

Dr. Gerald Furman

860-589-7333

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
DRINKING WATER DIVISION

edn CDPH

Drinking water Div.

**IN THE MATTER OF:**

TOWN OF WESTON

DEPARTMENT ORDER DWD 04-157-183

DEPARTMENT ORDER DWD 04-157-200

**CONSENT ORDER**

WHEREAS, the Department of Public Health (hereinafter "the Department") has jurisdiction over all matters concerning the purity and adequacy of public drinking water supplies pursuant to Section 19a-2a and 19a-36 of Chapter 368a and Sections 25-32 through 25-54 of Chapter 474 of the Connecticut General Statutes; and

WHEREAS, the Department has jurisdiction and authority to issue this Consent Order pursuant to Sections 4-177(c), 19a-2a, 25-32, 25-33, 25-34, and 25-36 of the Conn. Gen. Stat.

WHEREAS, The town of Weston (hereinafter "the Respondent") is a water company as defined in Section 25-32a of the Conn. Gen. Stat. and owns and operates a community public water supply system (Weston Water Supply) and a non-transient non-community public water system (Weston Schools and Municipal Buildings) in the town of Weston; and

WHEREAS, the Department has determined upon investigation that the Respondent has constructed athletic fields on a parcel of land (known as the Morehouse Farm Park Development Site) on Route 53 near the intersection of Valley Forge Road in the Town of Weston, CT. The Respondent asserts that construction on the parcel began in May of 2003. The development site is within the Public Drinking Water Supply Watershed for the Saugatuck Reservoir; and

WHEREAS, the Saugatuck Reservoir is part of the Hemlocks Reservoir System, which is owned and operated as an active source of public drinking water by the Aquarion Water Company of Connecticut. The Aquarion Water Company serves approximately 340,000 people in the metropolitan Bridgeport region; and

WHEREAS, any land owned by the Town of Weston on the public water supply watershed of the Saugatuck Reservoir is water company owned land pursuant to Conn. Gen. Stat. Section 25-37c; and

WHEREAS, the Respondent is in violation of Section 19-13-B32(i) of the Regulations of Connecticut State Agencies (hereinafter "RCSA") for constructing stormwater drainage facilities at the Morehouse Farm Park Development Site within one-hundred feet of an established watercourse tributary to the Saugatuck Reservoir; and

WHEREAS, the Department has determined, after investigation, that the public water supply of the Saugatuck Reservoir had been threatened during the construction phase of the Morehouse Farm Park development with pollution from the flow of turbid water containing suspended solids

that could harbor nutrients and pathogenic organisms judged to be prejudicial to public health under Conn. Gen. Stat. Section 25-34; and

WHEREAS, the Department issued to the Town of Weston, on June 21, 2004 an Order (DWD-04-157-183) for failure to comply with Section 19-13-B32(i) of the RCSA; and

WHEREAS, the Respondent is required pursuant to Conn. Gen. Stat. Section 25-32 and Section 25-37d-1 of the RCSA to obtain a written permit from the Commissioner of the Department of Public Health (hereinafter "the Commissioner") to change the use of any watershed lands; and

WHEREAS, the Respondent changed the use of watershed lands in the absence of a permit from the Commissioner by constructing athletic fields on watershed lands owned by the Respondent at the Morehouse Farm Park Development Site in violation of Conn. Gen. Stat. section 25-32 and Section 25-37d-1 of the RCSA; and

WHEREAS, the Respondent believed, pursuant to Public Acts 2003, No. 03-1 §10, that as of September 8, 2003 it was not a water company as defined by Conn. Gen. Stat. § 25-32(a) and that the land at the Morehouse Farm Park Development site could be used to develop athletic fields.

WHEREAS, the Department issued to the Town of Weston on July 30, 2004, a Notice of Violation and Civil Penalty (DWD-04-157-200) for failure to obtain a written permit from the Commissioner to change the use of watershed lands at the Morehouse Farm Park Development Site as required by Conn. Gen. Stat. Section 25-32 and Section 25-37d-1 of the RCSA; and

WHEREAS, the Respondent and the Department desire to fully resolve these matters without further administrative or judicial action;

WHEREAS, the Respondent, in consideration of this Consent Order, has chosen not to contest Department Orders DWD-04-157-183 and DWD-04-157-200 before a hearing officer and further agrees that this Consent Order shall have the same effect as if ordered after a full hearing pursuant to Conn. Gen. Stat. Sections 25-32e and 25-34.

