



STATE OF CONNECTICUT : Date of Issuance August 30, 2018
v. :
Frank's LLC,
Franklyn G. Heusser, Sr., and
Dolores M. Heusser :
: ORDER NO. COWSUST 18-001

CONSENT ORDER

A. With the agreement of Frank's LLC, Franklyn G. Heusser, Sr., and Dolores M. Heusser (collectively, "Respondents"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:

1. Respondent Frank's LLC formerly operated a service station at property located at 142 Wakelee Avenue, Ansonia, Connecticut ("the Site"), more fully described in a deed which is recorded at Pages 368-69 of Volume 163 in the Town of Ansonia Land Records, and as Map 011, Block 0060, Lot 0000 in the Town of Ansonia Tax Assessor's Office. The Site had been used for the storage and dispensing of petroleum products that were stored in ten (10) underground storage tanks ("USTs").
2. Respondents Franklyn G. Heusser, Sr. and Dolores M. Heusser are the owners of the Site. Respondents Franklyn G. Heusser, Sr. and Dolores M. Heusser have had title to the Site since on or about September 5, 1974.
3. Respondent Franklyn G. Heusser, Sr. owned and operated the USTs at the Site.
4. On March 23, 2010, staff of the Department of Energy and Environmental Protection ("the Department") inspected the Site. As a result of this inspection, the Commissioner issued a notice of violation to Respondent Franklyn G. Heusser, Sr., NOVUST-DJK10-0014, dated March 23, 2010. The violations noted were failure to submit an updated UST notification form to the Commissioner, as required pursuant to Regulations of the Connecticut State Agencies (RCSA) 22a-449(d)-102(b), and failure to provide a closure report to the Commissioner for the USTs removed from the Site, as required pursuant to RCSA 22a-449(d)-107(e).
5. An August 2, 2010 report entitled "Supplemental Phase 2 Subsurface Investigation and Groundwater Sampling Report" was prepared by AEI for the Site. The report documented the presence of VOCs, benzene, and ETPH in

groundwater samples which exceeded the standards in Connecticut's Remediation Standard Regulations ("RSRs") resulting from the previously removed USTs.

6. On May 20, 2013, Respondent Franklyn G. Heusser, Sr. was awarded \$30,394.93 from the Underground Storage Tank Clean-up Account to cover the costs of remedial actions performed at the Site.
7. On June 10, 2013, Department staff conducted an inspection at the Site and provided Respondents Frank's LLC and Franklyn G. Heusser, Sr. with a No Response to a Notice of Violation dated June 10, 2013, which notified those Respondents that the violations identified in Notice of Violation #NOVUST-DJK10-0014 were still outstanding. During this inspection, approximately 200 tons of uncovered contaminated soil was observed stockpiled at the Site. The stockpile was discussed with Respondent at the time of the inspection as well as during a meeting with DEEP staff in December 2013.
8. On July 17, 2013, the Commissioner received a UST closure report for the three USTs removed in 2012. This report was prepared by HRP Associates and is titled, "Underground Storage Tank Removal and Removal of Residual Soil Contamination Summary, 142 Wakelee Avenue, Ansonia, Connecticut (HRP# FRA1000.RA)," dated July 19, 2012 ("HRP Report"). The HRP Report documented the presence of contamination related to petroleum products as well as the removal of 100 tons of contaminated soil.
9. The HRP Report does not include an assessment of the groundwater quality including a receptor survey, as required by RCSA §§ 22a-449(d)-106(g) and 22a-449(d)-107(c), but, the HRP Report does recommend that additional subsurface investigation be undertaken to determine the extent of contamination. As of the date of this Consent Order, no additional soil and groundwater sampling or assessment has been provided to the Commissioner.
10. On November 1, 2013, a Consent Order Offer Letter was mailed to all Respondents. The letter discussed the following unaddressed violations identified from the inspections on March 23, 2010 and June 10, 2013:
 - a. RCSA § 22a-449(d)-102(b)-failure to provide requisite updated UST notification information;
 - b. RCSA §§ 22a-449(d)-107(c) and 22a-449(d)-106(g) -failure to fully assess the extent and degree of soil and groundwater contamination; and
 - c. RCSA § 22a-449(d)-106(b)(2) -failure to properly dispose of stockpiled contaminated soil.
11. On August 13, 2014, the Department received: a) documentation showing that the stockpile of contaminated soil noted during the June 10, 2013 inspection was

removed from the Site and disposed of; b) a waste manifest for the soil, and (c) the Notification Form for Underground Storage Tanks.

