



STATE OF CONNECTICUT

v.

D. R. CHARLES ENVIRONMENTAL
CONSTRUCTION, LLC.

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COWSUST 20-002

CONSENT ORDER

- A. With the agreement of D. R. Charles Environmental Construction, LLC. ("Respondent"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds the following:
1. Respondent is listed with the Connecticut Secretary of State with business ID 0679119 and primary address at 189 Monroe Turnpike in Monroe, CT.
 2. On December 20, 2019, a release of approximately 550 gallons from a heating oil tank occurred at 166 Nod Hill Rd. in Wilton, CT ("the Site"). The Site is a residence owned by Mannix Helen W S Trustee more fully described in a deed which is recorded at page 0263 of volume 1921 of the Wilton land records.
 3. Servco Oil, Inc. ("Servco") was retained to remove a 2000 gallon underground storage tank ("UST") and replace the UST at the Site with two 330 gallon above ground storage tanks (ASTs) that were to be manifolded together with plumbing. Servco subcontracted Respondent to perform the work.
 4. Respondent is a Connecticut licensed Spill Contractor with permit number CT-HW-929, issued July 2, 2019.
 5. Respondent removed the UST without incident, no signs of leakage, and subsequent analytical indicated no release had occurred associated with the UST.
 6. Respondent installed the ASTs in the basement on an existing asphalt floor. The tanks sank in the asphalt shortly after being filled with oil on December 19, 2019.

This caused the fire-valve on the bottom of the tanks to be severed resulting in the release referenced in paragraph A.2.

7. On December 20, 2019, the release referenced in paragraph A.2. was reported to the Connecticut Department of Energy and Environmental Protection ("DEEP") and assigned spill case # 2019-06045. DEEP Emergency Response Coordinator Kenneth LeClerc ("ERC LeClerc") responded to the Site.
8. Upon preliminary investigation by Respondent, Servco, and the licensed environmental professionals they retained, it was determined that the release impacted subsurface soil, groundwater, and bedrock based on visual impacts. It was further determined that nearby potential receptors included 17 potable wells and a public reservoir.
9. Throughout the incident, ERC LeClerc, Supervising Emergency Response Coordinator Jeff Chandler ("SERC Chandler"), and Supervising Environmental Analyst Aaron Green ("SEA Green") directed Respondent and Servco to perform specific tasks to determine the degree and extent of contamination and remedial activities. On January 14, 2020, DEEP requested a meeting to make clear the need to undertake a number of specific actions and to provide to DEEP data and information developed from those actions, including: a survey and mapping of the Site extending out to include all properties within 500 feet of the Site indicating all monitoring well locations; all potable well locations, all sample locations with the respective analytical results tabulated, interior and exterior excavation limits; soil vapor extraction locations; adjacent reservoir showing intake structure and boom locations; an investigation of the degree and extent of impacted bedrock at the Site; propose the installation of a bedrock sentry well on the north side of the Site, which construction and location is to be reviewed and approved by DEEP; an accounting of oil recovery from soil and water to date; post-excavation soil and groundwater sampling and results; monitoring the potable well at the Site for changes in separate phase contamination; alternative potable water for 166 and 178 Nod Hill Road; and all previously requested sample results from initial response.
10. Further investigation determined that the potable well at 7 Ryders Lane had exceedances for petroleum contaminants. On January 18, 2020, DEEP directed Respondent, as well as Servco, to immediately provide safe drinking water and expediently install a treatment system for this location.
11. DEEP further directed Respondent and Servco to provide a soil erosion control plan that is compliant with the 2002 Connecticut Guideline for Soil Erosion and Sediment Control to prevent the impact of potentially contaminated soil and other runoff issues to the reservoir on the adjacent property east of the Site, which is owned by South Norwalk Electric and Water.

