



STATE OF CONNECTICUT

V.

LAKIN TIRE EAST, INC.

CONSENT ORDER # COWSWDS 14004

Date Issued: September 22, 2014

- A. With the agreement of Lakin Tire East, Inc. ("Respondent"), the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:
1. Respondent, is the operator of a permitted solid waste volume reduction plant (the "facility") located at 220 – 240 Frontage Road in West Haven, Connecticut and more fully described as Assessor's Map 33, Block 69 and Map 33 Block 70, respectively. The property will hereinafter be referred to as "the site".
 2. On October 7, 2010, solid waste facility Permit to Operate No. 1560970-PO (the "Permit") was issued by the Department of Energy and Environmental Protection (the "Department").
 3. Based on the findings of an inspection of the facility performed on March 10 and 24, 2014:
 - a. Respondent failed to post a sign at the Facility entrance as required by Section 22a-209-10(3) of the Regulations of Connecticut State Agencies ("RCSA") and paragraph 14 of the Permit.
 - b. Respondent failed to post signs within the Facility limiting truck idling time for no more than three consecutive minutes pursuant to Section 22a-174-18(b)(3) of the RCSA and paragraph 15 of the Permit.
 - c. Respondent violated the minor Permit modification issued on November 6, 2013, by receiving and processing more than the maximum permit limit of 300 tons per day of tires.
 - d. Respondent failed to post financial assurance within sixty days after the effective date of the Permit as required by Section 22a-209-4(i) of the RCSA, Section 22a-6(a)(7) of the Connecticut General Statutes ("CGS") and paragraph 18 of the Permit.
 - e. Respondent failed to perform quarterly compliance audits within sixty days from the issuance date of the Permit and continuing for the life of the Permit as required by paragraph 19 of the Permit.
 - f. Respondent failed to seek approval from the Commissioner of a consultant retained to perform quarterly compliance audits and submit quarterly compliance audit reports as required by paragraph 19.b of the Permit.
 4. By virtue of the above, Respondent has violated Sections 22a-209-4(i), 22a-209-10(3), and 22a-174-18(b)(3) of the RCSA, Section 22a-6(a)(7) of the CGS, and the Permit.

5. On March 18, 2014, the Respondent submitted a letter requesting the Department's approval of the consultant retained to perform quarterly compliance audits and submit quarterly compliance audit reports. On March 25, 2014, the Department approved the "Certified Compliance Audit Consultant". As such, the violation listed in paragraph A.3.f had been corrected.
 6. On March 21, 2014, the Respondent via email provided photo documentation demonstrating that violations listed in paragraph A.3.a and b had been corrected.
 7. On March 31, 2014, the Respondent submitted an irrevocable standby letter of credit from JP Morgan Chase Bank N.A. in the amount of \$46,491. However, the amount was deficient. Additionally, a standby trust fund was not established in concert with this instrument as required by the regulation.
 8. On June 23, 2014, the Department issued Notice of Violation No. WSWDS14038 (NOV) to Respondent requiring correction of the violations listed in paragraphs A.3.a through A.3.f. of this consent order.
 9. On July 10, 2014, the Department received a signed Compliance Statement dated July 8, 2014.
 10. On July 29, 2014, the Department received the Quarterly Compliance Audit Report prepared by GZA GeoEnvironmental, Inc. for the Respondent, dated July 28, 2014.
 11. On August 12, 2014, the Respondent submitted a standby trust fund dated August 6, 2014, in concert with a revised irrevocable standby letter of credit as required by the regulation.
 12. By agreeing to the issuance of this consent order, the Respondent makes no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.1 and A.2 above.
- B. With the agreement of Respondent, the Commissioner, acting under CGS Sections 22a-6, 22a-208, 22a-225, and 22a-226, orders Respondent as follows:
1. Compliance. Respondent shall maintain its compliance with all applicable provisions of Connecticut's solid waste management regulations. In particular:
 - a. On or before **sixty (60) days** after issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a comprehensive plan which details the actions and/or operational changes it has undertaken or will undertake to ensure future compliance with the Connecticut solid waste management regulations including, but not limited to, those set forth in paragraph A.3. of this consent order. The plan shall address, among other things, inspection procedures, recordkeeping and reporting, training, and emergency planning procedures. Within five (5) days after the Commissioner approves such plan, Respondent shall carry out the plan and maintain it in full effect thereafter.
 - b. Respondent shall conduct a comprehensive recycling review of the facility to evaluate compliance with Connecticut's recycling laws set forth in section 22a-241b(d) of the CGS and section 241b-2(1) of the RCSA. On or before **sixty (60) days** after the date of issuance of this consent order, Respondent shall submit for the review and written approval of the Commissioner a business recycling profile documenting the management of recyclable materials. An example profile is included as Attachment A to this consent order.
 2. 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.

