

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT:

V.:

J.L. SEAMAN, LLC

CONSENT ORDER # COWSWDS 11006

DATE ISSUED: March 24, 2011

- A. With the agreement of J.L. Seaman, LLC (“Respondent”), the Commissioner of Environmental Protection (“the Commissioner”) finds:
1. Respondent is a Connecticut limited liability company that has its principal place of business at 3 Merrit Street, Norwalk, Connecticut (“the site”), shown on map 16NE, block 78, lot 18, in the City of Norwalk Tax Assessor’s Office.
 2. On November 12, 2002, the Department of Environmental Protection (“the Department”), issued the Respondent Permit to Operate No. 1030614-PO (“the permit”), for the site.
 3. On August 17, 2011, the Department conducted an inspection of the site and determined that the Respondent had:
 - a. Failed to perform and submit to the DEP quarterly air sampling for asbestos and lead reports in violation of §22a-209-4(e) of the Regulations of Connecticut State Agencies (RCSA) and paragraph No. 9. of the permit;
 - b. Failed to perform and submit to the DEP quarterly compliance audits reports in violation of §22a-209-4(e) of the RCSA and paragraph No. 18. of the permit;
 - c. Failed to submit to the DEP the appropriate financial instrument for the volume reduction plant in violation of §22a-209-4(e) of the RCSA and paragraph No. 17. of the permit;
 - d. Failed to confine and promptly remove non-processable wastes such as scrap metal, including appliances without CFC liquid and propane tanks without valves, in violation of §22a-209-4(e) of the RCSA and paragraphs No. 7.b. and 7.c. of the permit.
 4. On December 14, 2010, the Department issued Respondent Notice of Violation No. WSWDS10117 for violations discovered as a result of the inspection described in paragraph A.3 of this consent order.
 5. On December 30, 2010, the Department received the Respondent’s first quarterly compliance audit, which was conducted on December 8, 2010 by Anchor

(Printed on Recycled Paper)

79 Elm Street • Hartford, CT 06106-5127

www.ct.gov/dep

An Equal Opportunity Employer

Engineering Services, Inc. According to the findings of that compliance audit, three violations in addition to those described in paragraph A.3. of this consent order were reported. The findings of the compliance audit determined that the Respondent had:

- a. Failed to properly store residue, specifically, clean wood in accordance with §22a-209-4(e) and §22a-209-10(1) of the RCSA and paragraph 2. of the permit;
- b. Failed to control facility traffic flow in accordance with §22a-209-4(e) of the RCSA and paragraph 2. of the permit;
- c. Altered the design and operation of an approved solid waste facility, specifically by using a small hand-fed baler for compaction of cardboard at the volume reduction plant, which holds a permit to construct on or after June 16, 1985, without the proposed plan, design and method of operation of the altered facility having been filed with the Department and approved by the Commissioner by the issuance of a modified permit as required by §22a-208a(d) of the CGS and §22a-209-4(e) of the RCSA and paragraph 2.a. of the permit.

6. By virtue of the above, the Department found that Respondent has violated Connecticut General Statutes (CGS) §22a-208a(d) and the Regulations of Connecticut State Agencies (RCSA) §22a-209-4(e), and §22a-209-10(1) for violations of Permit to Operate No. 1030614-PO paragraphs 2.a., 7.b., 7.c., 9., 17., and 18.

B. With the agreement of Respondent, the Commissioner acting under CGS Sections 22a-6, 22a-208, 22a-225, and 22a-250 orders Respondent as follows:

1. **Environmental Consultant.** On or before thirty (30) days from the date of 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) if requested by the Commissioner in writing, a description of a consultant's education, experience and training which is relevant to the work required by this consent order. Respondent 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 the one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other consultant(s) and 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. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

2. **Status of Notice of Violation No. WSWDS10117.** This consent order supersedes and closes Notice of Violation No. WSWDS10117, issued on December 14, 2010.
3. **Civil Penalty.** Respondent shall pay a penalty of twenty-one thousand, two hundred and five dollars (\$21,205.⁰⁰) as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraphs A.3. and A.5. of this consent order. Payment shall be made in accordance with provisions of paragraph B.4. The penalty shall be paid in four separate installments due and payable as follows:
 - a. The first installment of the penalty shall be in the amount of five thousand, one hundred and twenty-nine dollars (\$5,129.⁰⁰) shall be due and payable on or before one hundred and eighty (180) days after the date of issuance of this consent order.
 - b. The second installment of the penalty shall be in the amount five thousand, one hundred and twenty-nine dollars (\$5,129.⁰⁰) shall be due and payable on or before two hundred and seventy (270) days after the date of issuance of this consent order.
 - c. The third installment of the penalty shall be in the amount of five thousand, one hundred and twenty-nine dollars (\$5,129.⁰⁰) shall be due and payable on or before three hundred and sixty (360) days after the date of issuance of this consent order.
 - d. The fourth installment of the penalty shall be in the amount of five thousand, eight hundred and eighteen dollars (\$5,818.⁰⁰) shall be due and payable on or before four hundred and fifty (450) days after the date of issuance of this consent order.
4. **Payment of penalties.** Payment of the penalties under this consent order shall be mailed or personally delivered to Department of 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 "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, Consent Order No. WSWDS11006". A copy of the check and any transmittal letter shall also be sent to Ms. Julie Dutton in the Bureau of Materials Management and Compliance Assurance at the same address.
5. **Supplemental Environmental Projects.** In lieu of making the forth civil penalty payment prescribed in paragraph B.3. above, Respondent may comply with the requirements of paragraph B.5.a regarding supplemental environmental projects ("SEP").

