

**Bureau of Water Protection and Land Reuse
Remediation Division**

STATE OF CONNECTICUT

V.

85 POND MILL, LLC

CONSENT ORDER No. SRD-234
Date of Issuance: September 10, 2018

A. The Commissioner of Energy and Environmental Protection ("the Commissioner") finds:

1. 85 Pond Mill, LLC ("Respondent") is a limited liability corporation organized under the laws of Connecticut and registered to do business in Connecticut with the Connecticut Secretary of the State. Respondent's registered business and mailing address is 501 Kings Highway East, Fairfield Connecticut 06825.
2. Respondent is the certifying party under §22a-134a of the Connecticut General Statutes for, and is the owner of, property located at 85 Mill Plain Road, Fairfield, Connecticut ("the parcel" or "the property" or "the establishment"), more fully described in a deed that is recorded at page 152 of volume 3243 of the Town of Fairfield land records, and which is also identified as Lot #359 on Map #180 in the Fairfield Tax Assessor's office. On May 3, 2004, the Commissioner received a Form III submittal for the parcel pursuant to §§22a-134 *et seq.* of the Connecticut General Statutes signed by the Respondent as certifying party. The Commissioner acknowledged such submittal as complete in a letter to Respondent dated May 19, 2004 (the "Acknowledgement Letter").
3. As the certifying party described in paragraph A.2 above, Respondent certified to the Commissioner, pursuant to §§22a-134 *et seq.* of the Connecticut General Statutes that Respondent would investigate the establishment in accordance with prevailing standards and guidelines and to remediate the parcel and any pollution caused by any release at the establishment in accordance with the remediation standards regulations, Regulations of Connecticut State Agencies §§22a-133-1 through 22a-133-3 ("RSRs").
4. Section 22a-134a(g) of the Connecticut General Statutes requires Respondent to complete the investigation and remediation of the parcel in accordance with a prescribed schedule. On November 2, 2004, the Commissioner issued a letter notifying the Respondent, as the Certifying Party, that an environmental professional licensed pursuant to Section 22a-133v ("licensed environmental professional" or "LEP") may verify that the investigation has been performed in accordance with prevailing standards and guidelines and that the remediation has been performed in accordance with the remediation standard regulations adopted by the Commissioner pursuant to Section 22a-133k. Pursuant to §22a-134a(g), and as reiterated in the Commissioner's November 2, 2004 letter, the Respondent was required to:
 - a. Submit to the Commissioner within 30 days of the date of the November 2004 letter, a schedule for the investigation and remediation of the establishment and for providing public notice prior to the remediation;
 - b. Complete investigation of the establishment in accordance with prevailing standards and

guidelines within 2 years of the date of the November 2004 letter;

- c. Initiate remediation of the establishment within 3 years of the date of the November 2004 letter;
- d. Post public notice of remediation prior to the initiation of remediation, in accordance with CGS §22a-134a(i), and submit a copy of the public notice to the Commissioner following publication of said notice; and
- e. Submit technical plans and reports related to the investigation and remediation of the Site to the Commissioner on an annual basis.

Respondent has not completed investigation of the parcel. Nor has Respondent provided public notice of remediation or a remedial action plan to the Department to document that remediation of the parcel had been initiated.