3. Status of Notice of Violation No. WSWDS14038. This consent order supersedes Notice of Violation No. WSWDS14038.
4. Increased limit in the daily intake of tires: The Respondent shall receive at the Facility on any one day, no greater than 400 tons of tires while ensuring that the average receipt of tires at the Facility does not exceed 250 tons per day (TPD). The 250 TPD of tires authorized through Permit to Operate No. 1560970-PO shall be averaged over time periods of six months, specifically December 1st through May 31st and June 1st through November 30th of each year per a seven (7) day work week. This provision expires one (1) year from issuance of this consent order.
5. Option to submit an application to amend the permit: On or before **thirty (30) days** from the issuance of this consent order the Respondent shall, either submit for the review and written approval of the Commissioner an application for a minor amendment to the current Permit to Operate No 1560970-PO; or submit a letter advising the Department that the Respondent has determined that such a modification will not be sought. The application for the amendment of the Permit to Operate shall, if sought, address all proposed modifications to the design of the processing equipment and may include a request to increase the maximum daily tonnage for receipt at the Facility. If the respondent fails to submit, on or before **thirty (30) days** from the issuance of this consent order, either an application for a minor amendment to the current Permit to Operate No 1560970-PO or submit a letter advising the Department that the Respondent has determined that such a modification will not be sought; or submits a letter advising the Department that the Respondent has determined that such a modification will not be sought, the provision allowed in paragraph B.4 expires **sixty (60) days** from the issuance of this consent order .
6. Civil penalty for violations. Respondent shall pay a civil penalty of **twenty thousand dollars (\$20,000)** as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in paragraph A.3. of this consent order. Payment shall be made in two (2) equal installments of ten thousand dollars (\$10,000) in accordance with the provisions of paragraph B.8., according to the following schedule:
 - a. The first installment of **ten thousand dollars (\$10,000)** shall be due and payable on or before **thirty (30) days** after the date of issuance of this consent order.
 - b. The second installment of **ten thousand dollars (\$10,000)** shall be due and payable on or before **one hundred and twenty (120) days** after the date of issuance of this consent order.
7. Supplemental Environmental Projects. In lieu of making the second civil penalty payment installment prescribed in paragraph B.6 above, Respondent may comply with the requirements of either paragraphs B.7.a. or B.7.b. below regarding supplemental environmental projects ("SEP").
 - a. Payment to the Statewide SEP Account.
 - (1) Respondent shall pay **ten thousand dollars (\$10,000)** to the Statewide SEP Account for the purpose of supporting efforts to promote product stewardship for tire management. Payment shall be due and payable on or before **one hundred and twenty (120) days** after the date of issuance of this consent order.
 - (2) The payments 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 "Connecticut Department of Energy and Environmental Protection." The check shall state in the memo notation, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty" and the consent order number identified at the top of page one of this consent order. Copies of the check and any transmittal letter shall also be sent to Ms.

Julie Dutton in the Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, at the same address.

b. Performance of SEP(s)

(1) On or before **forty-five (45)** days after the date of issuance of this consent order, Respondent shall submit for the Commissioner's review and written approval a proposal to perform one or more SEPs ("proposal"), according to the Department's February 15, 1996 "Policy on Supplemental Environmental Projects". The proposal shall include:

- i. a detailed description of each SEP,
- ii. itemized costs to be incurred by Respondent in carrying out each SEP,
- iii. documentation to support such cost estimates,
- iv. an explanation as to why each SEP is being proposed,
- v. a proposed schedule (of not more than 180 days) for implementation and completion of each SEP, and
- vi. a description of the benefit of each SEP to the general public or the environment.

Respondent shall be credited up to **ten thousand dollars (\$10,000)** to partially fund any SEP(s).

(2) The Commissioner will either:

- i. approve the proposal, including in such approval the dollar amount of the penalty offset to be realized by Respondent attributable to the SEP(s) and any additional conditions deemed necessary by the Commissioner; or
- ii. disapprove the proposal and notify Respondent, in writing, of deficiencies in the proposal and any additional actions or information required to be taken or supplied by Respondent.

