



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT

VS.

ORDER NO. 8074

WATERFRONT ENTERPRISES, INC.

CONSENT ORDER

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

- 1. Waterfront Enterprises, Inc. ("Respondent") is a corporation doing business as Gateway Terminal which operates a shipping business located at 400 Waterfront Street, New Haven, Connecticut ("site").
2. 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").
3. 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.
4. At the site, Respondent has caused or permitted materials to be handled, transported or stored without allegedly taking reasonable precautions to prevent particulate matter from becoming airborne.
5. The Commissioner has determined that Respondent must control fugitive emissions at the facility in accordance with the requirements of 22a-174-18(b)(1) of the Regulations of Connecticut State Agencies ("Regulations").
6. By virtue of the above, Respondent has allegedly violated Section 22a-174-18(b)(1) of the Regulations.
7. By agreeing to this Consent Order, Respondent makes no admission of fact or law with respect to the findings set forth in paragraphs A.4. through A.6. 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:

Respondent' initials: WEI Inc. By RS

Date: 10/21/93

1. Respondent has submitted, and the Commissioner has reviewed and approved a comprehensive and thorough written plan "Proposed Operation Plan In Response to Unilateral Order-Waterfront Enterprises, Inc.", dated July 30, 1993, revised September 20, 1993 ("plan"), which plan is attached hereto as Exhibit A and which identifies the remedial actions which Respondent will take to prevent particulate matter from being airborne. The remedial action described in the plan designates all land at the site as vehicle travel, parking or fenced vegetated areas. Such plan includes specifically described measures as approved by the Commissioner for:
 - a. properly grading and paving all areas that will be open to routine vehicle travel and/or parking;
 - b. fencing in with permanent barriers, such as guard rails, all areas that will not be open to vehicle travel and parking;
 - c. planting all areas included within such permanent barriers with vegetation suitable to the soil and climate;
 - d. constructing wind barriers to augment existing structures; and
 - e. installing and operating a wet suppression system for all piles of raw or product materials.

The plan includes an implementation and maintenance schedule for all remedial actions proposed by the Respondent and this Consent Order and evaluates any other alternative specified by the Commissioner. The plan also includes 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 twelve (12) months from the approval of the plan by the Commissioner.

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.

Respondent's initials: WEI by RS.

Date: 10/29/93

3. Respondent has submitted, and the Commissioner has reviewed and approved, a "Scope of Study for the Evaluation of Surface Silt Loading - Waterfront Enterprises, Inc." dated September 20, 1993 ("scope of study") for testing to quantify surface dirt loading and silt content at the site and outside the legal property boundaries. The scope of study includes testing surface dirt loading and silt content and subsequent laboratory analysis. Such scope of study is attached hereto as Exhibit B and includes the specifically described measures as approved by the Commissioner including the following:
 - a. a detailed plan describing procedures for sampling and laboratory analysis of surface materials in accordance with 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 three (3) months after the completion of the remedial actions required by paragraphs B(1) and B(2) of this Consent Order. Respondent shall provide the Commissioner with (7) days notice of such testing so as to allow representatives of the Department to be present during such testing, and shall allow such representatives to conduct procedural and operational audits. Within two (2) months 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 fugitive emissions to the satisfaction of the Commissioner, additional remedial actions and measures for testing and reporting on the effectiveness of those actions shall be 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 after notice from the Commissioner that they are required.

Respondent's initials: RLSDate: 11-18-

6. Progress reports. On or by the tenth day of every third month 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 comply with this Consent Order to date.
7. Full compliance. 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, and fugitive emissions emanating from the site and its sources are in compliance with Section 22a-174-18(b)(1) of the Regulations. Upon approval and compliance, the Commissioner shall provide Respondent with a written certification of the same in the form of an inspection report or other such documentation.
8. Stipulated future penalties.

- a. If, within 3 years after the date of issuance of this Consent Order, Respondent fails to comply with any requirement of this Consent Order or of any document approved hereunder, or fails to comply on time with any such requirement, Respondent shall pay the following civil penalties:

For each of the first ten days following the date compliance was required, two thousand dollars (\$2,000);

For each of the next ten days thereafter, five thousand dollars (\$5,000);

For each day thereafter, the sum to be paid shall increase by two thousand dollars (\$2,000) until the maximum civil penalty specified in the general statutes as amended is reached, which sum shall be paid every day thereafter until compliance is achieved.