- 5. On December 12, 2006, the Commissioner issued Consent Order (CO) #WSWDH06013 to Fischel Properties, Inc. (as owner of the parcel, 85 Mill Plain Road, Fairfield) for engaging in the storage and disposal of hazardous waste without obtaining the necessary permits. Harold Fischel signed the CO; at that time Harold Fischel was also the Manager of the Respondent. Fischel Properties, Inc. and Respondent have the same business address and mailing address. Paragraph B.1.b. of CO #WSWDH06013 required the submittal of a remedial action plan with a scope of study to investigate and remediate the additional areas of concern at the property and in the building as identified in an October 18, 2005 inspection and follow up investigation work. To date, a remedial action plan to satisfy the requirement of Paragraph B.1.b. has not been submitted.
- 6. Reports documenting the site investigation activities identified that soil and groundwater at the parcel are polluted with substances, including but not limited to: total petroleum hydrocarbons; volatile organic compounds (including, chloroform and carbon tetrachloride); semi-volatile organic compounds; and metals at concentrations exceeding the criteria established by the RSRs.
- 7. Pursuant to Conn. Gen. Stat. § 22a- 6u, the Commissioner received a notice dated August 21, 2009 from the Respondent that pollution on the parcel exceeds thresholds for groundwater volatilization and surface soil, each of which triggers notification of a significant environmental hazard ("SEH").
- 8. The Commissioner issued a SEH acknowledgement letter dated September 3, 2009 to the Respondent in response to the SEH notice.
- 9. The Commissioner's September 3, 2009 SEH acknowledgment letter directed Respondent to perform the following actions:
 - a. Determine the extent of groundwater and soil gas concentrations exceeding the hazard criteria;
 - b. Predict and measure the indoor air in the buildings potentially at risk;
 - c. Delineate the extent of soil exceeding the hazard criteria;
 - d. Inform persons with potential for contact;
 - e. Install temporary measures or remove polluted soil to prevent unknowing access to such polluted soil; and

- f. Submit a letter report of Respondent's actions including test results and recommendations for further action or monitoring.
10. On January 16, 2014, the Commissioner issued a letter to the Respondent requesting an update on the status of the reported significant environmental hazard conditions and subsequent actions taken to address pollution in groundwater and in surface soil at concentrations exceeding the applicable hazard threshold values.
11. On March 18, 2014, the Commissioner received a report titled "Remediation of Significant Environmental Hazard, 85 Mill Plain Road, Fairfield, CT", dated March 5, 2014, prepared by Cambrian Geological, LLC in response to the Commissioner's January 16, 2014 letter. The report provided results of the surface soil remediation completed in 2009 which consisted of excavation of surface soil exceeding the hazard threshold criteria and transportation of such soil for off-site disposal. Based on the results provided in the report, the surface soil hazard condition appears to have been adequately abated. The report did not address the groundwater volatilization condition. The Commissioner issued numerous letters and correspondence to Respondent since June 2014 to seek confirmation that Respondent has taken all appropriate measures to address the groundwater volatilization condition identified in the SEH notification.
12. To date, the Commissioner has not received the required information to document that the groundwater volatilization hazard noted above has been mitigated or abated to the satisfaction of the Commissioner.
13. On September 12, 2017 the Commissioner issued Notice of Violation (NOV) No. NOVWRSR1715 to the Respondent which instructed Respondent to, among other things:
 - a. Within fifteen (15) days of the date of the NOV, submit a proposed plan to mitigate or remediate the hazard condition;
 - b. Within thirty (30) days of the date of the NOV, complete the investigation of the extent of the groundwater hazard condition and submit the results to the Commissioner;
 - c. Within ninety (90) days of the date of the NOV, submit to the Commissioner a Final Site Investigation Report under cover of a Completion of Investigation Transmittal Form ("COI-TF") signed by an LEP; and
 - d. Within one hundred and fifty (150) days of the date of the NOV, commence remediation of the parcel and submit to the Commissioner a RAP under cover of a RAP Transmittal Form ("RAP-TF") signed by the LEP and a copy of the public notice of remediation.
14. In response to the NOV, the Commissioner received a letter dated September 18, 2017, requesting revisions to the schedule outlined in the NOV, a report documenting the results of soil vapor sampling dated October 19, 2017, and a report documenting results of a groundwater sampling event dated October 24, 2017. These response documents were disapproved by the Commissioner in a letter dated November 13, 2017 for the following reasons:
 - a. failure to submit a plan to mitigate or remediate the groundwater hazard condition;
 - b. failure to complete the investigation and delineation of the groundwater hazard condition.
15. By virtue of the facts set forth in paragraphs A.1 through A.4, above, the Respondent is in violation of §22a-134a(g) of the Connecticut General Statutes.

