oak Environmental Services, Inc. (“Charter Oak”), dated September 2011;
- m. a Scope of Work for a Phase III ESA, prepared by Charter Oak, dated October 14, 2011 and submitted on October 14, 2011; and

- n. Phase III Scope of Work Modifications, prepared by Apex, dated December 9, 2011 and submitted on December 9, 2011.

15. By agreeing to the issuance of this Consent Order, Respondents make no admission of fact or law with respect to the matters addressed herein.

- B. With the agreement of Respondents, the Commissioner, acting under CGS Sections 22a-6, 22a-424, 22a-432, 22a-433, 22a-438 and 22a-449, orders Respondents as follows:

1. Engage Consultant. On or before thirty (30) days after issuance of this Consent Order, Respondents 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. Respondents 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, Respondents shall notify the Commissioner in writing of the identity of such other consultant. Respondents 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.

2. Scope of Work. On or before thirty (30) days after issuance of this Consent Order, Respondents 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. The Commissioner acknowledges that the submittal referenced in Subparagraph A.14.m. above, as modified in the submittal referenced in Subparagraph A.14.n. above, shall satisfy the obligation in this Subparagraph B.2. if approved by the Commissioner. If the Commissioner disapproves these submittals, Respondents shall submit a revised Scope of Work within thirty (30) days of receipt of written notice of disapproval.

3. Performance of Investigation. On or before thirty (30) days after written approval of the Scope of Work, Respondents 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. Respondents 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.

4. Supplemental Plan and Investigation. If the investigation carried out under the approved Scope of Work does not fully characterize the extent and degree of soil, 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.

5. Investigation Report and Remedial Action Plan. 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.4 above, Respondents 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.3 and B.4 above, and which defines the existing and potential extent and degree of soil, 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.

6. Submission of Ground Water Monitoring Plan. On or before thirty (30) days after the Commissioner has approved a remedial action alternative, Respondents shall submit, for the Commissioner's review and written approval, (1) a plan for soil, surface water and ground water monitoring to determine the degree to which the approved remedial actions have been effective; and (2) a schedule for performing the approved monitoring program.

7. Permits. On or before fifteen (15) days after the Commissioner has approved a remedial action plan pursuant to Paragraph B.5. above, Respondents shall apply for any permits to the extent necessary to carry out the remedial action approved by the Commissioner. Respondents shall ensure that such applications are complete and shall diligently pursue the issuance of such permits. Within five (5) days of application for any

such permit referred to in this Paragraph or Paragraph B.5 above, Respondents shall submit a complete copy of such application to the Commissioner. Should the Commissioner request additional information as part of the permit review and evaluation process, such information shall be submitted on or before thirty (30) days of receiving a written request from the Commissioner.

8. Notice. On or before ten (10) days after receipt of any required permit or approval, Respondents shall submit to the Commissioner notice of receiving such permit or approval, and shall, upon the Commissioner's written request, submit a copy of such permit.

9. Performance of Remedial Action. Respondents 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, Respondents shall certify to the Commissioner in writing that the remedial actions have been completed as approved.

10. Monitoring. Respondents shall perform the monitoring program approved pursuant to Paragraph B.6 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, Respondents shall submit for the Commissioner's review and written approval a report describing the results of the monitoring program during that quarter or reporting period.

11. Additional Remedial Actions, Measures and Reporting. If the approved remedial actions do not result in the prevention and abatement of soil, 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.

12. Monitoring Program Report. On a schedule established by the Commissioner 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 or any supplemental remedial actions, Respondents shall submit for the Commissioner's review and written approval a report describing the results to date of the monitoring program to determine the effectiveness of the remedial actions.

13. New UST Systems. Respondents shall ensure that the installation of any new UST system at the site fully complies with the applicable requirements set forth in RCSA Sections 22a-449(d)-1 and 101 - 113 and, as of October 1, 2003, with CGS Section 22a-449o(b) regarding double walled UST systems, and is equipped with compliant leak detection equipment that is operated and monitored in full compliance with RCSA Section 22a-449(d)-104.

