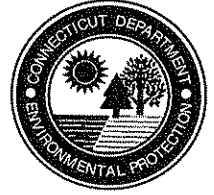


**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



STATE OF CONNECTICUT

V.

TOWN OF EASTON

CONSENT ORDER

Date of Issuance September 22, 2010

- A. With the agreement of the Town of Easton ("Respondent"), the Commissioner of Environmental Protection finds:
1. Respondent is a municipality which discharges stormwater from a municipal separate storm sewer system in Connecticut ("stormwater discharge").
 2. Respondent is or has been engaged in operating a public works garage and salt storage facility at 15 Westport Road in Easton, Connecticut ("salt storage facility").
 3. Since January 9, 2004, Respondent's stormwater discharge from a municipal separate storm sewer system is covered under the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems ("MS4 Permit") issued on January 9, 2004 under §22a-430b of the Connecticut General Statutes. Respondent's Permit Number is GSM000108.
 4. Since at least February 13, 2002, Respondent's stormwater discharge from the salt storage facility is covered under the General Permit for the Discharge Associated with Industrial Activity ("Industrial General Permit") issued on October 1, 1997 and reissued on October 1, 2002, October 1, 2007, October 2, 2008, and April 14, 2009 under §22a-430b of the Connecticut General Statutes. Respondent's Permit Number is GSI000504.
 5. Respondent is required to monitor its stormwater discharges annually between January 1st and December 31st in accordance with Subsection 6(h) of the MS4 Permit and submit the results by January 1 of the subsequent year beginning on January 1, 2005. Respondent conducted but failed to submit stormwater monitoring results in accordance with the MS4 Permit for the years 2005, 2006, 2007 and 2008.
 6. Pursuant to Subsection 6(i) of the MS4 Permit, Respondent is required to prepare and submit an Annual Report for each year by January 1 of the subsequent year beginning on January 1, 2005. Respondent failed to submit Annual Reports in accordance with the MS4 Permit for the years 2005, 2006, 2007 and 2008.
 7. On or about September 29, 2006, Respondent was issued Notice of Violation WR SW 06 031 for violations of the MS4 Permit and has not complied with said Notice.

8. Since at least February 4, 2009, Respondent failed to adequately cover a mixed sand and salt pile at the salt storage facility pursuant to Section 5(b)(6)(G) of the Industrial General Permit. On January 25, 2010, the Town of Easton provided photographic documentation which demonstrates a new sand/salt storage area has been built.
9. On February 4, 2009, Respondent was issued Notice of Violation WR SW 09 001 DMS for the improper storage of sand/salt piles at the salt storage facility and has not complied with said Notice.
10. By virtue of the above, Respondent has created or is maintaining a facility or condition which reasonably can be expected to create a source of pollution to the waters of the State and has violated a permit issued under Section 22a-430b of the Connecticut General Statutes.

B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-424, §22a-425, §22a-427, §22a-428, §22a-430, §22a-430b, §22a-432 and §22a-438 of the Connecticut General Statutes, orders Respondent as follows:

1. On or before ninety (90) days after the date of issuance of this consent order, Respondent shall prepare and submit the missing Annual Report(s) specified in Paragraph A.6. of this consent order in accordance with Section 6 of the MS4 Permit issued on January 9, 2004.
2. On or before fourteen (14) days after the date of issuance of this consent order, Respondent shall retain one or more qualified consultants acceptable to the Commissioner to prepare the documents and implement or oversee the actions required by Paragraph B.3. below (and any other actions of this consent order requiring a qualified consultant) and shall, by that date, notify the Commissioner in writing of the identity of such consultant(s). Respondent shall retain one or more qualified consultants acceptable to the Commissioner until this consent order is fully complied with, and, within ten (10) days after retaining any consultant other than the one originally identified under this paragraph, Respondent shall notify the Commissioner, in writing, of the identity of such other consultant(s) for the Commissioner's acceptance of said consultant. Respondent shall submit to the Commissioner a description of a 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. If Respondent provides verification to the Commissioner, pursuant to Paragraph B.3. below, that the newly build storage area meets the requirements of Paragraph B.3., the Respondent is not subject to the requirements of this paragraph.
3. On or before ninety (90) days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval, contract plans and specifications for the construction of a permanent sand/salt storage facility in accordance with Sections 5(b)(6)(C)(ix) and 5(b)(6)(G) of the Industrial General Permit. The location of such salt storage facilities shall not be located within a 100-year floodplain as defined and mapped for each municipality under 44 CFR 59 et seq. or within 250 feet of a well utilized for potable drinking water supply or within a Level A aquifer protection area as

defined by mapping pursuant to Section 22a-354c of the General Statutes. The Respondent may provide verification to the Commissioner that the newly built storage area complies with such requirements.