- b. Payment of the amounts specified in subparagraph (a) of this paragraph shall be submitted to the Commissioner within thirty days of the date that Respondent became aware or should reasonably have become aware of such violation. Failure to pay such penalties within thirty days shall not result in additional penalties under subparagraph (a) of this paragraph, provided that Respondent shall pay interest at a rate of one and two-thirds per cent per month or part thereof on any penalty which is not paid when due, beginning on the first day on which the penalty was past due.

Respondent's initials: W.E. Inc. Dg. R.S.

Date: 10/31/93

- c. In an action by the Commissioner to enforce the civil penalty provisions of this paragraph, the Commissioner need prove only that Respondent failed to comply with a requirement of this Consent Order or of any document approved hereunder within the time specified. Respondent waives the opportunity to contest the amount of any penalty specified herein or the justification for its imposition, except that Respondent may prove compliance or that compliance was impossible due only to an event beyond the reasonable control of Respondent which was unforeseeable and the results of which could not have been avoided or repaired or caused to be avoided or repaired by Respondent or an agent, employee or representative of Respondent in order to prevent the noncompliance. Increased cost shall not constitute such impossibility. Respondent shall have the burden of going forward and of persuasion with respect to any allegation of impossibility. If Respondent claims that compliance was impossible due to an event specified in this paragraph, in addition to the notice required by paragraph B(13) Respondent shall also submit a written notice to the Commissioner within ten days of becoming aware of such event stating the time of the event, the reasons that the event resulted in the noncompliance, and all activities which the Respondent and its agents, employees and representatives took to avoid or repair the results of the event and prevent the noncompliance. Failure of Respondent to submit this information to the Commissioner within ten days of becoming aware of the event shall render the provisions of this paragraph regarding allowance of claims of impossibility of no force and effect as to the particular incident involved.
9. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to Mr. Steven Peplau, Director of Engineering and Enforcement, Bureau of Air Management, Department of Environmental Protection, 79 Elm Street, P.O. Box 5066, Hartford, CT 06102-5066, and shall be by certified or bank check payable to the Connecticut Department of Environmental Protection. The check shall state on its face, "Air Consent Order No. 8076."
10. 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

Respondent's initials: WEL, B, KS,Date: 10/24/93

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.

11. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or an agent of the Commissioner.
12. 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.
13. Notification of noncompliance. In the event that Respondent become aware that they 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.

Respondent's initials: WFE, BRS.

Date: 10/24/93

14. 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 officers, 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."

15. 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.
16. False statements. Any false statement, by a responsible corporate officer of the Respondent or a duly authorized representative of such officers, 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.
17. Notice of transfer; liability of Respondent and others. Until Respondent have 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, or the business, which are the subject of this Consent Order, or obtaining a new mailing or location address. Upon Respondent's sale of its entire interest in the business, at the site and the complete and permanent cessation of its business at the site Respondent's obligations under this Consent Order shall terminate, provided, however, that if Respondent retains an ownership interest in the site or the business operated thereon, whether directly or indirectly (e.g., by ownership of stock in a corporation which owns the site or operates the business at the site), Respondent's obligations under this Consent Order shall remain fully in effect. Any future owner of the site may be subject to the issuance of an order from the Commissioner.

Respondent's initials: W.E. Fin. By RS

Date: 10/24/93

18. 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 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.
19. Respondent' obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law, provided, however, completion of the remedial actions required by paragraph B.1. of this Consent Order shall relieve Respondent of any and all liability related to Notice of Violation Number 11903 and shall render such Notice of Violation closed.
20. 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.
21. 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. Any representative of the Department shall comply with Respondent's visitor safety procedures.
22. 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.
23. Notice to Commissioner of changes. Within fifteen days of the date Respondent become 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.

Respondent's initials: W.E.I., B., R.S.Date: 10/24/93

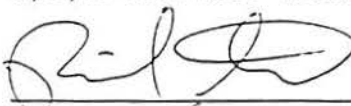
24. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in writing by the Commissioner, be directed to:

Elizabeth I. Hotaling
Department of Environmental Protection
Bureau of Air Management
79 Elm Street P.O. Box 5066
Hartford, Connecticut 06102-5066

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.

WATERFRONT ENTERPRISES, INC.
d/b/a GATEWAY TERMINAL

BY:



print:

Richard Smith

title:

Vice President

date:

10/29/93

Issued as a final decision in the appeal of Unilateral Order No. 8074B.

11-5-93

Date



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

MAILED CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Certified Document No. 058236647