



**Bureau of Water Protection and Land Reuse  
Remediation Division**

STATE OF CONNECTICUT

V.

110 Mountain Grove Street, LLC

**CONSENT ORDER No. SRD-235**

**Date of Issuance: September 5, 2018**

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

1. Mountain Grove Street, LLC ("Respondent") is a Connecticut limited liability corporation registered to do business in Connecticut with the Connecticut Secretary of the State. Respondent's registered business address is c/o Fischel Properties, 501 Kings Highway, Fairfield, CT.
2. Respondent is the owner of property located at 1550 State Street (formerly known as 110 Mountain Grove Street) in Bridgeport, Connecticut ("the parcel" or "the property" or "the establishment"), more fully described in a deed that is recorded at page 81 of volume 6784 of the City of Bridgeport land records, and which is also identified as Lot #3,4,5, Block 1224 on Map #12-10 in the Bridgeport Tax Assessor's office. On December 24, 2014 , the Respondent recorded an Environmental Land Use Restriction (ELUR) for the property pursuant to §22a- 134o *et seq.*of the Connecticut General Statutes (CGS) signed by the Respondent. The Respondent is the Grantor, and the Commissioner is the Grantee, on the ELUR.
3. As the Grantor on the ELUR, and pursuant to the terms of the ELUR, Respondent is required to comply with the terms of the ELUR.
4. The ELUR includes the following restrictions that have been violated:
  - a. Residential Activity Restriction in Subject Area A (entire property): A large portion of the main building is currently and has been leased to the Park City Charter School since April 2013. Section 22a-133k-1 of the Regulations of Connecticut State Agencies (RCSA) defines schools, among other uses, as residential activity.
  - b. Inaccessible Soil Restriction in Subject Area B: The asphalt and soil in this subject area were disturbed in September 2016 with the installation of guide posts in the parking lot, and in 2015 with the installation of two soil borings as part of an additional subsurface investigation conducted by Cambrian Geological, LLC.
  - c. Inaccessible Soil and Environmentally Isolated Restriction in Subject Area C: The concrete slab and underlying soil were disturbed in 2016 with the installation of bathroom fixtures within this subject area
5. On June 6, 2017 the Commissioner issued Notice of Violation (NOV) No. NOVWRSR17-12 to the Respondent which instructed Respondent to, among other things: 1) Come into compliance with the terms of the ELUR as soon as possible; and 2) Submit a written confirmation that the activities in violation have ceased and that all current activities and uses are in compliance with the ELUR, or a work plan and schedule to implement to return to compliance with the ELUR.

6. The Commissioner received a response, dated June 19, 2017. This response was inadequate for the following reasons: 1) No work plan was included with the schedule; and 2) The schedule included proposed Engineered Controls, which would not necessarily and in and of itself return Respondent to compliance with the ELUR violations.
  7. By virtue of the facts set forth in paragraphs A.1 – A.6, above, the Respondent has violated, and remains in violation of the ELUR.
- B. With the agreement of Respondent, the Commissioner, acting under §22a-6, §22a-424, §22a-434, and §22a-133p of the Connecticut General Statutes, orders Respondent as follows:
1. **Consultant Retention.** On or before thirty (30) days of issuance of this consent order Respondent shall retain an LEP to prepare documents and implement or oversee the actions required by this consent order and shall by that date, notify the Commissioner in writing of the identity of such LEP. Respondent shall retain one or more LEP(s) acceptable to the Commissioner until this consent order is fully complied with, and within ten (10) days after retaining any LEP other than the one originally identified under this paragraph, Respondent shall notify the Commissioner in writing of the identity of such other LEP. Respondent shall submit to the Commissioner a description of a LEP'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.
  2. Respondent shall complete and submit, within ninety (90) days of issuance of this consent order,
    - a. A plan to remediate conditions on the property to remedy the violations, which shall include but not be limited to:
      - (1) For any remedy that relies upon an ELUR for any area of the property, a full and complete ELUR application, using the form available on the Department's website, for the Commissioner's review and approval that includes all neccessary restrictions;
      - (2) Documentation in any ELUR application to support the use of each Restriction which shall include, but not be limited to:
        - a) Signed affidavat of a recorded Public Notice (RCSA 22a-133q-1(c)) with a thirty (30) day comment period;
        - b) Soil vapor laboratory results and figure depicting sample locations;
        - c) Soil sample results and figure depicitng sample locations within applicable subject areas;
        - d) Groundwater data that demonstrates the delineation of the VOC plume; and
        - e) Maintenance plan for any Inaccessible Soil subject areas.
      - (3) A full and complete application for any other RSR variance or approval that the plan (specified in B.2.a.) proposes, and a schedule for completing any non-ELUR action.
  3. If any ELUR is submitted, within sixty (60) days of receipt of comments, if any, Respondant shall address and respond to the Department's comments on the ELUR, and submit a corrected ELUR application and documents referenced in B.2. above.
  4. If any ELUR is submitted, within sixty (60) days of receipt of the final electronic ELUR document from the Department, Respondent shall sign the ELUR and Property Owner Affidavit and submit both to the Department for Commissioner signature.
  5. If any ELUR is submitted, within seven (7) days of receipt of the executed ELUR from the

