



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT)
VS.) ORDER NO. 8078
NEW HAVEN TERMINAL INCORPORATED)

CONSENT ORDER

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

- 1. New Haven Terminal Incorporated ("Respondent") is a corporation which owns and operates a business located at 100 Waterfront Street ("site one"), 238 Fairmont Avenue also known as the North Yard on Wheeler Street ("site two"), Alabama Street Lots 1, 2, 3, 4, 4.01, 8, 10.01, 10.02 Block 951 ("site three"), Alabama Street and Fulton Terrace Lots 2, 3, 4, 5, 6, Block 952 ("site four"), Alabama Street and Fulton Terrace Lot 5, Block 953 ("site five") and Connecticut Avenue Lot 1, Block 951, Map 67 ("site six"), New Haven, Connecticut.
2. Respondent is a corporation which leases property located at Alabama Street Lots 1.05, 5, 6, 10, 11, 12, 13, Block 951, Map 67 ("site seven"), Lot 4.1, Block 952, Map 67 ("site eight"), New Haven, Connecticut.
3. The Environmental Protection Agency ("EPA") has designated the city of New Haven as nonattainment with respect to the National Ambient Air Quality Standards ("NAAQS") for particulate matter with a nominal diameter of ten microns or less ("PM10").
4. The Commissioner, in accordance with the Clean Air Act Amendments of 1990, is developing a plan which reduces emissions of particulate matter to bring the city of New Haven into attainment with the NAAQS for PM10.
5. At site one, site two, site three, site four, site five, site six, site seven and site eight ("sites"), Respondent has caused or permitted materials to be handled, transported or stored without taking reasonable precautions to prevent particulate matter from becoming airborne and has caused or permitted the discharge of visible emissions beyond the lot line of the sites.
6. Respondent shall reduce fugitive emissions at the sites to bring the nonattainment area into attainment with the NAAQS for PM10.
7. By virtue of the above, Respondent has violated Sections 22a-174-18(b)(1) and 22a-174-18(b)(3) of the Regulations of Connecticut State Agencies ("Regulations").

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8. By agreeing to this Consent Order, Respondents make no admission of fact or law with respect to the findings set forth in paragraphs A.5., A.6. and A.7. of this Consent Order.
- B. With the agreement of Respondent, the Commissioner, acting under Sections 22a-6, 22a-171, 22a-174, 22a-177 and 22a-178 of the Connecticut General Statutes, orders Respondent as follows:
1. Upon the date of issuance of this Consent Order, Respondent shall submit for the Commissioner's review and written approval a comprehensive and thorough written plan which identifies the remedial actions which Respondent will take to prevent particulate matter from becoming airborne and to ensure no fugitive discharges of visible emissions beyond Respondent's legal property boundaries will occur. The remedial action in such plan shall designate all land within the sites as vehicle travel, materials storage, parking or fenced vegetated areas. Such plan shall include requirements for:
- a. properly grading and paving all areas that will be used for vehicle travel and parking;
 - b. fencing in with permanent barriers, such as guard rails, all areas that will not be open to vehicle travel, parking and storage;
 - c. planting all areas included within such permanent barriers with vegetation suitable to the soil and climate;
 - d. properly grading all material storage areas with 1 1/4 to 2 inch gravel, to a total depth of no less than 2 inches;
 - e. constructing wind barriers of no greater than 50% porosity to surround all piles of scrap metal and sand, salt or stone up to the pile height and length; and
 - f. installing and operating a wet suppression system for all piles of scrap metal and sand, salt or stone, as necessary.

The plan shall include an implementation and maintenance schedule for all remedial actions proposed by the Respondent in this Consent Order and shall evaluate any other alternative specified by the Commissioner. The plan also shall include a schedule for applying for and obtaining all approvals required for such remedial actions. The schedule shall provide for completion of all remedial actions as soon as possible, but in no event later than June 1, 1994.

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2. Respondent shall perform the approved plan in accordance with the approved schedule. Within fifteen days after completing all such actions, the Respondent shall certify to the Commissioner in writing that the actions have been completed as approved.
3. On or before two (2) months after the date of issuance of this Consent Order, the Respondent shall submit for the Commissioner's review and written approval a scope of study for testing to quantify surface dirt loading and silt content at the sites and outside the legal property boundaries of the sites to verify attainment with the NAAQS for PM10 ("scope of study"). The scope of study shall include but need not be limited to, testing surface dirt loading and silt content and subsequent laboratory analysis. Such scope of study shall include the following:
 - a. a detailed plan describing procedures for sampling and laboratory analysis of surface materials in accordance with the United States Environmental Protection Agency document, Control of Open Fugitive Dust Sources Appendix D & E, September 1988 (EPA-450/3-88-008);
 - b. the locations where Respondent will conduct sampling of surface dirt loading and silt content;
 - c. a detailed plot plan of the sites, including the location of legal property boundaries; and
 - d. a detailed schedule to perform the testing.
4. Respondent shall perform the approved testing program in accordance with the approved scope of study. In no event shall such testing commence later than one (1) month after the remedial actions are completed. Respondent shall schedule such testing so as to allow representatives of the Department to be present during such testing, notify the Department no later than fifteen (15) days prior to such testing and shall allow such representatives to conduct procedural and operational audits. Within one (1) month after completing the testing, Respondent shall submit to the Commissioner for his review and written approval, a report of the results of such testing and all documentation necessary to verify said results.
5. If the approved remedial actions do not result in the prevention and abatement of air pollution and/or attainment of the PM10 standard to the satisfaction of the Commissioner, additional remedial actions and measures for testing and reporting on the effectiveness of those actions shall be

