

Managing Environmental Compliance in Connecticut



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Arthur J. Rocque, Jr.
Commissioner

<http://www.dep.state.ct.us>

Connecticut Department of Environmental Protection
Office of Enforcement Policy and Coordination

Issue 1

Welcome to: *Managing Environmental Compliance in Connecticut*

In an effort to keep the public and the regulated community informed as to the compliance activities at the Department of Environmental Protection ("Department"), the Office of Enforcement Policy and Coordination has established a new newsletter entitled "Managing Environmental Compliance in Connecticut".

Published on a quarterly basis, readers will be able to view this publication on the Department's web site at <http://www.dep.state.ct.us>. In each issue you will find regular updates on the development of Department enforcement policies, ongoing outreach and compliance assistance initiatives, permitting approaches and enforcement actions. In addition to providing general overviews of activities associated with Department enforcement efforts, the newsletter will outline particular initiatives and highlight specific enforcement cases.

This newsletter will be an outstanding resource to the regulated community interested in following the latest Department enforcement and compliance initiatives. The public will also benefit through regular updates on enforcement activities in their communities.

Thanks and enjoy!

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Corporate Officer Liability

The Connecticut Supreme Court, in a case entitled *BEC Corporation v. Department of Environmental Protection*, 256 Conn. 602 (2001), has affirmed the state's ability to take direct action against corporate officers under its water pollution control act, and has adopted the "responsible corporate officer doctrine" in respect to actions brought under this statute. The case represents a major step forward in the enforcement of Connecticut's environmental laws, and, at the same time, has clarified where and how corporate officers may be held liable in their individual capacity notwithstanding their assertions that the common law doctrine of the corporate veil affords them shelter from personal liability. ☞

Reinspecting Serious Violators

To assure long-term compliance at facilities that have been previously subject to formal enforcement, the Department adopted in February 2002, a *Policy on Inspecting A Facility Previously Subject to Formal Enforcement Action*. The policy can be found at <http://www.dep.state.ct.us/enf/policies/reinspection.htm>. Under the policy, the Department will reinspect a facility not more than three (3) years following closure of a formal enforcement action to assure continued compliance with environmental requirements. By dedicating resources to entities with a significant history of non-compliance, the policy indirectly provides the rest of the regulated community a benefit to maintaining a good compliance record (i.e. lower inspection priority). ☞

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Self-Disclosure Initiatives

In 2001 EPA Region I and the New England states launched two initiatives aimed at promoting within the regulated community the self-discovery, disclosure, correction and prevention of violations. The current initiatives are directed at municipal vehicle maintenance facilities and colleges and universities. Participants in the initiatives are much less likely to pay a large fine or face formal enforcement action and, for a limited time, are a low inspection priority for both EPA and the state. In Connecticut, twenty-four municipalities and thirty-three colleges/universities are participating in the self-policing initiatives. Through the initiatives, the Department expects that violations that may have otherwise gone undetected will be disclosed and corrected.

Connecticut's *Policy on Incentives for Self-Policing* was extended on April 5, 2002 and is available at <http://www.dep.state.ct.us/enf/policies/selfpol.pdf>. ☞

Prison Sentence for Dry Cleaner

Michael Rosenberg was sentenced to 18 months imprisonment in May 2002 after pleading guilty in federal court to illegally disposing of two drums of tetrachloroethylene in a wooded area in Farmington and to causing the disposal of tetrachloroethylene waste in the woods adjacent to Avenue Cleaners in Naugatuck.

Rosenberg owned and operated a dry cleaning business named "Avenue Cleaners" located at 428 Rubber Avenue in Naugatuck from approximately August 1995 to August 1999. Several months after Rosenberg discontinued operations at the site, two drums of tetrachloroethylene waste from Avenue Cleaners were found spilling in the woods off Reservoir Road in Farmington. This resulted in contamination of the drinking water wells supplying two nearby homes on Reservoir Road.

The case was jointly investigated by the U. S. Environmental Protection Agency Criminal Investigation Division and Connecticut's Chief State's Attorney's Office, with assistance from the Department of Environmental Protection and the Town of Farmington Police Department.

Rosenberg's sentence includes 18 months imprisonment to be followed by a 3 year term of supervised release. An order of restitution was deferred pending further hearing. Rosenberg faces a potential restitution order of more than \$200,000 to cover clean-up costs. ☞

Circuit-Wise Penalized \$769,000

On March 7, 2002, the Connecticut Department of Environmental Protection ("Department") and Circuit-Wise, Incorporated ("Circuit-Wise") of North Haven finalized agreements in State Superior Court that settle three outstanding lawsuits against the company. The lawsuits had been brought against Circuit-Wise by the State Attorney General on behalf of the Department in response to numerous violations of Connecticut environmental laws in the areas of water pollution control, hazardous waste management, and air pollution control.

The first of the three actions was brought against Circuit-Wise in September 1999 for numerous water pollution control violations including: unpermitted discharges of process wastewaters to the Quinnipiac River and to the Town of North Haven Sewage Treatment Plant, improper operation and maintenance of wastewater treatment facilities, unapproved bypass of wastewater treatment facilities, inadequate spill prevention and control, and discharge of process wastewaters to the Quinnipiac River in violation of permitted effluent limits. Subsequent actions were brought by the State in July 2000 and August 2001 in response to additional environmental violations by the company including: failure to apply for air emissions permits for several process lines, storage of hazardous waste for greater than ninety days, failure to store hazardous waste containers on an impervious surface, failure to maintain adequate separation of incompatible waste materials, failure to properly perform required hazardous waste inspections, and failure to maintain adequate inspection records.