NOW, THEREFORE, the Drinking Water Section of the Department acting herein and through Gerald Iwan, its Section Chief, and the Respondent, act herein by Woody Bliss, First Selectmen of the town of Weston, hereby stipulate and agree as follows:

1. This Consent Order supersedes and replaces Department Orders DWD-04-157-183 and DWD-04-157-200.
2. The Respondent, by entering into this Consent Order, waives any rights it may have to an administrative hearing or otherwise contest or challenge the validity of the provisions of this Consent Order. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack, or judicial review under any legal theory or in any form. Further, this Order is not subject to appeal or review under the provisions of Chapter 54 or 368a of the General Statutes of Connecticut.
3. This Consent Order is a revocable offer of settlement that may be modified by mutual agreement or withdrawn at any time prior to its being signed by the Section Chief of the Drinking Water Section or his designee.

4. This Consent Order is a matter of Public Record.
5. The Department shall not pursue further penalties or administrative or judicial action against the Respondent for the previous violations identified in the Order dated June 21, 2004 and Notice of Violation and Civil Penalty dated July 30, 2004 set forth herein provided that the Respondent is in compliance with this Consent Order, and the statutes and regulations governing water companies.
6. The Department agrees that the respondent may continue to operate and maintain the playing fields located on the Morehouse Farm Park development site to include parking and portable bathroom facilities provided said operation and maintenance is done in accordance with this consent agreement and the water management plan approved by the Department. Maintenance shall include lawn mowing, weed elimination, watering, turf management, and stabilization and reconfiguration of the ball fields if and when required.
7. This Consent Order is effective upon the signature of the Commissioner's representative if a hearing has not been scheduled or by the Commissioner if a hearing has been scheduled, at which time it shall become a final and an Order of the Commissioner of Public Health.
8. The Respondent agrees that it is a water company as defined in Conn. Gen. Stat. 25-32a and as such agrees that it will comply with and abide by all Connecticut state statutes and regulations governing water companies as well as any Final Orders of the Department of Public Health, subject to any right of review the Respondent may have under the law. The Respondent agrees that it shall not contest this finding in any future proceedings.
9. The Respondent agrees that it is subject to the procedures and remedies authorized by state statutes and regulations if its water supply systems are not in compliance with state statutes and regulations. The Respondent agrees that it will not raise as a defense Public Act No. 2003, No. 03-1, § 10 with regard to any action, including but not limited to actions to obtain injunctive relief or other equitable relief, specific performance, brought at any time in the future in an administrative proceeding before the Department of Public Health and/or judicial proceeding in the Courts of the State of Connecticut regarding any dispute with the state statutes and regulations pertaining to water companies and/or public water systems.
10. The land at Morehouse Farm Park Development site is needed for water supply purposes.
11. The Respondent agrees to achieve and maintain compliance at all times with Conn. Gen. Stat. Section 25-32 and Section 19-13-B32(i) of the RCSA, including but not limited to, completing the following:
  - a. On or before August 4, 2005, the Respondent shall verify in writing to the Department that the following items have been and will continue to be implemented for the Morehouse Farm Park site:
    - (i) All personnel, vendors, and visitors are being routinely notified that the site is located in a sensitive watershed area;

- (ii) Aquarion Water Company source protection personnel have unrestricted access to inspect the site at any time;
- (iii) Any and all spills are promptly reported to the Aquarion Water Company, Department of Public Health and Department of Environmental Protection;
- (iv) Fueling and equipment maintenance is prohibited onsite except for the fueling of lawn maintenance equipment and the emergency fueling of cars and buses. In the event such fueling is required, the respondent agrees that drip pans and covers will be used in a manner consistent with this consent order and with the water management plan approved by the Department.
- (v) Storage of fuel and/or chemicals is prohibited on-site;

If the Respondent fails to verify in writing to the Department by August 4, 2005 that items 11(a)(i) through (v) have been implemented, the Respondent shall pay a penalty of \$500.00 per day for each day after August 4, 2005 that the Respondent remains out of compliance with items 11(a)(i) through (v).

