

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

STATE OF CONNECTICUT

V.

DJR Tamarack, LLC

CONSENT ORDER No. SRD-239

Date of Issuance: 5/2/2019

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

1. DJR Tamarack, LLC ("Respondent") is a Connecticut Domestic Limited Liability Company registered to do business in Connecticut with the Connecticut Secretary of the State. Respondent's registered business address is 5 Juniper Circle, Brewster, NY 10509. Respondent's registered mailing address is 5 Juniper Circle, Brewster, NY 10509.
2. Respondent is the certifying party under §22a-134a of the Connecticut General Statutes for property located at 36-38 Tamarack Road in Danbury, Connecticut ("the parcel" or "the property" or "the establishment"), more fully described in a deed that is recorded at page 836 of volume 2065 of the Town of Danbury land records, and which is also identified as Block 40 on Map #110 in the Danbury Tax Assessor's office. On October 2, 2009, the Commissioner received a Form III submittal for the parcel pursuant to §§22a-134 *et seq.* of the Connecticut General Statutes signed by Donato Ruggiero, Member on behalf of the Respondent as certifying party. The Commissioner acknowledged such submittal as complete in a letter to Donato Ruggiero dated December 18, 2009 (the "Acknowledgement Letter").
3. As the certifying party described in paragraph A.2 above, on October 22, 2009, 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 remediate the parcel and any pollution caused by any release at the establishment in accordance with the remediation standard regulations, Regulations of Connecticut State Agencies §§22a-133k-1 through 22a-133k-3 ("RSRs").
4. Section 22a-134a(g)(1) of the Connecticut General Statutes requires Respondent to achieve the RSRs for the establishment to support a Final or Interim Verification and shall submit to the Commissioner such Final or Interim Verification by a licensed environmental professional not later than eight years after the date of receipt of the notice that the Form III or Form IV is complete. This requirement was also set forth in the Acknowledgement Letter. As further detailed in the Acknowledgement Letter, pursuant to §22a-134a(g)(1)(A), the Respondent was required to submit the Final or Interim Verification to the Commissioner on a form prescribed by the Commissioner by December 18, 2017. The Respondent has not achieved the RSRs sufficient to support a Final or Interim Verification.
5. On March 29, 2018 the Commissioner issued Notice of Violation (NOV) No. NOVWRSR1820 to the Respondent which instructed Respondent to, among other things:

Within sixty days (60) days of the date of NOV, achieve compliance with the RSRs for the

establishment sufficient to support a verification or an interim verification as defined by §22a-134(19) ("Final Verification") and §22a-134(28) ("Interim Verification") of the Connecticut General Statutes, respectively. Submit to the Department on a form prescribed by the Commissioner such Final or Interim Verification signed and sealed by the LEP retained, with a report prepared by such LEP that describes the investigation and remediation that was performed ("Final Verification Report" or "Interim Verification Report").

6. The Commissioner did not receive a formal response to the NOV.
 7. By virtue of the facts set forth in paragraphs A.1 – A.6, above, the Respondent is in violation of §22a-134a(g)(1) of the Connecticut General Statutes.
- B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-424, §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 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. 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.
 3. 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, Respondent shall submit to the Commissioner written progress reports. The reports shall describe the actions Respondent has taken to comply with this consent order concerning the remediation and monitoring of the establishment.
 6. Final Verification. The Respondent shall submit to the Commissioner a Final or Interim Verification for the establishment as follows:
 - a. Within one (1) year after the issuance of this consent order, the Respondent shall have investigated and remediated the parcel sufficiently to support a verification as defined by § 22a-134(19) ("Final Verification") of the Connecticut General Statutes. 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 one (1) year after issuance of this consent order, the Respondent shall have investigated and remediated the parcel sufficiently to support an interim verification as defined by § 22a-134(28) ("Interim Verification") of the Connecticut General Statutes. 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.

7. 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 is not a "parcel" as defined in §22a-6u(3) of the Connecticut General Statutes.
8. 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.
9. 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.
10. 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.
11. Civil penalty. On or before 60 days after issuance of this consent order, Respondent shall pay a penalty of \$5,000 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in A.1 –A.6 of this consent order pursuant to §22a-134d of the Connecticut General Statutes.
12. 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 ."
13. Sampling. All sampling 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 most recent final version of the EPA publication SW-846, entitled "Test Methods

for Evaluating Solid Waste, Physical/Chemical Methods,” the most recent final version of the Department’s “Site Characterization Guidance Document,” and relevant policies and guidelines issued by the Commissioner.