4. Within two years of the Commissioner's written approval of the plans and specifications required by paragraph B.3., above, Respondent shall construct the permanent sand/salt storage area and submit written verification of such implementation to the Commissioner or if the Commissioner deems the newly built storage adequate, pursuant to paragraph B.3. above, a maintenance plan for such storage shall be developed, implemented and kept on-site for the Commissioner's inspection. The Commissioner may request in writing a copy of such maintenance plan.
5. 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 as approved and to the Commissioner's satisfaction.
6. Penalty. Respondent agrees to the assessment of a civil penalty of **\$4,950** as the total civil penalty to be sought by the Commissioner for past violations described in paragraphs A.5. – A.10. of this consent order to be satisfied by the following:
 - a. Supplemental Environmental Project. Respondent has agreed to pay the entire amount of the penalty (**\$4,950**) to implement a Supplemental Environmental Project (SEP) or make payment(s) as follows:
 - i. On or before one year after the date of issuance of this consent order, Respondent shall complete a SEP consisting of the implementation of a watershed management plan for Toth Park on the Aspetuck River as described in a proposal from Sally Harold of the Nature Conservancy's Saugatuck River Watershed Partnership to Chris Stone, CTDEP dated May 4, 2010. The cost of such SEP shall be at least \$4,950.
 - ii. If Respondent fails to fund the SEP in accordance with paragraph B.6.a.i. above, Respondent shall, instead of funding such SEP, immediately pay a civil penalty in the amount of **\$4,950 plus \$2,500** into the DEP Supplemental Environmental Project (SEP) Account for Small Municipal (MS4) Programs. Such payment shall be mailed or personally delivered to the Department of 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 "Treasurer, State of Connecticut", with notation thereon "Small Municipal (MS4) Program, SEP Account No. DEPA00003087007" and shall include the consent order number (starting with "WC") from the final consent order.
 - iii. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.

- iv. Respondent shall not claim or represent that any SEP payment made pursuant to this consent order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
7. Sampling and 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 to conduct such analyses. All sampling and sample analyses performed under this order shall be performed in accordance with the MS4 permit or with procedures specified or approved in writing by the Commissioner. 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.
8. 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 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.
9. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner. 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.
10. 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.


11. 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's chief elected official or a duly authorized representative of such official and by the individual(s) responsible for actually preparing such document, and Respondent's chief elected official and each such individual shall certify in writing as follows:
 - a. "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 is punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law."
12. 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.
13. False statements. Any false statement in any information submitted pursuant to this consent order is punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
14. 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 15 days after transferring all or any portion of the facility, the operations, the site 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.
15. Commissioner's powers. Except as provided hereinabove with respect to payment of civil penalties, 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 past, present, or future violations of law. 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 pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
16. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
17. 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.

18. Access to site. Any representative of the Department of Environmental Protection may enter Respondent's site or facility without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
19. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons or municipalities that are not parties to this consent order.
20. Notice to Commissioner of changes. Within 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.
21. 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.
22. 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:

Christopher Stone, P.E., Sanitary Engineer 3
Department of Environmental Protection
Bureau of Materials Management and Compliance Assurance
Water Permitting and Enforcement Division
79 Elm Street
Hartford, Connecticut 06106-5127

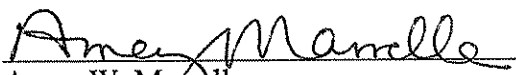
Respondent consents to the issuance of this consent order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondent to the terms and conditions of the consent order.

BY: 

Thomas A. Herrmann
First Selectman

Sept. 9, 2010
Date

Issued as a final order of the Commissioner.


Amey W. Marrella
Commissioner

Sept. 21, 2010
Date

Order No. WC 5693
DEP/WPC No. 46/035

Town of Easton
Land Records