The decision to approve or disapprove an SEP shall be in the sole discretion of the Commissioner.

(3) If the dollar amount of the penalty offset attributable to the approved SEP(s) is less than **ten thousand dollars (\$10,000)**, Respondent shall pay the difference in accordance with a revised schedule established by the Commissioner.

(4) Respondent shall not be given any credit, or reduction in the civil penalty provided for by this paragraph if an SEP included in an approved proposal is not fully complied with. If Respondent fails to fully perform any SEP in accordance with the proposal approved pursuant to paragraph B.7.b.(2).i., Respondent shall immediately notify the Commissioner in writing of such noncompliance and shall, upon written request by the Commissioner, remit a payment equal to the total estimated cost, as determined by the Commissioner, of all such SEP(s), plus either two thousand five hundred dollars (\$2,500) or 10% of such total estimated cost, whichever is greater. Respondent shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.7.b.(10). of this consent order.

- (5) The net present after-tax value of the SEP(s) shall be equivalent to the sum(s) identified in this paragraph or Respondent shall submit certified documentation that no tax credits shall be obtained as a result of the SEP(s) performed under this paragraph.
 - (6) If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding an SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
 - (7) 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.
 - (8) On or before thirty (30) days after completion of each SEP, Respondent shall submit for the Commissioner's review and written approval a comprehensive final report that certifies completion of each SEP. Such final report shall include, at a minimum:
 - i. a narrative history of the project,
 - ii. detailed explanation of its design and implementation,
 - iii. summary of any data collected,
 - iv. complete final accounting of actual project costs including receipts for out-of-pocket costs, and
 - v. a discussion of environmental benefits resulting from each SEP.
 - (9) Should the Commissioner determine that the actual cost to Respondent in completing an SEP is less than the estimated cost identified in the proposal approved by the Commissioner in accordance with paragraph B.7.b.(2).i, Respondent shall pay the difference between such actual cost and estimated cost to the Commissioner as unexpended SEP funds. The Commissioner shall notify Respondent in writing of the amount of any such unexpended SEP funds which are due.
 - (10) Respondent shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Connecticut Department of Energy and Environmental Protection." The check shall state in the memo notation, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty" and the consent order number identified at the top of page one of this consent order. Any payment shall be made in accordance with paragraph B.7.a.(2) of this consent order.
8. Payment of penalties. Payment of penalties under paragraph B.6. of 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 "Connecticut Department of Energy and Environmental Protection." The check shall state in the memo notation, "Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division civil penalty" and the consent order number identified at the top of page one of this consent order. Copies of the check and any transmittal letter shall also be sent to Ms. Julie Dutton in the Bureau of Materials Management and Compliance Assurance, Waste Engineering and Enforcement Division, at the same address.

9. 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.
10. Definitions. As used in this consent order, "Commissioner" means the Commissioner of Energy and Environmental Protection or a representative of the Commissioner.
11. 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.
12. 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 chief executive officer or a duly authorized representative of such officer, as those terms are defined in section 22a-430-3(b)(2) of the RCSA, 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:

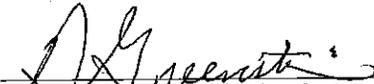
"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate 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 section 53a-157b of the CGS and any other applicable law."
13. Noncompliance. This consent order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this consent order may subject Respondent to an injunction and penalties.
14. False statements. Any false statement in any information submitted pursuant to this consent order is punishable as a criminal offense under section 53a-157b of the CGS and any other applicable law.
15. 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 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.

16. 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 violations of law, including but not limited to violations of any permit issued by the Commissioner. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this consent order have not fully characterized the extent and degree of pollution or have not 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 pollution.
17. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
18. 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.
19. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
20. 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.
21. 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.
22. 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.
23. 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:

Laurene Buckowski, Sanitary Engineer 2
Department of Energy and Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street, 4th Floor
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.

LAKIN TIRE EAST, INC.

BY: 
(Signature of the individual with authority to bind Respondent to terms of consent order)

David Greenstein, Vice President

Name (typed)

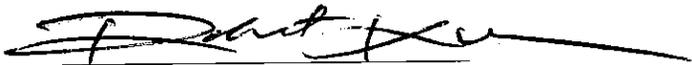
Vice President

Title

9/11/14

Date

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



~~Macky McCleary~~ Robert Klee
~~Deputy Commissioner~~

9/22/14
Date

CONSENT ORDER # COWSWDS 14004

City of West Haven Land Records