16. By virtue of the facts set forth in paragraphs A.1, A.2, and A.6, above, Respondent has been maintaining a facility or condition which reasonably can be expected to create a source of pollution to the waters of the State.
- B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-424, §22a-430, §22a-432, §22a-434, and §22a-134a(j) of the Connecticut General Statutes, orders Respondent as follows:
1. Consultant Retention. On or before thirty (30) days of issuance of this consent order Respondent shall retain an LEP acceptable to the Commissioner to prepare 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 LEP. Respondent shall retain one or more LEP(s) acceptable to the Commissioner until this consent order is fully complied with, and within ten (10) days after retaining any LEP other than the one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other LEP. Respondent shall submit to the Commissioner a description of a LEP'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. Significant Environmental Hazard.
 - a. Within thirty (30) days from the issuance of this consent order, Respondent shall further evaluate and delineate the extent of the hazard condition and control the volatilization hazard condition noted in the above findings by installing and operating a vapor mitigation system to cover the full extent of the groundwater plume exceeding the volatilization hazard threshold to mitigate the reported significant environmental hazard.
 - b. Within ninety (90) days from the issuance of this consent order and annually thereafter until the reported significant environmental hazard is abated, Respondent shall provide as-built details on the construction, installation, and operation of the vapor mitigation system (including but not limited to, the location, depth, design pressures), system performance data, monitoring results, and an evaluation as to whether actions taken are effective, for review and approval by the Commissioner.
 3. Completion of Investigation. Within one (1) year after the issuance of this consent order, the Respondent shall complete the investigation of releases at and from the entire parcel and submit to the Commissioner a COI and COI-TF signed and sealed by the LEP retained pursuant to paragraph B.1 of this order documenting that such investigation has been completed in accordance with prevailing standards and guidelines.
 4. Submission of Remedial Action Plan. Within eighteen (18) months after the issuance of this consent order, the Respondent shall submit to the Commissioner a RAP based on the COI for the property. Respondant shall submit the RAP under cover of a RAP-TF signed and sealed by the LEP. The RAP shall include a schedule to initiate and complete all necessary remedial action for all releases at and emanating from the parcel in accordance with the RSRs.
 5. Public Notice. Respondent shall provide public notice of remediation in a manner consistent with § 22a-134a(i) of the Connecticut General Statutes no fewer than forty-five (45) days prior to the initiation of remediation. Respondent shall submit a copy of the public notice of remediation to the Commissioner immediately after publication of said notice.
 6. Progress Reports. Commencing two (2) years after issuance of this consent order and on an annual

basis thereafter until the Respondent has fully complied with this consent order, Respondant shall submit to the Commissioner written progress reports. The reports shall describe the actions Respondant has taken to comply with this consent order concerning the remediation and monitoring of the establishment.

7. Final Verification. The Respondent shall submit to the Commissioner a Final or Interim Verification for the establishment as follows:
 - a. Within four (4) years after the issuance of this consent order, the Respondent shall have investigated and remediated the parcel sufficiently to support a verification as defined by Conn. Gen. Stat. § 22a-134(19) ("Final Verification"). The Respondent shall submit to the Commissioner on a form prescribed by the Commissioner such Final Verification signed and sealed by the LEP retained pursuant to paragraph B.1, above. Respondent shall submit with the Final Verification a report prepared by such LEP that describes the investigation and remediation that was performed ("Final Verification Report").
 - b. If the Respondent cannot submit a timely Final Verification, then, within four (4) years after issuance of this consent order, the Respondent shall have investigated and remediated the parcel sufficiently to support an interim verification as defined by Conn. Gen. Stat. § 22a-134(28) ("Interim Verification"). The Respondent shall submit to the Commissioner on a form prescribed by the Commissioner such Interim Verification signed and sealed by the LEP retained pursuant to paragraph B.1, above. Respondent shall submit with the Interim Verification a report prepared by such LEP that describes the investigation and remediation performed to date ("Interim Verification Report"). The Interim Verification Report shall include a schedule for conducting any groundwater monitoring necessary: (i) to determine the effectiveness of the remediation in preventing further pollution of groundwater; (ii) to monitor natural attenuation (if applicable); and (iii) to demonstrate compliance with the RSRs. Respondent shall perform all actions identified in the Interim Verification Report, including groundwater monitoring, in accordance with the schedule provided in the Interim Verification Report. Within thirty (30) days of completion of the actions required by the Interim Verification Report, including groundwater monitoring, Respondent shall submit a Final Verification Report and a Final Verification, rendered by the LEP, on forms prescribed by the Commissioner.
8. Notification of Certain Conditions. The Respondent shall immediately inform the Commissioner in writing if it discovers any pollution on or emanating from the property that meets any condition described in §22a-6u(b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1) or (h)(1) of the Connecticut General Statutes. The Respondent shall comply with this paragraph even though the property in the future may not be a "parcel" as defined in §22a-6u(3) of the Connecticut General Statutes.
9. Submission of Supporting Documentation. Within ten (10) days of receipt of a written request from the Commissioner, the Respondent shall provide to the Commissioner copies of all technical plans, reports and other supporting documentation relating to the investigation and remediation of the parcel as specified in the Commissioner's written request.
10. Compliance with laws and regulations. Respondent shall comply with the environmental laws and regulations governing the management of solid and hazardous wastes, including but not limited to, §22a-208a, §22a-208c and §22a-449(c) of the Connecticut General Statutes, and §22a-209-4, §22a-209-7, §22a-209-8, and §22a-449(c)-100 through 119, §22a-449(c)-11 of the Regulations of Connecticut State Agencies. Respondent shall not conduct activities requiring a permit from the Commissioner without first having the requisite permit(s) issued by the Commissioner.
11. 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 to the Commissioner's