14. Release Reporting. If at any time during the installation and/or operation of release detection equipment, or during permanent closure of an UST system, as any of which may be required by or in response to this Consent Order, Respondents discover or become aware of contaminated soil, contaminated groundwater or free product as a liquid or vapor anywhere at, on or emanating from the site, Respondents shall: (1) notify the Department regarding such contamination or free product in accordance with applicable law; and (2) perform corrective action in accordance with RCSA Section 22a-449(d)-106, as applicable. Nothing in this provision shall excuse, be a substitute for, or affect any other notification or reporting requirement applicable to Respondents or the site.

15. Free Product. If qualified consultants overseeing the initial site investigation determine that free product is present, Respondents shall, as soon as possible after such determination, develop and implement a plan to remove free product to the maximum extent technically practicable. Such initial site investigation shall determine:

- a. the presence and extent of free product resulting from release(s);
- b. ground water pollution resulting from the release that may threaten the quality of drinking water wells; and
- c. if the release has resulted in pollution of soil vapor that poses a significant environmental hazard as identified in CGS Section 22a-6u(e)(2).

16. Significant Environmental Hazard. If qualified consultants overseeing the initial site investigation determine that groundwater pollution resulting from the release threatens the quality of drinking water wells, Respondents shall, as soon as possible after such determination, sample such drinking water, notify the commissioner of such determination and take all necessary steps to provide potable water, in a manner determined by the commissioner, to any person impacted by the release, where the pollution exceeds groundwater protection criteria identified in CGS Section 22a-6u(g)(1). If qualified consultants overseeing the initial site investigation determine that the release has resulted in pollution of soil vapor that poses a significant environmental hazard as identified in CGS Section 22a-6u(e)(2)(A) through (C), Respondents shall, as soon as possible after such determination, take any measures necessary as determined by the commissioner to abate the hazards from those release(s).

17. No Effect on UST Regulations. 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.*

18. Full Compliance. Respondents 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.

19. Approvals. Respondents 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 Respondents that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondents 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. Nothing in this Paragraph shall excuse noncompliance or delay.

20. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of Energy and Environmental Protection or an agent 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. "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).

21. 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 by the Commissioner, 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.

22. Notification of Noncompliance. In the event that Respondents 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, Respondents 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, Respondents 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 Respondents shall comply with any dates that may be approved in writing by the Commissioner. Notification by Respondents 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. 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 Respondents, as those terms are defined in RCSA Section 22a430-3(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."***

24. 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 Respondents to an injunction and penalties under CGS Chapters 439, and 445 or 446k.

25. 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.

26. Notice of Transfer; Liability of Respondents and Others. Until Respondents have fully complied with this Consent Order, Respondents 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. Respondents' 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.

27. 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 Respondents 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 Respondents to undertake further investigation or further action to prevent or abate pollution.

28. Respondents' Obligations Under Law. Nothing in this Consent Order shall relieve Respondents of the other obligations under applicable federal, state and local law.

29. 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 Respondents pursuant to this Consent Order will result in compliance or prevent or abate pollution.

30. Access to Site. Any representative of the Department of Energy and 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.

31. 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.

32. Notice to Commissioner of Changes. Within fifteen (15) days of the date Respondents become 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, Respondents shall submit the correct or omitted information to the Commissioner.

33. 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 Energy and Environmental Protection
Emergency Response and Spill Prevention Division
Storage Tank & PCB Enforcement Unit
79 Elm Street Hartford,
Connecticut 06106-5127

34. Joint and Several Liability. Respondents shall be jointly and severally liable for compliance with this Consent Order.

Respondents consent to the issuance of this Consent Order without further notice. The undersigned certifies that Michael J. Devino, Jr. is fully authorized to enter into this Consent Order and to legally bind Respondents to the terms and conditions of the Consent Order.

Respondent Mercury Fuel Service, Inc.

BY: Michael J. Devino, Jr.
Michael J. Devino, Jr., President

DATE: 5/14/12

Respondent Lafayette Realty Company

BY: Michael J. Devino, Jr.
Michael J. Devino, Jr., President

DATE: 5/14/12

ORDER NO. COWSUST 11-001

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

BY: Macky McCleary
Macky McCleary
Deputy Commissioner

DATE: 6/22/12