Under three March 7th stipulated judgments, Circuit-Wise is required to pay civil penalties totaling \$769,000 for past violations, institute immediate organizational changes to ensure that environmental issues are identified, reported and resolved, and conduct annual environmental compliance audits over the next two years to monitor the effectiveness of the organizational changes and confirm that past violations have been adequately addressed. ☞

Complying With Your General Permit

To minimize its permit application backlog and to more expeditiously deal with minor activities, the Department has, in the past ten years made a significant investment in the use of general permits. A general permit is a single permit issued by the Department to cover certain activities throughout a prescribed geographic area. A general permit sets terms and conditions for conducting an activity that, when complied with, are protective of the environment.

Thirty-five different minor activities are now eligible for coverage under a general permit. A description of each general permit and registration forms for most are now available on the Internet at DEP's web site (<http://www.dep.state.ct.us/pao/listgen.htm>). At last count, the department had accepted more than 9000 general permit registrations, representing more than fifty percent of all currently permitted activities. While the activity of each registrant is often by definition minor in nature, it is important to recognize the potential cumulative impact that those activities might have on the environment.

Common Non-Compliance Issues

- *Failed to monitor required parameters*
- *No written record of monitoring results*
- *Exceeded discharge limitations*
- *Violations of other best management practices*
- *Failure to report violations*

Identified Reasons for Non-Compliance

- *Facility/operations management unaware of permit*
- *Lack of awareness of monitoring requirement*
- *Uncertain how to conduct monitoring*
- *Lacked staff or monitoring equipment*

Since both the Department and the regulated community now rely so heavily on general permits, it is important that everyone authorized by a general permit fully understand and follow the terms and conditions of that permit. The Department has assessed compliance with the general permit program



and conducted audits of five categories. The results have been uniformly disappointing. For example, the analysis of non-compliance and the associated root causes among registrants covered by the *Discharge of Minor Tumbling or Cleaning of Parts Wastewater General Permit* pointed to a general lack of knowledge or understanding of permit terms and conditions (see box).

Systematic non-compliance of general permits may jeopardize their future use and development. Through the issuance of general permits, the Department has been able to make great gains in environmental protection with limited resources. Abandonment or

scaling back of the general permit program would dramatically increase timeframes for authorization of activities, cost both the Department and the regulated community more money, and tie up important resources that are currently addressing critical environmental needs. The Department takes compliance by each and every registrant seriously. It is therefore incumbent on registrants to pay close attention to all of the requirements of their general permit. The process of registering and having your consultant certify to meeting the required conditions is only the starting point. Many general permits require data collection, monitoring, and maintenance. Registrants signing the registration certification are liable under the law for compliance. As the *BEC Corporation v. Department of Environmental Protection* case shows, this liability can be directed both against the company and the corporate officers. For the *Tumbling and Cleaning* permit alone, the Department issued fifteen administrative consent orders, collected more than \$100,000 in penalties and referred one company to the Office of the Attorney General to bring a civil action. ☞

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What can you do as the primary person responsible for compliance with a general permit?

- Carefully read the general permit yourself before you or your consultant registers.
- Make sure you understand the terms and conditions you are agreeing to abide by.
- Understand record keeping provisions and maintain copies for your records.
- Establish a schedule for reviewing permit terms and conditions, conducting monitoring, notifying and or reporting to DEP, and reregistering.
- Create a tickler file for report submission and reapplication/renewal.
- Inform all affected parties in your organization about their specific obligations under the general permit, including upper management.
- Be sure to follow up on work you have contracted out to others.
- Regularly evaluate process changes to determine the impact on your general permit(s). Some changes could mean you no longer qualify to be covered under the general permit.
- Report all exceedences or exceptions in accordance with the permits terms and conditions and any applicable regulations.
- Ask questions! Check with your consultant or DEP if you do not understand a requirement of your permit.

Keep an eye on future editions of this publication for more information regarding new categories of general permits or changes to existing permits. If you have any questions, you can contact the Permits Assistance Office at 860-424-3003. For information on other DEP permits, go to <http://www.dep.state.ct.us/pao/userguid.htm>.

Hazardous Waste Regulations

The Department has now completed the second phase of the update process through adoption of revised state hazardous waste regulations which incorporate 40 CFR Parts 260-279 and Part 124 as of January 1, 2001. The Department has done so by incorporating by reference the federal rules as of July 1, 2000 and adding, when required, the rules promulgated by EPA between July 1, 2000 and January 1, 2001. One of the most notable changes to the state's program in the second update was the addition of used electronics to the state's universal waste rule. The first phase of universal waste rule included hazardous waste lamps, thermostats, most batteries including lead-acid batteries, and pesticides. The final regulations were submitted to the Office of the Secretary of State on June 27, 2002 and became effective on that date. The updated regulations, adoption dates, and other information can be found at <http://www.dep.state.ct.us/wst/hw/hwregs.htm>. ☞

Useful Link:



<http://www.epa.gov/region01/steward/ceit/index.html> – The Center for Environmental Industry and Technology (CEIT) is a window to resources, people, and programs for the environmental technology industry in New England, promoting the acceptance of innovative environmental technologies to solve the most significant environmental problems in New England.