satisfaction and the Commissioner issues a written notice that no audit of the Final Verification will be conducted, or the Commissioner conducts an audit of the Final Verification and issues written findings that the Final Verification was appropriate and is thereby accepted. If the Commissioner determines the Final Verification is not appropriate and thereby rejects the Final Verification, Respondent is not in compliance with this consent order.

12. Civil penalty. On or before thirty (30) days after issuance of this consent order, Respondent shall pay a penalty of \$ 60,000 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraph A.15 of this consent order pursuant to §22a-134d of the Connecticut General Statutes.
13. 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, "Remediation Division, Bureau of Water Protection and Land Reuse civil penalty, consent order # SRD-234."
14. 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 consent 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 40 CFR 136 or EPA document SW-846, as applicable. 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.
 - a. The Respondent shall use the reasonable confidence protocols as published on the website of the Connecticut Department of Energy and Environmental Protection ("Reasonable Confidence Protocols"). In all cases where the Reasonable Confidence Protocol method is used, a properly completed laboratory QA/QC certification form certified by the laboratory shall be provided to the Commissioner with the analytical data.
 - b. In cases where a Reasonable Confidence Protocol method has not been published by the Commissioner, the analytical data shall be generated using a method approved in writing by the Commissioner, and such method shall include and report a level of quality control and documentation equivalent to the Reasonable Confidence Protocols.
 - c. The reporting limit shall be consistent with the Reasonable Confidence Protocols and standard industrial and laboratory practices. The reporting limit used shall not be at levels greater than those used in such standard practices, as determined by the Commissioner in writing, in consultation with the Commissioner of Public Health, and in no case shall be greater than the applicable criteria or background concentration established in the RSRs.
15. 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.

16. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
17. 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.
18. 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 responsible corporate officer, general partner, or proprietor, or a duly authorized representative of such person, 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."
19. 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.
20. 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.
21. 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 parcel 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.
22. 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 those described in this consent order. 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 any pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate pollution.

23. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
24. 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.
25. Access to Parcel. Any representative of the Department may enter the parcel without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
26. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons that are not parties to this consent order.
27. 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.
28. 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.
29. 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:

Carolyn Fusaro, Environmental Analyst
Department of Energy and Environmental Protection
Bureau of Water Protection and Land Reuse
Remediation 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/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."

JONATHAN ECKMAN, MEMBER
85 POND MILL, LLC
(Print name of Respondent)

BY: Jonathan Eckman / member
(Print and sign name of individual with authority to bind Respondent to terms of consent order)
(Insert individual's title)

8-21-2018
Date

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

Robert E. Kaliszewski
Robert E. Kaliszewski
Deputy Commissioner

September 10, 2018
Date

ORDER NO. SRD-234
DISCHARGE CODE Z
TOWN OF FAIRFIELD
LAND RECORDS

