

STATE OF CONNECTICUT

V.

GRAINGER SERVICE HOLDING COMPANY, INC.

d/b/a ALLIANCE ENERGY SOLUTIONS

CONSENT ORDER no. COWSWDH12006

Date Issued: May 31, 2012

A. With the agreement of Grainger Service Holding Company, Inc. d/b/a Alliance Energy Solutions (“Respondent”) the Commissioner of Energy and Environmental Protection (“the Commissioner”) finds:

1. Respondent is a Delaware corporation, with a business address of 100 Grainger Parkway, Lake Forest, Illinois.
2. Respondent is engaged in the business of performing energy efficiency audits and supervising energy conservation projects, with headquarters located at 61 Mattatuck Heights Road, Waterbury, Connecticut.
3. Respondent was formerly located at 115 Hurley Road in Oxford, Connecticut (“the site”).
4. Respondent is or has been a handler of universal waste at the site.
5. On December 23, 2011, the Department of Energy and Environmental Protection’s (“DEEP”) Emergency Response Unit responded to a complaint alleging mismanagement of universal waste at the site.
6. On December 23, 2011, Respondent hired a spill contractor to contain all broken and exposed universal waste at the site.
7. On December 27, 2011, the Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, conducted a follow-up inspection at the site. Based on this inspection, Respondent had:

- a. Failed to manage universal waste lamps in a manner that prevents releases of universal waste or universal waste component to the environment, as required by section 22a-449(c)-113(a)(1) of the Regulations of Connecticut State Agencies (“RCSA”) incorporating Title 40 of the Code of Federal Regulations (“40 CFR”) 273.13(d)(1).
 - b. Failed to immediately clean up and place in a container any universal waste lamp that showed evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment, as required by section 22a-449(c)-113(a)(1) of the RCSA incorporating 40 CFR 273.13(d)(2).
 - c. Failed to label each lamp or container holding universal waste lamps with the words “Universal Waste – Lamps”, or “Waste Lamps”, or “Used Lamps”, as required by section 22a-449(c)-113(a)(1) of the RCSA incorporating 40 CFR 273.14(e).
8. On March 13, 2012, DEEP issued Notice of Violation no. WSWDH12035 to Alliance Energy Solutions requiring correction of the violations listed in paragraphs A.7. above.
9. On January 9, 2012, DEEP received documentation demonstrating that all universal waste had been removed from the site and properly disposed. As such, the regulations referenced in paragraph A.7. above are no longer being violated at the site.
10. 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. through A.4. of this consent order.
- B. With the agreement of Respondent, the Commissioner, acting under sections 22a-6, 22a-131, and 22a-449 of the Connecticut General Statutes (“CGS”), orders Respondent as follows:
1. Compliance. Respondent shall maintain its compliance with all applicable provisions of Connecticut’s hazardous waste management regulations, sections 22a-449(c)-100 through 119 of the RCSA, including but not limited to those regulations applicable to handlers of universal waste identified in paragraph A.7. above. In particular,
 - a. On or before thirty (30) days after 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 consultant(s), or shall submit documentation to the Commissioner demonstrating that qualified in-house expertise exists 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 in-house expert(s). Respondent shall retain one or more qualified consultants or in-house experts, acceptable to the Commissioner until this Consent Order is fully complied with and within ten (10) days after retaining any consultant or in-house expert other than one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant or in-house expert. Respondent shall submit to the Commissioner a description of a consultant's or in-house expert'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 a description. Nothing in this paragraph shall prevent the Commissioner from finding a previously acceptable consultant or in-house expert unacceptable.

- b. On or before sixty (60) days after issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a plan detailing all actions and/or operational changes it has undertaken or will undertake to ensure compliance with the universal waste management requirements specified in paragraph A.7. of this consent order, and all applicable provisions of the hazardous waste management regulations, sections 22a-449(c)-100 through 119 of the RCSA. The plan shall detail the provisions made by the Respondent to ensure that universal wastes are managed appropriately. Within five (5) days after the Commissioner approves such plan in writing, Respondent shall operate its facility in accordance with the terms and conditions of the plan approved by the Commissioner and maintain it in full effect thereafter.
 - c. Respondent shall conduct a comprehensive recycling review of its operations at 61 Mattatuck Heights Road, Waterbury to evaluate compliance with Connecticut's applicable recycling laws set forth in CGS section 22a-241b(d). On or before ninety (90) days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a business recycling profile documenting the management of recyclable materials. An example profile is included as attachment A to this consent order.
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 Commissioner's satisfaction.
 3. Status of Notice of Violation no. WSWDH12035. This consent order supersedes Notice of Violation no. WSWDH12035.
 4. Civil penalty. Respondent shall pay a penalty of twenty thousand, six hundred and thirty dollars (\$20,630⁰⁰) as the total civil penalty to be sought by the Commissioner for those, and only those

violations described in paragraph A.7. of this consent order. The penalty shall be paid in two separate installments as follows:

- a. The first installment shall be in the amount of ten thousand, three hundred and fifteen dollars (\$10,315⁰⁰) and shall be due and payable on or before fourteen (14) days from the date of issuance of this consent order.
 - b. The second installment shall be in the amount of ten thousand, three hundred and fifteen dollars (\$10,315⁰⁰) and shall be due and payable on or before ninety (90) days from the date of issuance of this consent order.
5. Payment of civil penalty. Payment of the penalty required 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 "Treasurer, State of Connecticut." The check shall state on its face, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty" and include the consent order number identified at the top of page one of this consent order. Copies of the check and any transmittal letter shall also be sent to Julie Dutton in the Bureau of Materials Management and Compliance Assurance at the same address.
6. Supplemental Environmental Projects. In lieu of making the second civil penalty payment prescribed in paragraph B.4. above, Respondent may comply with the requirements of subparagraph B.6.a. below regarding supplemental environmental projects ("SEP").
- a. Performance of SEP(s)
 - (1) On or before sixty (60) days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a proposal to perform one or more SEPs ("proposal"), according to the Department's February 15, 1996 "Policy on Supplemental Environmental Projects". The proposal shall include:
 - i. a detailed description of each SEP,
 - ii. itemized costs to be incurred by Respondent in carrying out each SEP,
 - iii. documentation to support such cost estimates,
 - iv. an explanation as to why each SEP is being proposed,

- v. a proposed schedule (of not more than 180 days) for implementation and completion of each SEP, and
- vi. a description of the benefit of each SEP to the general public or the environment. Respondent shall be credited up to ten thousand, three hundred and fifteen dollars (\$10,315⁰⁰) to partially fund any SEPs.

(2) The Commissioner will either:

- i. approve the proposal, including in such approval the dollar amount of the penalty offset to be realized by Respondent attributable to the SEP(s) and any additional conditions deemed necessary by the Commissioner; or
- ii. disapprove the proposal and notify Respondent, in writing, of deficiencies in the proposal and any additional actions or information required to be taken or supplied by Respondent.

The decision to approve or disapprove an SEP shall be in the sole discretion of the Commissioner.

(3) If the dollar amount of the penalty offset attributable to the approved SEP(s) is less than ten thousand, three hundred and fifteen dollars (\$10,315⁰⁰) Respondent shall pay the difference in accordance with a revised schedule established by the Commissioner.

(4) Respondent shall not be given any credit, or reduction in the civil penalty provided for by this paragraph if an SEP included in an approved proposal is not fully complied with. If Respondent fails to fully perform any SEP approved in accordance with paragraph B.6.a.(2).i., Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to: the total estimated cost, as determined by the Commissioner, of all such SEP(s); plus either \$2,500 or 10% of such total estimated cost, whichever is greater. Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.6.a.(10). of this consent order.

(5) The net present after-tax value of the SEP(s) shall be equivalent to the sum(s) identified in this paragraph or Respondent shall submit certified documentation that no tax credits shall be obtained as a result of the SEP(s) performed under this paragraph.

(6) If and when Respondent disseminates any publicity, including but not limited

to any press releases regarding funding an SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.

- (7) Respondent shall not claim or represent that any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
- (8) On or before thirty (30) days after completion of each SEP, Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of each SEP. Such final report shall include, at a minimum:
 - i. a narrative history of the project,
 - ii. detailed explanation of its design and implementation,
 - iii. summary of any data collected,
 - iv. complete final accounting of actual project costs including receipts for out-of-pocket costs, and
 - v. a discussion of environmental benefits resulting from each SEP.
- (9) Should the Commissioner determine that the actual cost to Respondent in completing an SEP is less than the estimated cost identified in the proposal approved by the Commissioner in accordance with paragraph B.6.a.(2).i, Respondent shall pay the difference between such actual cost and estimated cost to the Commissioner as unexpended SEP funds. The Commissioner shall notify Respondent in writing of the amount of any such unexpended SEP funds which are due.
- (10) Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut" and the check shall state on its face "Statewide SEP Account" and include the consent order number identified at the top of page one of this consent order. Any payment shall be made in accordance with paragraph B.5. of this consent order.

7. Sampling and 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 to conduct such analyses. All sampling and sample

analyses performed under this 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.

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.
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 Respondents' chief executive officer or a duly authorized representative of such officer, as those terms are defined in section 22a-430-3(b)(2) of the RCSA, and by the individual(s) responsible for actually preparing such document, 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 may be punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law.”

12. 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.
13. False statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law.
14. 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 fifteen (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.
15. Commissioner’s powers. Except as provided hereinabove with respect to payment of civil penalties, 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. 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.
16. Respondent’s obligations under law. Nothing in this consent order 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.

18. Access to site. Any representative of the Department of Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
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 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. Notification of noncompliance. In the event that Respondent becomes aware that they did not or may not comply, or did not or may not comply on time, with any requirement of this consent order or of any document required hereunder, Respondent shall immediately notify by telephone the individual 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 five (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.
22. Submission of documents. Any document required to be submitted to the Commissioner under this consent order shall, unless otherwise specified in this consent order or in writing by the Commissioner, be directed to:

Brent Madho
Department of Energy and Environmental Protection
Bureau of Materials Management & Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

Grainger Service Holding Company, Inc.
Consent Order

Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.

Grainger Service Holding Company, Inc.

BY: Paul Rechlin

(Signature of the individual with authority to bind Grainger Service Holding Company, Inc. to the terms of this consent order)

Paul Rechlin

Name (typed)

Director, AES Production and Supply Chain

Title

May 21, 2012

Date

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

Macky McCleary

Macky McCleary

Deputy Commissioner

5/31/12

Date

Consent Order COWSWDH12006