12. By virtue of the above, the Respondents have violated RCSA §§ 22a-449(d)-102(b), 22a-449(d)-106(b)(2), 22a-449(d)-106(g), and 22a-449(d)-107(c) and have created or are maintaining a condition which reasonably can be expected to create a source of pollution to the waters of the State in violation of Conn. Gen. Stat. §§ 22a-427 and 22a-430.
13. The HRP Report partially satisfies paragraphs B.2 (Scope of Work), B.3 (Performance of investigation), and B.5 (Investigation report and remedial action plan) of this Consent Order, but lack a groundwater assessment and well receptor survey.

B. With the agreement of Respondents, the Commissioner, acting under Conn. Gen. Stat. §§ 22a-6, 22a-424, 22a-432, 22a-433, 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.

3. Performance of investigation. On or before thirty (30) days after written approval of the Scope of Work, Respondents shall initiate 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 complete the investigation and other actions specified in the approved Scope of Work within ninety (90) days. 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(s) 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 groundwater 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 groundwater monitoring plan. On or before thirty (30) days after the Commissioner has approved a remedial action plan, Respondents shall submit, for the Commissioner's review and written approval, (1) a plan for soil, surface water and groundwater 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 all permits that are 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 approved remedial action plan and schedule. Within fifteen (15) days after 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 groundwater 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. Free product. If qualified consultants overseeing the supplemental site investigations 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 supplemental site investigation shall determine:

- a. the presence and extent of free product resulting from release(s);
- b. groundwater 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)(1), and must notify the Commissioner in accordance with 22a-6u(e).

13. Significant environmental hazard. If qualified consultants overseeing the supplemental site investigations determine that groundwater pollution resulting from a 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 supplemental site investigations determine that a release has resulted in pollution of soil vapor that poses a significant environmental hazard as identified in CGS section 22a-6u(e)(2). 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).

14. 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.

15. Civil penalty. On or before thirty (30) days after issuance of this Consent Order, Respondent Frank's LLC and Dolores Heusser shall pay a penalty of \$13,500.00 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in Paragraph A.12 and 13 of this Consent Order.

16. 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 18-001.*"

17. Sampling and sample analyses. All sampling and sample analyses that are required by this Consent Order and all reporting of such sample analyses shall be done by a laboratory certified by the U.S. Environmental Protection Agency and/or the

Connecticut Department of Health Services to conduct such sampling and analyses. All sampling and sample analyses performed under this Consent 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 EPA Document SW-846. 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. All samples shall be discrete rather than composite samples. 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. All samples shall be discrete rather than composite samples.

18. 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, or any of them, 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.

19. 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 §22a-449(d)-101(d)(75). "Petroleum" shall be defined as that term is defined in RCSA §22a-449(d)-101(d)(59)(b) and shall include all of the items included as a "Regulated substance" in RCSA §22a-449(d)-101(d)(59).

20. 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.

21. Notification of noncompliance. In the event that Respondents, or any 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, 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.

22. 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 the managing member of Respondent Frank's LLC and either Respondent Franklyn G. Heusser, Sr. or Respondent Dolores M. Heusser, 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."*

23. 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.

24. 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.

25. 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.

26. 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, or any of them, to undertake further investigation or further action to prevent or abate pollution.

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

28. 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.

29. 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.

30. 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.

31. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondents, or any of them, 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.

32. 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:

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

33. 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 Franklyn G. Heusser, Jr. is fully authorized to enter into this Consent Order and to legally bind Respondent Frank's LLC to the terms and conditions of the Consent Order.

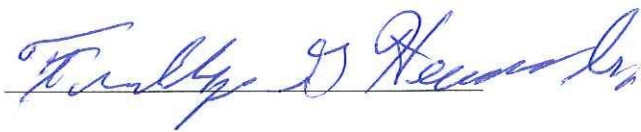
Respondent Frank's LLC

BY: 

Franklyn G. Heusser, Jr., Managing Member


DATE: July 31 2018

Respondent Franklyn G. Heusser, Sr.



DATE: July 31 2018

Respondent Dolores M. Heusser



DATE: July 31 2018

ORDER NO. COWSUST 18-001

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

BY: 
Robert E. Kaliszewski, Deputy Commissioner

DATE: August 30, 2018