



STATE OF CONNECTICUT

v.

ABDUL KHAN

ORDER NO. COWSUST 14-001

DATE ISSUED: August 26, 2016

A. With the agreement of Abdul Khan, hereafter referred to as ("Respondent"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:

1. Respondent operated (3) gasoline underground storage tank ("UST") systems and currently operates (2) gasoline USTs located at 394 North Main Street, Marlborough, Connecticut ("the Site"), more fully described in a deed which is recorded at Page 291 of Volume 199 in the Town of Marlborough Land Records, and as Block 17A on Map 2 in the Town of Marlborough Tax Assessor's Office. The USTs covered by this Consent Order are identified as C2R1, C3R1 and C4R1, in a form entitled "Underground Storage Tank Notification Form EPHM-6", received by the Commissioner regarding the Site and signed by the previous owner, Thomas E. Cafro, on October 1, 1996.

2. The Respondent is the current operator of the Site. The Respondent is identified as the A Operator and the B Operator at the Site.

3. On March 30, 2009 and on December 13, 2011, compliance inspections were performed by the Department of Energy and Environmental Protection ("the Department") at the Site.

4. During those inspections, the automatic tank gauging unit was in alarm mode indicating liquid was detected in the interstitial space of the C2R1 (4K) UST and the C4R1 (8K) UST, respectively. Respondent failed to notify the Department and begin an investigation as to the cause of the suspected releases, constituting violations of the Regulations of Connecticut State Agencies ("RCSA") section 22a-449(d)-105.

5. Results of the Department's investigation revealed that the C2R1 UST had an inner wall failure and the C4R1 UST had an outer wall failure, which resulted in both USTs being permanently taken out-of-service. Respondent failed to submit updated notification forms, constituting a violation of RCSA section 22a-449(d)-102(b).

6. As a result of the violations referenced in Paragraphs A.4. and A.5. and other violations discovered, Respondent was issued notice of violation NOVUST-OZT11-0011 ("the NOV"). However, Respondent failed to comply with the NOV.

7. During the December 13, 2011 inspection, the Department determined that Respondent failed to perform the required annual cathodic protection and line leak detector test, constituting violations of RCSA section 22a-449(d)-103(b) and 22a-449(d)-104(c).

8. On December 13, 2011 and on September 25, 2012, the Department performed follow-up inspections at the Site and discovered that Respondent failed to maintain proper release detection for piping by disabling the liquid sensor in the tank top sumps, constituting a violation of RCSA section 22a-449(d)-104(f)(3).

9. During a meeting with Respondent on November 22, 2013, Respondent stated that he does not understand the UST regulations. Based on the allegations in Paragraph A.4., Respondent failed to act on historic fuel alarms at the Site, demonstrating to the Department that Respondent is not sufficiently knowledgeable of the UST systems that he operates. Therefore, Respondent cannot function adequately as an A Operator or as a B Operator.

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

B. The Commissioner, acting under sections 22a-6, 22a-424 and 22a-449 of the Connecticut General Statutes ("CGS"), orders Respondents as follows:

1. 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.

2. 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.

3. Prohibited from being an A/B Operator. Respondent is prohibited from acting as an A Operator or as a B Operator at any UST facility in the State of Connecticut until July 21, 2016.

4. Documentation submission. Respondent must submit the annual UST notification form (DEEP-UST-NOT-001) to the Department with complete and accurate updated information to reflect the new A/B Operator.

5. Monthly inspection requirements. Respondent must provide the Department with the identity of the person(s) who will be responsible for performing the monthly inspections at the Site. Monthly inspection reports must be recorded on the form identified as Appendix A. Respondent must perform the monthly inspection for December, 2014 and forward the completed form to the person identified in Paragraph B.21. on or before December 22, 2014. Respondent must maintain all future monthly inspection reports on-site.

6. Civil penalty. On or before thirty (30) days after issuance of this Consent Order, Respondent shall pay a penalty of \$500.00 as the total civil penalty to be sought by the Commissioner for those violations described in Paragraphs A.4., A.5., A.7. and A.8 of this Consent Order.

7. 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 of bank check payable to the "*Connecticut Department of Energy and Environmental Protection.*" The check shall state on its face, "*Bureau of Materials Management and Compliance Assurance, Emergency Response and Spill Prevention Division, Civil Penalty, Consent Order Number COWSUST 14-001.*"

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 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.

9. 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)(75). "Petroleum" shall be defined as that term is defined in RCSA subparagraph 22a-449(d)-101(d)(59)(b) and shall include all of the items included as a "Regulated substance" in RCSA subdivision 22a-449(d)-101(d)(59).

10. 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.

11. Notification of noncompliance. In the event that Respondent become aware that he 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.

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, 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."*

13. 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.

14. 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.

15. Commissioner's powers. Nothing in this 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 has not fully characterized the extent and degree of pollution or has 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.

16. Respondent's obligations under law. Nothing in this 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 the Site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Order.

19. 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.

20. 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.

21. 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:

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

Khan's Dairy  
COWSUST 14-001

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

Respondent Abdul Khan

BY: \_\_\_\_\_

Abdul Khan

DATE: 7/28/16

ORDER NO. COWSUST 14-001

Issued as an Order of the Commissioner of the Department of Energy and Environmental Protection.

BY: \_\_\_\_\_

Michael Sullivan  
Deputy Commissioner

DATE: 8/26/2016