



STATE OF CONNECTICUT

V.

12-13 STERLING ASSOCIATES, LLC

UNILATERAL ORDER # WSWDS UOWSWDS19005

Date Issued: 4/12/2019

- A. The Commissioner of Energy and Environmental Protection (“the Commissioner”) finds:
1. 12-13 Sterling Associates, LLC (“Respondent”) is a Connecticut Corporation registered to do business with the Connecticut’s Secretary of State (“SOS”) with a business and mailing address of 61 North Plains Highway, PMB 156, Wallingford, Connecticut 06492. Respondent is listed as the owner of record of 12-13 North Sterling Road in Sterling, Connecticut, also described more fully on Map 6830, Block 15, Lot numbers 12 & 13, with deed date of June 29, 2017 and recorded in Volume 152 on Page 115 (“Sterling Site”).
 2. On August, 2, 2017, the Department of Energy and Environmental Protection (“Department”) inspected the Sterling Site and found:
 - a. Respondent established a solid waste facility where more than ten (10) cubic yards of solid waste was disposed of after July 1, 1971 without a plan, design, and method of operation of such solid waste facility having been filed with the Department and approved by the Commissioner by the issuance of a permit to construct and operate a solid waste facility as required by Sections 22a-208a, 22a-208a(b) and 22a-208c of the Connecticut General Statutes (“CGS”) and Sections 22a-209-2, 22a-209-4, 22a-209-7, and 22a-209-8 of the Regulations of Connecticut State Agencies (“RCSA”). Specifically, the Department observed greater than ten (10) cubic yards of scrap tires (approximately 300-350 scrap tires or approximately 35 cubic yards) and other solid wastes disposed at the Sterling Site, including approximately 400 to 450 cubic yards of street sweepings and catch basin material mixed with municipal solid waste and designated recyclable items.
 - b. Respondent failed to determine whether each solid waste generated at the Sterling Site is a hazardous waste as required by Section 22a-449(c)-102(a)(2)(A) of the RCSA, incorporating by reference Title 40 of the Code of Federal Regulations (“CFR”) Part 262.11, with specified changes. Specifically, the Department found hazardous waste determinations were not made for street sweepings and catch basin material off-loaded onto the Sterling Site.
 - c. Respondent failed to register with the City of New Haven and the Town of Sterling as a collector as required by Section 22a-220a(d) of the CGS. Specifically, the Department found no record(s) of such registrations filed on behalf of Respondent in the City of New Haven nor the Town of Sterling.

3. On October 12, 2017, the Department issued Notice of Violation ("NOV") No. WSWDS17071 to Respondent to correct the violations listed in paragraph A.2 of this order.
4. On November 14, 2017, January 30, 2018 and March 14, 2018, WEED issued a Notice of Violation No Response letters to Respondent to correct the violations identified in NOV No. WSWDS17071. However, no complete or satisfactory response has been received to date, nor have the violations been corrected.
5. By virtue of the above, Respondent has violated Sections 22a-208a, 22a-208a(b), 22a-208c, and 22a-220a(d) of the CGS and Sections 22a-209-4, 22a-209-7, and 22a-209-8 and 22a-449(c)-102(a)(2)(A) of the RCSA.

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

1. Prohibition. Respondent shall not receive, process or dispose of solid waste at the Sterling Site unless a valid permit for such solid waste, issued by the Commissioner is first obtained.
2. Retention of Consultant. On or before **thirty (30) days** after the issuance of this order, the Respondent shall identify, for the Commissioner's review and written approval, one or more qualified consultant(s) to prepare the documents and oversee the actions required under paragraphs B.1 through B.6 of this order. The Respondent shall retain one or more qualified consultants as approved by the Commissioner until they comply with paragraphs B.1 through B.6 of this order. Within ten (10) days after retaining any qualified consultant(s) other than one originally identified and approved under this paragraph, the Respondent shall notify the Commissioner in writing of the identity of and receive written approval of such other qualified consultant(s) from the Commissioner. In order to seek approval of a qualified consultant, Respondent shall submit to the Commissioner a description of a qualified consultant(s)' education, experience and training which is relevant to the work required by paragraphs B.1 through B.6 of this order. The consultant(s) proposed to be retained to prepare the documents and implement or oversee the actions required by paragraphs B.1 through B.6 of this order shall be: 1) an independent, environmental consultant(s), 2) a registered professional engineer(s) in the State of Connecticut ("P.E."), or 3) an environmental professional licensed pursuant to §22a-133v of the RCSA. The consultant(s) shall have a minimum of five (5) years demonstrated expertise and competence in Connecticut's solid waste program.

Nothing in this paragraph shall prevent the Commissioner from finding a previously acceptable consultant unacceptable.

3. Remove Solid Waste. Respondent shall remove all solid waste from the Sterling Site as follows:

- a. Plan for Removal. On or before **sixty (60) days** after issuance of this order, Respondent shall submit a plan, for the Commissioner's review and written approval, for the removal and disposal of all solid waste from the Sterling Site. This plan shall be prepared by the consultant approved by the Commissioner pursuant to paragraph B.2., and shall include, at a minimum, an inventory of the type, quantity and location of all solid waste from the Sterling Site; identification of the permitted disposal facilities to which the solid waste will be delivered; and a specific schedule to perform the work to be conducted by the plan. Additionally, with respect to the solid waste pile containing partially composted leaves, leaves, wood chips, catch basin clean outs, and litter, the plan shall include a sampling plan that identifies: a) the vertical and horizontal boundaries of the waste pile in question; b) all constituents of concern ("COCs") that may be present in the waste pile (total petroleum hydrocarbons, sodium chloride, lead, etc.); c)

the extent to which any COCs have migrated into the soils underlying the waste pile; and d) the specific methods used for sampling the waste pile (i.e., US EPA's SW-846 physical/chemical/statistical methods).