Department, the Respondant shall record: 1) The approved ELUR and any associated exhibits; 2) Documents which are necessary to demonstrate that each person holding an interest in the land, or any part thereof has irrevocably subordinated such interest to the ELUR; and 3) The Department's approval of any waiver from the requirement to obtain subordination agreements for interests which are so minor as to be unaffected by the ELUR, as applicable. **The new ELUR shall be recorded simultaneously with the permanent release of ELUR currently recorded on land records.**

6. If any ELUR is submitted, **within seven (7) days of recording the ELUR**, the Respondant shall submit to the Department: 1) Certificate of Title; 2) the ELUR as recorded (Town Clerk certified copy); 3) the full-sized final ELUR Survey, bearing an original stamp and signature; and 4) electronic copies of items 1) through 3.
7. If any ELUR is submitted, **within thirty (30) days of recording the ELUR**, Respondant shall send copies of the ELUR by certified mail, return receipt requested to 1) the chief administrative officer of the town; 2) the chairman of the planning, zoning, or planning and zoning commission for the Town of City, CT; (3) the local Director of Health; and (4) any person who submitted comments on the ELUR during the public comment period. Respondant shall submit copies of the letters and completed return receipts in Adobe® PDF format to the Department.
8. For purposes of paragraphs B.4 through and including B.7 above, if at any time Respondent is no longer the owner of the property, Respondent shall make best efforts to have the property owner perform each of the actions identified in those paragraphs B.4 though and including B.7 of this consent order. In addition to any other requirement in law, Respondent shall provide the Commissioner with no less than thirty (30) days notice of any transfer of the property to a different owner, if such transfer would occur prior to full compliance and completion of this consent order.
9. Reporting. The Respondent shall immediately inform the Commissioner in writing if it discovers any pollution on or emanating from the property that meets any condition described in §22a-6u(b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1) or (h)(1) of the Connecticut General Statutes. The Respondent shall comply with this paragraph even though the property is not a "parcel" as defined in §22a-6u(3) of the Connecticut General Statutes.
10. Submission of Supporting Documentation. Within ten (10) days of receipt of a written request from the Commissioner, the Respondent shall provide to the Commissioner copies of all technical plans, reports and other supporting documentation relating to the investigation and remediation of the parcel as specified in the Commissioner's written request.
11. 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, §22a-208a, §22a-208c and §22a-449(c) of the Connecticut General Statutes, and §22a-209-4, §22a-209-7, §22a-209-8, and §22a-449(c)-100 through 119, §22a-449(c)-11 of the Regulations of Connecticut State Agencies. Respondent shall not conduct activities requiring a permit from the Commissioner without first having the requisite permit(s) issued by the Commissioner.

12. 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 to the Commissioner's satisfaction and the Commissioner issues a written notice that no audit of the Final Verification will be conducted, or the Commissioner conducts an audit of the Final Verification and issues written findings that the Final Verification was appropriate and is thereby accepted. If the Commissioner determines the Final Verification is not appropriate and thereby rejects the Final Verification, Respondent is not in compliance with this consent order.
13. Civil penalty. On or before thirty (30) after issuance of this consent order, Respondent shall pay a penalty of \$48,860 as the total civil penalty to be sought by the Commissioner for those, and only those, violations described in A.4 of this consent order pursuant to §22a-133p(e) of the Connecticut General Statutes.
14. Payment of penalties. Payment of penalties under 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 the "Connecticut Department of Energy and Environmental Protection." The check shall state on its face, "Remediation Division, Bureau of Water Protection and Land Reuse civil penalty, consent order #SRD-235."
15. Sampling and sample analyses. All sampling and 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 sampling and analyses. All sampling and sample analyses performed under this consent 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 Respondent shall use the reasonable confidence protocols as published on the website of the Connecticut Department of Energy and Environmental Protection ("Reasonable Confidence Protocols"). 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 by the Commissioner, the analytical data shall be generated using a method approved in writing by the Commissioner, and 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 consistent with the Reasonable Confidence Protocols and standard industrial and laboratory practices. The reporting limit used shall not be at levels greater than those used in such standard practices, as determined by the Commissioner in writing, in consultation with the Commissioner of Public Health, and in no case shall be greater than the applicable criteria or background concentration established in the RSRs.
16. 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.

17. Definitions. As used in this consent order, "Commissioner" means the Commissioner or a representative of the Commissioner.
18. 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.

19. 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 responsible corporate officer, general partner, or proprietor, or a duly authorized representative of such person, 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 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."*

20. 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.
21. False Statements. Any false statement in any information submitted pursuant to this consent order may be punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
22. 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 parcel 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.
23. Commissioner's powers. 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 those described in this consent order. 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 any pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate pollution.

24. Respondent's obligations under law. Nothing in this consent order shall relieve Respondent of other obligations under applicable federal, state and local law.
25. 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.
26. Access to Parcel. Any representative of the Department may enter the parcel without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this consent order.
27. No effect on rights of other persons. This consent order neither creates nor affects any rights of persons that are not parties to this consent order.
28. 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.
29. 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.
30. 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:

Amanda R. Killeen, Environmental Analyst  
Department of Energy and Environmental Protection  
Bureau of Water Protection and Land Reuse  
Remediation 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.

110 Mountain Grove Street, LLC

BY:

  
Harold Fischel (Manager)

8-8-2018

Date

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

  
Robert E. Kaliszewski

Robert E. Kaliszewski  
Deputy Commissioner

  
September 5, 2018

Date

ORDER NO. SRD-235  
DISCHARGE CODE H  
TOWN OF BRIDGEPORT  
LAND RECORDS