12. DEEP directed Respondent as well as Servco to continue to maintain containment boom in the reservoir at the direction of DEEP and to perform surface water sampling at the direction of DEEP and CT Department of Public Health ("DPH") and provide the results of the sampling to DEEP, DPH and Local Health.
 13. DEEP also directed Respondent as well as Servco that they must continue to sample all previously identified private drinking wells within a 500' radius of the Site at the direction of DEEP, DPH and Local Health and provide the analytical results to the same.
 14. By virtue of the above, Respondent has created a discharge and maintained a condition which reasonably can be expected to create a source of pollution to the waters of the State, in violation of Connecticut General Statute §22a-427, and has initiated, created, originated or maintained an unpermitted discharge in violation of Connecticut General Statute §22a-430.
 15. Respondent has retained a qualified consultant acceptable to the commissioner, HRP Associates, as required by Paragraph B.1.a. of this Consent Order.
 16. Due to the COVID-19 pandemic, documents related to this Consent Order may be exchanged via electronic mail until such time as the Commissioner notifies Respondent that documents must be provided via U.S. mail.
 17. 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 Paragraphs A.1., A.2., and A.4.
- B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-424, §22a-425, §22a-430, §22a-431, §22a-432, and §22a-449 of the Connecticut General Statutes ("CGS"), orders Respondent as follows:
1. a. Qualified Consultant. On or before 10 days from the 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 10 days after retaining any consultant other than one(s) originally identified under this Paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant. Respondent shall submit to the Commissioner a description of the consultant's education, experience and training which is relevant to the work required by this Consent Order within 10

days after a request for such a description. Nothing in this Paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

- b. Emergency Response. On or before 10 days from the issuance of this Consent Order, Respondent shall submit for the Commissioner's review and approval the information, data, and documentation specified in Paragraphs A.9. through A.13. or a schedule for providing same.
- c. Scope of Study. On or before 30 days from the issuance of this Consent Order, Respondent shall submit for the Commissioner's review and written approval a conceptual site model ("CSM") and scope of study ("SOS") for investigating the potential impact of pollution on human health and the environment both on-site and off-site, including but not limited to: the existing and potential extent and degree of soil; sediments; ground water; and surface water pollution. Such SOS shall include at least: the proposed location and depths of ground water monitoring wells; soil; sediment; surface water sampling; a proposed sampling and analytical program, including at least the parameters to be tested; proposed sampling and analytical methods; quality assurance and quality control procedures; and a schedule for conducting the investigation.
- d. Investigation. On or before 30 days after written approval of the CSM and SOS, Respondent shall perform the investigation and other actions specified in the approved SOS in accordance with the approved SOS and approved schedule. Respondent shall notify the Commissioner of the date and time of installation of monitoring wells and of each soil, sediment and water sampling event, at least 5 full business days prior to such installation or sampling.
- e. Supplemental Scope of Study. If the investigation carried out under an approved SOS 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 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 30 days after notice from the Commissioner that they are required.
- f. Investigation Report, Remedial Alternatives Evaluation, Remedial Action Plan, Monitoring Plan. Except as may be provided in the investigation schedule approved by the Commissioner, on or before 30 days after the approved date for completion of the investigation, Respondent shall submit for the Commissioner's review and written approval a comprehensive and thorough report which includes: any modifications to the CSM as a result of the investigation and describes in detail the investigation performed; identifies the type, quantity and location of all wastes on

site; 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 evaluates the alternatives for remedial actions to abate such pollution, including but not limited to any alternative specified by the Commissioner; states in detail the most expeditious schedule for performing each alternative, and lists all permits and approvals required for each alternative, including but not limited to any permits required under sections 22a-32, 22a-42a, 22a-342, 22a-361, 22a-368, 22a-430 or 22a-467 of the Connecticut General Statutes ("CGS"); proposes a preferred alternative with supporting justification therefore; and proposes a detailed program and schedule to perform the preferred remedial actions, including but not limited to 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.

- g. Contract Plans and Specifications. Unless another deadline is specified in writing by the Commissioner, on or before 30 days after approval of the report described in the preceding Paragraph, Respondent shall submit for the Commissioner's review and written approval contract plans and specifications for the approved remedial actions, a revised list of all permits and approvals required for such actions, and a revised schedule for applying for and obtaining such permits and approvals. Respondent shall use best efforts to obtain all required permits and approvals.
- h. Remediation Completion. Respondent shall perform the approved remedial actions in accordance with the plan and schedule as approved in writing by the Commissioner. Within 15 days after completing such actions, Respondent shall certify to the Commissioner in writing that the actions have been completed as approved.
- i. Monitoring, Further Remediation. Respondent shall perform the approved monitoring program to determine the effectiveness of the remedial actions in accordance with the approved schedule. If the approved remedial actions do not result in the prevention and abatement of soil, sediment, 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 shall be submitted for the Commissioner's review and written approval on or before 30 days after notice for the Commissioner that they are required.