- b. Implement Removal Plan. On or before **thirty (30) days** after the plan required in paragraph B.3.a is approved, Respondent shall initiate implementation of the approved plan. Respondent shall complete removal of all solid waste from the Sterling Site in accordance with the schedule as approved by the Commissioner. Respondent shall, contemporaneously with the removal of each load of solid waste from the Sterling Site, create a written log of each load of solid waste removed from the Sterling Site pursuant to the approved plan, including the name of the transportation company and the vehicle registration number for each load of solid waste transported from the Sterling Site; the quantity and type of solid waste removed; and the name of the receiving waste facility.
- c. Certify Removal. On or before **thirty (30) days** after completion of all elements of the plan approved in accordance with paragraph B.3.a., Respondent and their consultant shall submit a Waste Removal Report for the Commissioner's review and written approval. The Waste Removal Report shall confirm the removal of all wastes pursuant to the plan approved under paragraph B.3.a above. Such report shall be prepared by the consultant approved under paragraph B.2. above and include, but not be limited to, copies of all photographs documenting the removal, analytical results for all samples obtained, and all weight receipts, trip tickets, bills of lading, and manifests demonstrating that all wastes generated from the Sterling Site was received at a facility permitted to receive such waste. Respondent and their consultant shall certify to the Commissioner in writing that the actions have been completed as approved and shall submit a copy of the written log and the receipts from the receiving waste facilities.
4. Future Compliance Plan. On or before **sixty (60) days** after the date of issuance of this order, Respondent shall submit for the Commissioner's review and written approval, a plan which details specific actions to be instituted by Respondent to ensure future compliance with solid and hazardous waste laws and regulations, including Sections 22a-209-1 and 22a-220 of the CGS and Section 22a-449(c)-102 of the RCSA, as well as any anticipated solid waste permit(s) associated with the Sterling Site. Within **five (5) days** after the Commissioner approves such plan. Respondent shall carry out the plan and maintain it in full effect thereafter. Approval of the plan shall not constitute an authorization to conduct a regulated solid waste activity in the absence of a permit.
5. Business Recycling Profile. On or before **sixty (60) days** after the date of issuance of this order, Respondent shall conduct a comprehensive recycling review of its Connecticut locations to evaluate compliance with Connecticut's recycling laws set forth in CGS Section 22a-241b(d) and submit from the Commissioner's review and written approval a business recycling profile for each location documenting the management of recyclable materials. Refer to the enclosed example profile, which has been marked as Appendix A. Within five (5) days after the Commissioner approves such plan(s), Respondent shall carry out the plan(s) and maintain them in full effect thereafter.
6. Progress reports. On or before the last day of March, June, September, and December of each year following the issuance of this order and continuing until all actions required by this 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 has taken to date to comply with this order.

7. 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 Sections §22a-208a, 22a-208c and 22a-449(c) of the CGS, and Sections 22a-209-4, 22a-209-7, 22a-209-8, 22a-449(c)-100 through 119, and 22a-449(c)-11 of the RCSA. Respondent shall not conduct activities requiring an approval from the Commissioner without first having the requisite approval(s) issued by the Commissioner.
8. Full compliance. Respondent shall not be considered in full compliance with this order until all actions required by this order have been completed as approved and to the Commissioner's satisfaction.
9. Sampling and sample analyses. All sampling and sample analyses which are required by this 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 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 Reasonable Confidence Protocols shall be used when there is a method published by the Department. 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, the analytical data shall be generated using a method approved by the Commissioner, 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 established consistent with the Reasonable Confidence Protocols and standard industrial and laboratory practices. The Reporting Limit shall not be set at levels greater than those used in such standard practices, as determined by the Commissioner, in consultation with the Commissioner of Public Health and in no case shall be greater than the Applicable Criteria or Background Concentration established in Sections 22a-133k-1 through 22a-133k-3 of the RCSA. 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).
10. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this 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 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 order. Nothing in this paragraph shall excuse noncompliance or delay.

11. Definitions. As used in this order, "Commissioner" means the Commissioner or a representative of the Commissioner.
12. Dates. The date of "issuance" of this order is the date the 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 order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this 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 order, the word "day" as used in this order means calendar day. Any document or action which is required by this 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.
13. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this 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 Respondent or Respondent's 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 §53a-157b of the Connecticut General Statutes and any other applicable law."
14. Noncompliance. This 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 order may subject Respondent to an injunction and penalties.
15. False statements. Any false statement in any information submitted pursuant to this order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
16. Notice of transfer; liability of Respondent. Until Respondent have fully complied with this 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(s) or the business which is the subject of this order or after obtaining a new mailing or location address. Respondent's obligations under this order shall not be affected by the passage of title to any property to any other person or municipality.
17. Commissioner's powers. Nothing in this 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 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.

18. Respondents' obligations under law. Nothing in this order shall relieve Respondent of other obligations under applicable federal, state and local law.
19. No assurance by Commissioner. No provision of this 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 order will result in compliance or prevent or abate pollution.
20. Access to site(s). Any representative of the Department of Energy and Environmental Protection may enter the site(s) without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this order.
21. No effect on rights of other persons. This order neither creates nor affects any rights of persons or municipalities that are not parties to this order.
22. 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 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.
23. 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 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.
24. Submission of documents. Documents required to be submitted to the Commissioner under paragraphs B.1 through B.6 of this order shall, unless otherwise specified in writing by the Commissioner, be directed to:

Ms. Evelyn Silva, Environmental Analyst 2
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
Department of Energy and Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127

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



Katherine S. Dykes
Commissioner

Department of Energy and Environmental Protection

Date



Unilateral Order No. : UOWSWDS19005

Town of Sterling Land Records