

*Entered into Court on*

DOCKET NO. HHD CV-09-4041784-S  
GINA MCCARTHY, COMMISSIONER OF ENVIRONMENTAL PROTECTION

SUPERIOR COURT  
JUDICIAL DISTRICT OF HARTFORD

*8/19/10*  
~~8/19/10~~  
↓

v.

DEREKTOR SHIPYARDS CONN., LLC,  
d/b/a DEREKTOR SHIPYARDS

JUNE 8, 2010

*This is for date*

**STIPULATION FOR JUDGMENT**

*Obligations are set against...*

The plaintiff, the Commissioner of Environmental Protection ("the Commissioner"), and the defendant, Derektor Shipyards Conn., LLC d/b/a Derektor Shipyards ("Derektor"), hereby stipulate that Judgment in the above-captioned case may enter in accordance with the following:

WHEREAS, the Commissioner is charged with enforcing the environmental laws and regulations of the State of Connecticut, including those pertaining to the prevention of water pollution; and

WHEREAS, Derektor, a Delaware limited liability company registered to conduct business in Connecticut, leases from the Bridgeport Port Authority and operates a ship building and repair facility at 837 Seaview Avenue, Bridgeport, Connecticut ("the Site"); and

WHEREAS, the Commissioner commenced this action against Derektor by Complaint dated January 6, 2009, wherein the Commissioner alleges that Derektor violated § 22a-430 of the General Statutes, and failed to comply with certain requirements of the General Permit for the Discharge of Stormwater Associated with Industrial Activity as issued October 1, 2002, and modified July 15, 2003 (the "Stormwater General Permit"); and

WHEREAS, shortly after the commencement of this action, the Commissioner and Derektor commenced negotiations to resolve the allegations of the Complaint; and

WHEREAS, during the pendency of such negotiations, Derecktor, with the Commissioner's consent, filed motions to extend the period in which to respond to the Complaint, which the court granted; and

WHEREAS, in May 2009, Derecktor disclosed to the Commissioner an additional possible violation of § 22a-430 of the General Statutes that occurred after the filing of the Complaint associated with a discharge from a barge being used to test and certify its Travelift, which discharge was subject to a Temporary Authorization issued by the Commissioner; and

WHEREAS, in October 2009, Derecktor disclosed to the Commissioner an additional possible violation of § 22a-430 of the General Statutes that occurred after the filing of the Complaint associated with a discharge during the dock and sea trials of the tugboat "Independence," which was subject to a Temporary Authorization issued by the Commissioner; and

WHEREAS, the Commissioner and Derecktor believe that it is in the public interest to resolve this action without further litigation and that the entry of this Judgment on stipulation is an appropriate means of resolving this matter, and

WHEREAS, Derecktor filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Connecticut (the "Bankruptcy Court") on July 18, 2008, under Bankruptcy Petition number 08-50643 (the "Bankruptcy Case"); and

WHEREAS, The Commissioner filed a Proof of Claim in the Bankruptcy Case on January 12, 2009, alleging a general unsecured claim for civil penalties resulting from the violations alleged in the Complaint;

NOW, THEREFORE, the Commissioner and Derecktor stipulate and agree that Judgment may enter in this matter in accordance with the following:

1. By agreeing to the entry of this Judgment on stipulation, Derecktor does not admit any fact, conclusion of law, or violation of law. Neither the Judgment on stipulation, nor Derecktor's compliance with the Judgment, shall be construed as an admission by Derecktor of any fact, conclusion of law, or violation of law.

2. A permanent injunction is entered against Derecktor prohibiting it from violating § 22a-430 of the General Statutes.

3. A permanent injunction is entered against Derecktor prohibiting it from violating the provisions of the Stormwater General Permit, and as such Stormwater General Permit subsequently may be reissued or modified and applicable to Derecktor.

