

Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**STATE OF CONNECTICUT
V.
DIRT, LLC, and
THOMAS H. VANEPPS, JR., OWNER
DBA VANEPPS CONSTRUCTION COMPANY**

CONSENT ORDER # COWSWDS11011

Date Issued: December 16, 2011

A. With the agreement of Dirt, LLC, and Thomas H. VanEpps, Jr., dba VanEpps Construction Company ("Respondents") collectively, the Commissioner of the Department of Energy and Environmental Protection ("the Commissioner") finds:

1. Dirt, LLC ("Respondent Dirt, LLC"), is a limited liability corporation and the property owner of the VanEpps bulky waste solid waste disposal area ("landfill") located at Spencer Plains Road, Old Saybrook, Connecticut, ("the site") more fully described in a deed recorded at page 589 of volume 390 of the Town of Old Saybrook land records, and also identified as lot 25 on map 25, in the Town of Old Saybrook Tax Assessor's Office.
2. Respondent Thomas H. VanEpps, Jr., Owner, dba VanEpps Construction Company ("Respondent VanEpps") provides general construction services. Respondent Thomas H. VanEpps, Jr. is the sole principal member of Dirt, LLC.
3. On October 7, 1976, Donald VanEpps, and VanEpps Construction Co. were issued solid waste Permit to Operate No. SW-106-1b, to operate a bulky waste landfill at the site. Based on correspondence written by the Department dated November 24, 1986, closure of the landfill was initiated during 1986, however, final closure was not obtained and a final topographical site map, along with a description of the landfill, was not placed on the town land records, nor was a certified copy from the Town clerk sent to the Department.
4. On April 17, 2001, the bulky waste landfill was sold to Dirt, LLC by Joan Van Epps. The solid waste Permit to Operate No. SW-106-1b was not transferred to Dirt, LLC. Joan Van Epps never held a Permit.
5. On April 12, 2002, the Bureau of Material Management and Compliance Assurance, Waste Engineering and Enforcement Division ("WEED"), conducted an inspection of the

site. On May 1, 2002, based on the April 12, 2002 inspection, the Department issued Notice of Violation #WSWDS02063 for the following violations:

- a) Failure to obtain approval from the Commissioner for the disruption of the landfill as required by Regulations of Connecticut State Agencies (RCSA) § 22a-209-7(u).
 - b) Altering a solid waste facility without a plan, design and method of operation of such solid waste facility having been filed with the Department and approved by the Commissioner as required by RCSA § 22a-209-2 and 22a-209-4, and Connecticut General Statutes (CGS) § 22a-208a(b) and 22a-208c.
 - c) Failure to obtain a permit for owning, operating and maintaining a solid waste disposal area as required by CGS § 22a-207b.
6. On January 26, 2007, WEED conducted an inspection of the site. On February 9, 2007, based on the January 26, 2007 inspection, WEED issued Notice of Violation #WSWDS07015 for the following violations:
- a) Establishing a solid waste transfer station without a solid waste permit as required by RCSA § 22a-209-2, 22a-209-4, and 22a-209-9 and CGS § 22a-208a(b) and 22a-208c.
 - b) Failure to obtain the Commissioner's approval for post closure use of the landfill, as required by RCSA § 22a-209-13(d).
7. On July 22, 2009, WEED conducted an inspection of the site. On September 1, 2009, based on the July 22, 2009 inspection, WEED issued Notice of Violation #WSWDS09081 for the following violations:
- a) Failure to conduct closure of the permitted landfill as required by RCSA § 22a-209-13.
 - b) Failure to obtain the Commissioner's approval for post closure use of the landfill, as required by RCSA § 22a-209-13(d).
8. On March 19, 2010, WEED issued Order #WSWDS10006 for noncompliance with the above Notices of Violation. The Respondent appealed the Order.
9. By virtue of the above, Respondents have violated CGS § 22a-208a(b), 22a-208c, and RCSA § 22a-209-2, 22a-209-4, 22a-209-4(e), 22a-209-4(g), 22a-209-7(u), 22a-209-9, 22a-209-13(d), 22a-209-13(g), 22a-209-9(g), and Solid Waste Permit to Operate No. 106-1b.
10. By agreeing to the issuance of this Consent Order, Respondents makes no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraph A.1. and A.2. of this Consent Order.

B. With the agreement of Respondents, the Commissioner, acting under § 22a-6, 22a-208, 22a-208a(c) and 22a-225 of the Connecticut General Statutes, orders Respondents as follows:

1. Retention of Consultant. Respondents have identified Christopher B. Bell, P.E. as the qualified consultant, who is acceptable to the Commissioner, to prepare the documents and implement or oversee the actions required by this consent order. Respondents shall retain Christopher B. Bell, P.E. or a qualified environmental consultant acceptable to the Commissioner until this Consent Order is fully complied with. Within ten (10) days after retaining any consultant other than the one originally identified under this paragraph, or retaining an independent environmental consultant for the purposes of compliance with 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 the 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.
2. Compliance. Respondents shall complete final closure of the landfill in accordance with RCSA § 22a-209-13 as further described below in paragraphs B.3. through B.6.
3. Submit Updated Topographic Map. On or before sixty (60) days from the date of issuance of this Consent Order, Respondents shall submit to the Commissioner for review and written approval, a current topographic survey of the site at a scale and contour interval adequate to serve in the preparation of a landfill closure plan. The topographic survey shall be signed and sealed by the Land Surveyor in accordance with section 20-300-10 of the RCSA.
4. Submit Closure Plan. On or before (90) days from the date of issuance of this Consent Order, Respondents shall submit, pursuant to CGS § 22a-208a(c), to the Commissioner for review and written approval a closure plan ("the plan") for the landfill and a schedule for implementation of the plan. The plan shall provide for compliance with closure requirements in accordance with RCSA § 22a-209-13. The plan shall include the elements defined in CGS § 22a-207(26) and specifically shall include but not be limited to:
 - a) a description of the final topography of the landfill including elevation and final contours;
 - b) a delineation of the aerial extent of the landfill which would include the installation of fill limit markers in accordance with RCSA § 22a-209-7(w);
 - c) landfill regrading;
 - d) the installation and maintenance of final cover;
 - e) establishment of vegetative cover;
 - f) detailed information concerning the use of the site following closing in accordance with RCSA § 22a-209-13(d);
 - g) a post closure plan for landfill maintenance and monitoring including a water quality monitoring plan and financial assurance. The plan shall provide for completion of the installation of final cover, landfill regrading, and establishment of vegetative cover in accordance with the implementation schedule; and
 - h) identification of the extent of the fill onto Amtrak Railroad property and a proposed resolution to address the fill.

5. Initiate Landfill Closure. On or before thirty (30) days from the date of approval of the plan required in paragraph B.4. of this Consent Order, Respondents shall initiate the landfill closure. Respondents shall complete closure in accordance with the approved schedule.
6. Completion of Closure. On or before ninety (90) days from the date of completion of the landfill closure, Respondents shall submit to the Commissioner a certified copy of the municipal land record notification including a detailed description of the landfill in conformance with RCSA §22a-209-13(g). The notice on the municipal land records shall also include reference to post closure use requirements of RCSA §22a-209-13(d).
7. Progress reports. On or before the last day of March, June, September, and December, 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, Respondents shall submit a progress report to the Commissioner describing the actions which Respondents have taken to date to comply with this Consent Order.
8. Future Compliance Plan including Recycling.
 - a) On or before sixty (60) days from the date of the issuance of this Consent Order, Respondents 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 the Solid Waste Management Regulations, RCSA section 22a-209, et. seq., including but not limited to those sections set forth in paragraphs A.9 of this Consent Order.
 - b) Respondents shall conduct a comprehensive recycling review of VanEpps Construction's office location to evaluate compliance with Connecticut's recycling laws set forth in CGS section 22a-241b(c). On or before ninety (90) days from the date of issuance of this Consent Order, Respondents 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.
9. Status of Order #WSWDS10006. This Consent Order supersedes Unilateral Order #AOWSWDS10006.
10. 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.
11. Civil Penalty. Respondents agree to the assessment of a civil penalty of thirty seven thousand dollars (\$37,000) as the total civil penalty to be sought by the Commissioner for those, and only those, violations alleged in paragraph A.5, A.6, A.7, A.8, and A.9 of this Consent Order. The Commissioner and the Respondent agree that thirty seven thousand dollars (\$37,000) shall be permanently discharged pending Respondents' full compliance with the terms and conditions of this Consent Order and documents incorporated herein and upon issuance of a compliance letter by the Commissioner. In the event that, in the

sole judgment of the Commissioner, Respondents violate any provision of this Consent Order, Respondents shall pay to the Commissioner the penal sum of thirty seven thousand dollars (\$37,000) within thirty (30) days from the receipt of the Department's written notice thereof.

12. 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 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 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 purpose to this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.
13. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.
14. 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.
15. 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 Respondents or, if Respondents 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 Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and Respondents or Respondents' 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 may be punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law."

16. Noncompliance. This Consent Order is a final Consent 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.
17. 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.
18. 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 days after transferring all or any portion of the operations which are the subject of this Consent Order, the site or the business, or obtaining a new mailing or location address. Respondents' obligations under this Consent Order shall not be affected by the passage of title to any property to any other person or municipality.
19. 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 to undertake further investigation or further action to prevent or abate pollution.
20. Respondents' obligations under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.
21. 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.
22. 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.
23. 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.
24. Notice to Commissioner of changes. Within fifteen (15) days of the date Respondents 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.
25. Notification of noncompliance. In the event that Respondents become 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, Respondents 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, Respondents 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 Respondents shall comply with any dates which 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.

26. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in writing by the Commissioner, be directed to:

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

27. Joint and Several Liability. Respondents shall be jointly and severally liable for compliance with this Consent Order.

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Respondents consent 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 Respondents to the terms and conditions of the Consent Order.

Dirt, LLC, Thomas VanEpps, Jr., VanEpps Construction Company, Inc.

RESPONDENT—Dirt, LLC

BY: 

Dirt, LLC

RESPONDENT—Thomas H. VanEpps, Jr.

BY: 


Thomas H. VanEpps, Jr.

RESPONDENT—VanEpps Construction Company

BY: 

VanEpps Construction Company

Issued as a final Consent Order of the Commissioner of the Department of Energy and Environmental Protection on 10/15, 2011.


FAR Daniel C. Esty,
Commissioner

CONSENT ORDER NO. _____
Town of Old Saybrook Land Records