14. Sample analyses. All 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 and approved to conduct such analyses.
15. Reasonable Confidence Protocols. When the Department has published a Reasonable Confidence Protocol for a specific analytical method, such Reasonable Confidence Protocol shall be used when samples are evaluated using that analytical method. When samples have been evaluated using an analytical method for which a Reasonable Confidence Protocol has been published, a properly completed laboratory Quality Assurance/Quality Control certification form, certified by the laboratory must be provided to the Commissioner with the analytical data.

In cases where samples are to be evaluated using a method for which a Reasonable Confidence Protocol has not been published, it shall be demonstrated to the satisfaction of the Commissioner, before analytical data generated using such a method can be used to satisfy the requirements of this Consent Order, that such method includes a level of quality control and documentation equivalent to the standards specified in the Reasonable Confidence Protocols for other, similar methods.

16. Reporting limits. Reporting limits shall be established at a concentration which is less than applicable criterion for a substance contained in, or specified pursuant to, the RSRs.
The laboratory reporting limit for the analysis of all samples shall:

- a. Not be artificially raised or lowered; and
- b. Be equivalent to the concentration of the lowest standard used to calibrate the instrument actually analyzing a sample, provided such instrument has been calibrated in accordance with a method specified in an Reasonable Confidence Protocol or otherwise approved by the commissioner after consultation with the Commissioner of Public Health; or
- c. Be equivalent to the concentration of a low-level reporting standard, as specified in an Reasonable Confidence Protocol or otherwise approved by the commissioner after consultation with the Commissioner or Public Health.

The Reporting Limit for a given sample shall be corrected for specific sample weight or volume, and dilutions, and, for soil and sediment samples moisture content (reported as dry weight).

When analyzing a sample, if due to instrument limitations or matrix interference the laboratory reporting limit for a substance is greater than the applicable RSR criterion for such substance, alternative analytical methods, sample preparation procedures or alternative instrumentation shall be evaluated and a plan shall be submitted for the Commissioner’s review and written approval to attempt to achieve appropriate reporting limits.

17. Analytical Data Quality and Usability. All analytical data used to comply with this consent order and the RSRs shall be scientifically valid and defensible, with a level of precision, accuracy, and sensitivity commensurate with its intended use. All analytical data submitted shall include an analytical data quality assessment and data usability evaluation prepared by individuals qualified to make such assessment or evaluation; and

If the commissioner determines that analytical data is not scientifically valid and defensible, or not of a sufficient level of precision, accuracy, and sensitivity to support the intended use of the data, the Commissioner may determine that the requirements of this consent order have not been satisfied.

18. 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.
19. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
20. 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.
21. 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."
22. 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.
23. 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.
24. 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.

25. 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.
26. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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:

Carl Gruszczak, Jr., 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."

DJR Tamarack, LLC

BY: 

(Insert name of individual with authority to bind Respondent to terms of consent order)
(Insert individual's title)

4/8/19
Date

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


Katherine S. Dykes
Commissioner

5/2/19
Date

ORDER NO. SRD- 239
DISCHARGE CODE H
TOWN OF DANBURY
LAND RECORDS

[Note: This sheet is not a part of the consent order and is only attached to the original consent order which is retained in separate DEEP files which are accessible to the public with close supervision. The consent order must be mailed to the Respondent by certified mail, return receipt requested. If the Respondent is a business, send a certified copy of the consent order to the business alone and a plain copy to the attention of a person at the business.]

Certification of Mailing

On _____, 20____, at ____:____ a.m./p.m., I mailed a certified copy of Consent Order

No. _____ to the following, by placing it in the [U.S. mail/interdepartmental mail]:

1.

Certified mail number:

[NOTE: CERTIFIED COPY TO RESPONDENT MUST BE SENT BY CERTIFIED MAIL]

2. (etc.)

On _____, 20 __, at ____:____ a.m./p.m., I mailed a copy (that was not a certified copy) of Consent

Order No. _____ to the following, by placing it in the [U.S. mail/interdepartmental mail]:

1.

Certified mail number (if sent by certified mail):

2. (etc.)

(signature)

[Type name of person who did mailing]

[Type title]

[date]