4. On or before sixty (60) days after entry of Judgment pursuant to this Stipulation, Derecktor shall pursuant to Section 5(b)(4) of the Stormwater General Permit submit to the Commissioner for her review and written approval an amended pollution prevention plan for the Site that satisfies the requirements of the Stormwater General Permit. In addition, such amended pollution prevention plan shall: (a) provide that Derecktor shall conduct the inspections of material handling areas and other potential sources of pollution required under Section 5(b)(6)(D)(i) of the Stormwater General Permit at least once per month; (b) set forth actions Derecktor shall undertake to address pollution or other issues discovered during such inspections; and (c) provide that Derecktor shall create records of such inspections and maintain such records at the Site for a period of five (5) years. If, prior to the Commissioner's approval of the amended pollution prevention plan submitted pursuant to this paragraph, the Commissioner requests any revisions thereto, Derecktor shall, within twenty (20) days of receipt of such

request, make all requested revisions consistent with the terms and conditions of the Stormwater General Permit and submit the revised pollution prevention plan to the Commissioner for her review and written approval.

5. On or before sixty (60) days after entry of Judgment pursuant to this Stipulation, Derecktor shall submit to the Commissioner for her review and written approval a written plan for the implementation of the environmental management system outlined on page 3 of the May 21, 2009 correspondence of Attorney David J. Monz to Kevin S. Barrett of the Department of Environmental Protection, which shall provide for such measures to reasonably ensure Derecktor's compliance with applicable environmental law. If, prior to the Commissioner's approval, the Commissioner requests any revisions thereto, Derecktor shall, within twenty (20) days of receipt of such request, make all requested revisions reasonably designed to ensure compliance with applicable environmental law, and submit the revised plan to the Commissioner for her review and written approval.

6. For each of the twelve (12) months following the entry of Judgment pursuant to this Stipulation, Derecktor shall continue to prepare and submit to the Commissioner a Monthly Wastewater Report, which identifies each wastewater generated on the Site during the month preceding the submittal of each such Report. For each wastewater, such Report shall state the date of generation, the volume generated, and the means of disposal. Such report shall be due on or before the 15<sup>th</sup> day of the succeeding month.

7. A civil penalty is assessed against Derecktor in the amount of One Hundred Seventy-Six Thousand Three Hundred Dollars (\$176,300.00). The Commissioner and Derecktor agree that, subject to approval by the Bankruptcy Court of this Stipulation for Judgment following notice and hearing pursuant to Rules 2002 and 9019 of the Federal Rules of

Bankruptcy Procedure, the \$176,300.00 civil penalty shall be deemed in the Bankruptcy Case to be an allowed general unsecured claim (the "Allowed Claim"). The Commissioner and Derecktor further agree that the Allowed Claim shall receive the same treatment under any plan of reorganization, without discrimination, as all other allowed general unsecured claims and shall not, under any plan of reorganization under Chapter 11 of the Bankruptcy Code, be subordinated to any other allowed general unsecured claims pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of allowed claims, including, without limitation, Sections 105 and 510 of the Bankruptcy Code (11 U.S.C. §§ 105 and 510). Any cash distribution on account of the Allowed Claim shall be payable as follows:

a. Fifty percent (50%) by a bank, cashier's, or certified check made payable to "Treasurer, State of Connecticut" delivered to Scott N. Koschwitz, Assistant Attorney General, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford CT 06141-0120.

b. Fifty percent (50%) by a bank, cashier's, or certified check made payable to "Connecticut Fund for the Environment" with notation thereon "Urban Green Infrastructure Scan" delivered to Scott N. Koschwitz, Assistant Attorney General, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford CT 06141-0120, for the sole purpose of funding as a supplemental environmental project the Urban Green Infrastructure Scan for the Cities of New Haven and Bridgeport proposed by Connecticut Fund for the Environment and as approved by the Commissioner.

8. Entry of this Judgment on stipulation constitutes a full and complete settlement by the Commissioner of all claims for violations alleged in the Complaint and of all potential claims for violations associated with the above-referenced May 2009 and October 2009 disclosures. Nothing in this Judgment shall relieve Derecktor of any other obligation under applicable

federal, state, and/or local law. Except as provided herein, nothing contained in this Judgment shall preclude the Commissioner or the State of Connecticut from instituting any action against Derecktor for any violation of law or to institute any proceeding to prevent or abate pollution. Derecktor reserves all of its rights, privileges and defenses with respect to any claims other than those alleged in the Complaint and those potential claims for violations associated with the above-referenced May 2009 and October 2009 disclosures.