a. Performance of SEP(s)

- i. 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 proposal to perform one or more SEP's ("proposal"). The proposal shall include: a detailed description of each SEP; itemized costs to be incurred by Respondent in carrying out each SEP, documentation to support such cost estimates, an explanation as to why each SEP is being proposed, a proposed schedule for implementation and completion of each SEP, and a description of the benefit of each SEP to the general public or the environment. Respondent shall be credited up to five thousand, eight hundred and eighteen dollars (\$5,818.⁰⁰), which is the sum of the fourth civil penalty payment, to partially fund any SEPs.
- ii. The Commissioner will either (a) 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 (b) 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.
- iii. If the dollar amount of the penalty offset attributable to the approved SEP(s) is less than five thousand, eight hundred and eighteen dollars (\$5,818.⁰⁰), Respondent shall pay the difference in accordance with a revised schedule established by the Commissioner.
- iv. If the Commissioner approves Respondent's proposal and Respondent fails to perform any approved SEP within the timeframes specified in the proposal, a payment to the Statewide SEP Account in an amount equal to the amount credited to Respondent for the SEP under paragraph B.5.a.i. shall be due immediately upon notification by the Commissioner. In addition, a two thousand, five hundred dollar (\$2,500.⁰⁰) penalty shall also be paid at this time for non-compliance with the approved proposal. This additional two thousand, five hundred dollar (\$2,500.⁰⁰) penalty shall apply to each SEP which Respondent fails to perform in accordance with the terms and conditions approved by the Commissioner. Any payment made pursuant to this subparagraph shall be made in accordance with paragraph B.5. of this consent order. 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.
- v. 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.

- vi. 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.
- vii. 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.
- viii. On or before thirty (30) days after completion of the SEP, Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of the SEP. Such final report shall include, at a minimum, a narrative history of the project, detailed explanation of its design and implementation, summary of any data collected, complete final accounting of actual project costs including receipts for out-of-pocket costs, and a discussion of environmental benefits resulting from the SEP.
- ix. 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.5.a.ii, 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. 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." Any payment shall be made in accordance with paragraph B.4. of this consent order.

6. **Future compliance plan including recycling.**

- a. On or before sixty (60) days after issuance of this consent order, Respondent shall submit to the Commissioner, for review and written approval, a plan which details the actions and/or operational changes to ensure future compliance with Solid Waste Management Regulations, RCSA §22a-209, et. Seq., including but not limited to those set forth in paragraph A.6.

- b. Respondent shall conduct a comprehensive recycling review of its operations at 3 Merrit Street, Norwalk, Connecticut to evaluate compliance with Connecticut's recycling laws set forth in CGS §22a-241b(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 business recycling profile documenting the management of recyclable materials. A profile is included in Attachment A of this consent order.
7. **Full compliance.** Respondent shall not be considered in full compliance with this consent order until all actions required by this consent order have been completed as approved and to the satisfaction of the Commissioner.
8. **Progress reports.** On or before the last day of each month following the 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 have taken to date to comply with this consent order.
9. **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 as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purpose to this consent order. Nothing in this paragraph shall excuse noncompliance or delay.
10. **Definitions.** As used in this consent order, "Commissioner" means the Commissioner of Environmental Protection or a representative of the Commissioner.
11. **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.

12. **Certification of documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this consent order shall be signed by Respondent 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 §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 §53a-157b of the Connecticut General Statutes and any other applicable law.
13. **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.
14. **False statements.** Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
15. **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.
16. **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. 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.

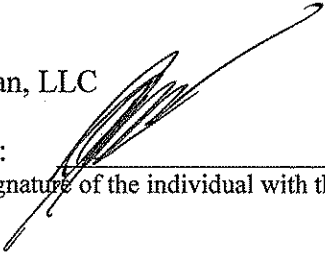
17. **Respondent's obligations under law.** Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
18. **No assurance by Commissioner.** No provision of this consent order and no action or inaction by the Commissioner shall be construed 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].
19. **Access to site.** Any representative of the Department of 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.
20. **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.
21. **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.
22. **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.

23. **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:

Bethany McWade, Environmental Analyst
Department of Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

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

J.L. Seaman, LLC

By: 
(Signature of the individual with the authority to bind Respondent to the terms of this consent order)

Joseph Seaman
Name (typed)

VP
Title

3/15/11
Date

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

Amy Manella

3/23/11

fol
Daniel C. Esty,
Acting Commissioner

Date

CONSENT ORDER NO. COWSWDS 11006

City of Norwalk Land Records