- j. Monitoring Report. On a schedule established by the Commissioner or, if no such schedule is established, on a quarterly basis beginning no later than ninety days after initiation of the approved remedial actions or, as applicable, supplemental remedial actions, Respondent 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.
 - k. Approvals. Respondent may request that the Commissioner approve, in writing, revisions to any document approved hereunder in order to make such document consistent with law or for any other appropriate reason.
- 2. Progress Reports. On or before the last day of each month 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. On or before 30 days after issuance of this Consent Order, Respondent shall pay a penalty not to exceed \$25,000.00 as the total civil penalty to be sought by the Commissioner only for those violations alleged in Section A of this Consent Order. The penalty shall be paid in two installments as specified in this Paragraph. No later than thirty (30) days after issuance of this Consent Order, Respondent shall pay the first installment of \$12,500.00. No later than forty-five (45) days after issuance of this Consent Order, Respondent shall pay the second installment of \$12,500.00, however, Respondent shall not be required to pay the second installment if both of the following occur: (i) the first installment from Respondent was paid in a timely manner; and (ii) Respondent to Consent Order COWSUST 20-001 made a payment of \$12,500 no later than thirty (30) days after issuance of Consent Order COWSUST 20-001. In the event either of these conditions is not satisfied, Respondent shall pay the second installment within the time frame specified in this Paragraph.
 - 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 "Connecticut Department of Energy and Environmental Protection."

The check shall state on its face, "Bureau of Materials Management and Compliance Assurance – UST Program civil penalty, Consent Order COWSUST 20-002." A copy of the check shall be mailed to Department of Energy and Environmental Protection, UST Program, 79 Elm St., Hartford, CT 06106-5127.

6. 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 such procedures have been specified or approved, in accordance with 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 final version of the Department's "Site Characterization Guidance Document," and relevant policies and guidelines issued by the Commissioner.
7. 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. In addition, the Reasonable Confidence Protocols shall be used when there is a method published by Department. In all cases where the Reasonable Confidence Protocol ("RCP") 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 RCP 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 RCPs.

The reporting limit shall be established consistent with the RCPs 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).

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 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 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.

9. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
10. Dates. 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. 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.


Notwithstanding the foregoing, due to the COVID-19 pandemic, the following shall apply. The date of "issuance" of this Consent Order is the date the Consent Order is sent to Respondent via electronic mail. In addition, for documents to be submitted to the Commissioner, until such time as the Commissioner notifies Respondent that documents must be submitted via U.S. mail or by personal delivery, Respondent may submit documents to the Commissioner electronically and the date of submission of any such document shall be the date such document is received by electronic mail. Nothing in the foregoing is intended preclude the Commissioner from requiring that a document submitted electronically also be submitted via U.S. mail or by personal delivery within the timeframe specified by the Commissioner. With respect to notices from the Commissioner under this Consent Order, until such time as the Commissioner notifies Respondent that notices will be provided via U.S. mail or by personal delivery, such notices may be sent electronically and 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 sent via electronic mail.

11. 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 Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in CGS §22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individuals responsible for actually preparing such document, and Respondent or Respondent's chief executive officer 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 CGS §53a-157b and any other applicable law."
12. False Statements. Any false statement in any information submitted pursuant to this Consent Order is punishable as a criminal offense under CGS §53a-157b and any other applicable law.
13. 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.
14. 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 past, present, or future violations of law, including but not limited to those described in this Consent Order. 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.
15. Respondent's Obligations Under Law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.

16. 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.
17. Access to Site. Respondent shall not interfere with any representative of the Department of Energy and Environmental Protection entering the facility or the Site. Moreover, the representatives of the Department of Energy and Environmental Protection are not required to provide prior notice to Respondent for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
18. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondent to an injunction and penalties.
19. 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.
20. Notice to Commissioner of Changes. Within 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. Notification of Noncompliance. In the event that Respondent becomes aware that it 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 by telephone the individual(s) 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 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.

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certify that they are fully authorized to enter into this Consent Order and to legally bind the Respondent to the terms and conditions of the Consent Order.


D. R. Charles Environmental Construction LLC

Member

Title

11/2/20
Date

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

BY: Betsy Wingfield
Betsy Q. Wingfield
Deputy Commissioner

November 30, 2020
Date

Order # COWSUST 20-002
Certified Mail RRR
Town of Wilton Land Records