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performed in accordance with a supplemental plan and schedule approved in writing by the Commissioner. Unless otherwise specified in writing by the Commissioner, the supplemental plan and schedule shall be submitted for the Commissioner's review and written approval on or before thirty (30) days, not including Saturdays, Sundays and legal holidays, after notice from the Commissioner that they are required.

6. If the approved remedial actions do result in the prevention and abatement of air pollution and attainment of the PM10 standard to the satisfaction of the Commissioner, the Respondent may request that this Consent Order be terminated. Upon Respondent's request the Department will provide the current compliance status for this Consent Order.
7. Progress reports. On or by the tenth day of March, June, September and December following issuance of this Consent Order, and continuing until all actions required by this Consent Order have been completed as approved and to the satisfaction of the Commissioner, Respondent shall submit progress reports describing the actions which the Respondent has taken to date to comply with this Consent Order.
8. Full compliance.
 - a) Respondent shall not be considered in full compliance with this Consent Order until all actions required by the order have been completed as approved and to the satisfaction of the Commissioner.
 - b) If Department of Economic Development ("DED") fails to provide financing for the remedial action, as described in the "Financial Assistance Proposal" dated October 28, 1993, and Respondent has substantially completed the remedial action to the Commissioner's satisfaction, the Commissioner may make a finding that Respondent has complied with this Consent Order. If the Commissioner determines that remedial measures are insufficient to satisfy the terms of this Consent Order, Commissioner and Respondent shall in good faith attempt to reach an agreement as to what further measures are required.
 - c) If DED fails to provide financing for the remedial action as set forth above and if no agreement is reached between Respondent and the Commissioner regarding the what remedial action is required, Unilateral Orders 8076B and 8078A will be considered to be in full force and effect and will be subject to administrative and judicial review. Respondent's entering into this Consent Order, and any delay caused thereby, shall not impair Respondent's right to such review.

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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 the 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 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 or an agent of the Commissioner.
11. Dates. 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 personally delivered or the date three days after it is mailed by the Commissioner, 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 legal holiday shall be submitted or performed on or before the following day which is not a Saturday, Sunday or legal holiday.
12. 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 the Commissioner 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. In so notifying the Commissioner, Respondent shall state in writing 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.

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13. 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 a responsible corporate officer of the Respondent or a duly authorized representative of such officer, as those terms are defined in section 22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows:
- "I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense."
14. 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 under Chapters 439 and 446c of the Connecticut General Statutes.
15. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense under Section 22a-175 of the Connecticut General Statutes or, in accordance with Section 22a-6, under Section 53a-157 of the Connecticut General Statutes.
16. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with this Consent Order, Respondent shall notify the Commissioner in writing no later than fifteen days after transferring all or any portion of the operations, the site or the business, which are the subject of this Consent Order, or 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. Any future owner of the site may be subject to the issuance of an order from the Commissioner.
17. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding 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

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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.

18. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
19. 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.
20. Access to site. Any representative of the Department of 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.
21. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.
22. Notice to Commissioner of changes. Within fifteen 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.
23. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in writing by the Commissioner, be directed to:

Elizabeth I. H. McAuliffe
Department of Environmental Protection
Bureau of Air Management
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent's initials: PPC

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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.

NEW HAVEN TERMINAL INCORPORATED

BY: Joseph D. Crowley
print: JOSEPH D. CROWLEY
title: PRESIDENT
date: 11-9-93

~~Issued as a final decision in the appeal of Unilateral Orders Nos. 8078A and 8076B.~~

~~_____~~
Date

~~_____~~
Donald H. Levenson, Esq.
Hearing Officer
Department of Environmental
Protection
Office of Adjudications

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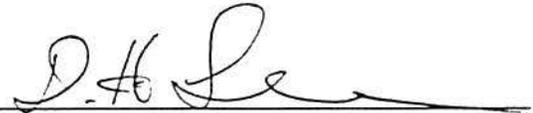
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Issued as a final decision in the appeal of Orders Nos. 8078A and 8076B, subject to the following:

- 1) The Commissioner, or his designee, shall provide written notification to the Office of Adjudications within ten days of determining that the Parties have failed to reach agreement on Respondent's full compliance with the Consent Order as set forth in paragraphs B.8.C of this order; and
- 2) Upon receipt of such notification, the Office of Adjudications will schedule hearings on the appeals of Orders Nos. 8078A and 8076B (attached hereto as Attachments A and B).

11-15-93

Date



Donald H. Levenson, Esq.
Hearing Officer
Department of Environmental
Protection
Office of Adjudications

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