



**STATE OF CONNECTICUT
V.
TOMMY'S TANNING, INC.**

CONSENT ORDER #WSWDH16005

Date Issued: September 29, 2016

- A. With the agreement of Tommy's Tanning, Inc. ("Respondent"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:
1. Respondent is a corporation which is or has been engaged in providing sunbed tanning and sunless spray tanning services at 690 Foxon Road in East Haven, Connecticut ("the site").
 2. Respondent is or has been a generator of mercury-containing waste at the site.
 3. Based on the findings of an inspection of the site performed by the Department of Energy and Environmental Protection ("the Department"), Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division on June 17th and 20th, 2016:
 - a. Respondent failed to determine whether each waste generated at the site was a hazardous waste as required by Section 22a-449(c)-102(a)(2)(A) of the Regulations of Connecticut State Agencies ("RCSA") which incorporates by reference Title 40 of the Code of Federal Regulations ("CFR") 262.11 with specified changes. Specifically, the Department found that Respondent did not assess whether or not spent mercury-containing lamps generated on-site were a hazardous waste.
 - b. Respondent failed to manage spent mercury-containing lamps in a way that prevents the release of a component of the lamps to the environment as required by Section 22a-209-17(c) of the RCSA which incorporates by reference 40 CFR 273.13(d) with specified changes. Specifically, the Department found spent mercury containing lamps generated on-site were disposed of in a solid waste trash dumpster with incidental broken pieces of the spent lamps and their components disposed of on the ground under and around the dumpster at least at the time of the inspection.
 4. By virtue of the above, Respondent has violated Sections 22a-449(c)-102(a)(2)(A) and 22a-209-17 of the RCSA.
 5. On June 26, 2014 the Department issued Notice of Violation No. WSWDH 16032 to Respondent to correct the violations identified in paragraph A.3 of this consent order.
 6. In correspondence received June 20, 2016, July 1, 2016, July 12, 2016, and August 16, 2016, Respondent represented that the violations identified in paragraph A.3 of this consent order have been corrected and indicated plans to perform an investigation for mercury contamination in the area surrounding and underneath the dumpster as outlined in the Notice of Violation.

- B. With the agreement of Respondent, the Commissioner, acting under Sections 22a-6, 22a-131, 22a-208, 22a-225, 22a-226, and 22a-449 of the Connecticut General Statutes ("CGS"), orders Respondent as follows:
1. Respondent shall maintain compliance with all applicable provisions of the RCSA Sections 22a-449(c)-100, et. seq. and Section 22a-209-17(c), including but not limited to those regulations applicable to generators of hazardous and mercury-containing waste identified in paragraph A.3. above, in accordance with the following schedule:
 - a. Respondent has retained Facility Support Services, LLC which is a qualified consultant acceptable to the Commissioner, to prepare the documents and implement or oversee the actions required by this consent order. Respondent shall retain such consultant or retain other qualified environmental consultants acceptable to the Commissioner until this consent order is fully complied with, and within ten (10) days after retaining any consultants other than those 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 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 a description. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
 - b. 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 report describing the investigation, characterization, and removal of mercury contamination in the area directly surrounding and underneath the trash dumpster in which spent mercury-containing lamps had been disposed. This activity shall follow the guidance provided by the attached *Draft RCRA Closure Guidance for Generators Who Store Less Than 90 Days Container Storage Areas and Tank Systems*.
 - c. 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 plan detailing additional actions taken and/or operational changes made to ensure future compliance with the requirements of RCSA Section 22a-209-17 at its Connecticut locations. Within ten (10) days after the Commissioner approves such plan, Respondent shall carry out the plan and maintain it in full effect thereafter.
 - d. On or before **one hundred twenty (120) days** after the date of issuance of this consent order, Respondent shall conduct a comprehensive recycling review of its Connecticut locations to evaluate compliance with Connecticut's recycling laws set forth in CGS Section 22a-241b(d) and submit for the Commissioner's review and written approval a business recycling profile documenting the management of recyclable materials. Refer to the enclosed example profile. Within ten (10) days after the Commissioner approves such plan, Respondent shall carry out the plan and maintain it in full effect thereafter.
 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. WSWDH 16032. This consent order supersedes Notice of Violation No. WSWDH 16032.
 4. Civil penalty. On or before **fourteen (14) days** after issuance of this consent order, Respondent shall pay a penalty of **five thousand nine hundred dollars (\$5,900)** as the total civil penalty to be sought by the Commissioner for the violations described in paragraph A.3 of this consent order.

5. Supplemental Environmental Project. In addition to the penalty referenced in paragraph B.4 above, Respondent has agreed to fund a supplemental environmental project ("SEP") or projects acceptable to the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects". Therefore, on or before one hundred eighty (180) days after the date of issuance of this consent order, Respondent shall pay **five thousand nine hundred dollars (\$5,900)** to the Statewide SEP Account, provided Respondent has not received approval from the Commissioner to perform an alternate SEP. Within ninety (90) days of issuance of the order, Respondent may submit an alternate SEP proposal and implementation schedule for the Commissioner's review and written approval. If such approval is received, then the payment to the Statewide SEP Account noted above is limited to the difference between the credited value of the SEP and **five thousand nine hundred dollars (\$5,900)**. The proposed alternative SEP shall be implemented in accordance with the Commissioner's approval of the proposed SEP and implementation schedule. Any payments under this paragraph 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, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection", with notation thereon "Statewide SEP Account" and the consent order number identified on the first page of this Consent Order. A copy of the check and any transmittal letter shall also be sent to Julie Dutton, Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division at the same address.
 - a. 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.
 - b. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
 - c. If Respondent fails to fully perform any SEP in accordance with paragraph B.5 of this consent order, 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. Within fourteen (14) days after the date of the Commissioner's written request, Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in paragraph B.5 above.
6. 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 the "Connecticut Department of Energy and Environmental Protection." The check shall state on its face, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, civil penalty" and the consent order number identified on the first page of this consent order. A copy of the check as well as any transmittal letter shall be mailed or delivered to Julie Dutton, Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division at the same address.
7. Sampling and sample analyses. All sampling and 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 sampling and 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 thirty (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 Respondent's 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 Regulations of Connecticut State Agencies, 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 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 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 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 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:

Michelle L. Gore, Sanitary Engineer 3
Department of Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street, 4th Floor
Hartford, Connecticut 06106-5127

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.

TOMMY'S TANNING, INC.


BY:


Edward Kelleher, President

Date

9/20/16

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


Michael Sullivan
Deputy Commissioner

Date

9/29/16

Consent Order # WSWDH16005

Town of East Haven Land Records