9. No provision of this Judgment and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Derecktor pursuant to this Judgment will result in compliance or prevent or abate pollution.

10. 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 Judgment.

11. Any document or notice required to be submitted to the Commissioner under this Judgment shall, unless otherwise specified in writing by the Commissioner, be transmitted by mail, electronic mail, or facsimile transmission and directed to:

Kevin S. Barrett  
Department of Environmental Protection  
Bureau of Materials Management & Compliance Assurance  
79 Elm Street  
Hartford, Connecticut 06106  
Fax: (860) 424-4074  
[Kevin.Barrett@ct.gov](mailto:Kevin.Barrett@ct.gov)

Any document or notice required to be submitted to Derecktor under this Judgment shall, unless otherwise specified in writing by Derecktor, be transmitted by mail, electronic mail, or facsimile transmission and directed to:

Carol A. Topitzer  
Environmental, Health & Safety Manager

Derecktor Shipyards Conn., LLC  
837 Seaview Avenue  
Bridgeport, Connecticut 06607  
Fax: (203) 336-9690  
[carolt@derecktor.com](mailto:carolt@derecktor.com)

12. Derecktor shall use best efforts to submit to the Commissioner all documents required by this Judgment in a complete and approvable form. Subject to the provisions of paragraphs 4 and 5 of this Judgment, if the Commissioner notifies Derecktor that any document or other action is deficient, and does not approve it as submitted or with conditions, it is deemed disapproved, and Derecktor shall correct the deficiencies and resubmit it within the time frame specified by the Commissioner, or if no time frame is specified by the Commissioner, within thirty (30) days of receipt of the Commissioner's notice of deficiencies. In approving any document or action under this Judgment, the Commissioner may approve the document or other action as submitted or performed with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Judgment. Nothing in this paragraph shall excuse noncompliance or delay.

13. Within thirty (30) days of the date Derecktor becomes aware of a change in any information submitted to the Commissioner under this Judgment, or that any such information was inaccurate or misleading or that any relevant information was omitted, Derecktor shall submit the corrected or omitted information to the Commissioner.

14. If Derecktor becomes aware that it did not or may not comply, or did not or may not comply on time with any requirement of the Judgment or of any document required hereunder, Derecktor shall within twenty-four (24) hours notify the Commissioner and take all reasonable steps to ensure that any noncompliance or delay is avoided, or if unavoidable, is minimized to the greatest extent possible. In so notifying the Commissioner, Derecktor shall

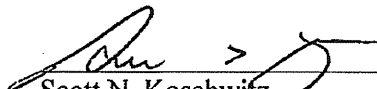
state in writing the reasons for the noncompliance or delay and propose, for the review and approval of the Commissioner, dates by which compliance will be achieved, and Derecktor shall comply with any dates which may be approved in writing by the Commissioner. Notification by Derecktor shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated in writing by the Commissioner. The provisions of this paragraph shall not supersede any other requirement pursuant to any statute, regulation, ordinance, permit, license, or other legal authorization applicable to Derecktor to provide notice to the Commissioner.

15. Derecktor 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 that is the subject of this Judgment, or after obtaining a new mailing or business address. Unless otherwise approved by the Commissioner, Derecktor's obligations under this Judgment shall not be affected by the passage of title to any property to any other person or municipality.

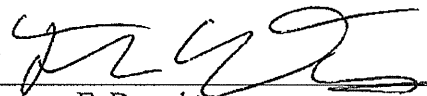


**PLAINTIFF  
GINA MCCARTHY  
COMMISSIONER OF  
ENVIRONMENTAL PROTECTION**

By: RICHARD BLUMENTHAL  
ATTORNEY GENERAL

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**DEFENDANT  
DEREKTOR SHIPYARDS CONN., LLC**

By:   
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Thomas E. Derektor  
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