Thereafter, if the respondent violates any provision of item 11(a), the Respondent shall pay a penalty of \$500.00 per day per violation for each day that the Respondent remains out of compliance with any provision in item 11.

- b. The respondent may continue to operate and retain the storm water drainage facility at the Morehouse Farm Park site within one-hundred feet of an established watercourse tributary to the Saugatuck Reservoir provided said operation and retention is done in accordance with the terms of this consent order and the water management plan approved by the Department.
- c. On or before October 31, 2006, the Respondent shall verify in writing to the Department that a draft drinking water quality management plan has been completed. For purposes of this consent order, a draft water quality management plan is a plan that maximizes efficient and effective management practices at the Morehouse Farm Park site to protect the Saugatuck Reservoir and promote the public health, safety and welfare. The draft drinking water quality management plan shall be drafted by a qualified consultant in consultation with a technical advisory group, including but not limited to, the Aquarion Water Company, any state or local agencies, and such entities that the Board of Selectmen believes provide positive input on environmental and community concerns or issues. The draft drinking water quality management plan shall include, but not be limited to: a list and description of any and all present and future on-site activities and processes at Morehouse Farm Park Site, an analysis and evaluation of the potential hazards any of these activities and/or processes may pose to drinking water supply of the Saugatuck Reservoir, and a description of all control measures, emergency plans and corrective actions needed to address each identified activity and/or process at the Morehouse Farm Park Site.

The draft drinking water quality management plan shall identify the roles and responsibilities of the individuals or groups that would assure implementation and compliance with the plan. The Department reserves the right to observe the process undertaken to prepare the plan. Activities and processes include, but are not limited to, the following:

1. Storm water design, measures, maintenance, control and treatment;
2. Chemical application, use, handling, and storage;
3. Fuel use, handling, and storage;
4. All other processes involved in field maintenance;
5. Impervious surface design and maintenance,
6. Ball field design;
7. Roles, responsibilities, and enforcement of plan and processes;
8. Periodic water quality testing, monitoring, and reporting program;
9. Potential future change of use of the parcel from its current recreational use;
10. Future adjustments to address water quality degradation;
11. Emergency spill control and containment,
12. Parking and vehicle restrictions;
13. Activities allowed including restrictions and controls;
14. Signage and visitor notification concerning site restrictions and sensitivity; and
15. Waste collection, control, and disposal.

If the Respondent fails to comply with this item by October 31, 2006, the Respondent shall pay a penalty of \$500.00 per day for each day after October 31, 2006 that the Respondent remains out of compliance with this requirement.

- d. On or before January 30, 2007, the Respondent shall solicit and consider comments on the draft drinking water quality management plan from any interested person, association, organization, municipal or regional planning agency within the Weston area and hold a public forum to allow comment on the draft plan. Legal Notice shall be given by the Respondent in a manner consistent with the Town of Weston's charter requirements for convening of the public forum. The Respondent shall submit to the Department a copy of the legal notice within 10 days of publication. The Respondent shall take such comments into consideration in finalizing the drinking water quality management plan.

If the Respondent fails to comply with any requirement of this provision, the Respondent shall pay a penalty of \$500.00 per day per violation for each day that the Respondent remains out of compliance with this item.

- e. On or before June 2, 2007, the Respondent shall submit to the Department for review and approval the final drinking water quality management plan. The respondent shall also submit along with the final drinking water quality management plan a summary of the public comments solicited and the Respondent's response to those comments.

If the Respondent fails to comply with this item by June 2, 2007, the Respondent shall pay a penalty of \$500.00 per day for each day after June 2, 2007 that the Respondent remains out of compliance with this item.

- f. On or before October 20, 2007 or within 90 days of the Department's written approval, whichever is later, the Respondent shall verify in writing to the Department that the drinking water quality management plan is being implemented as approved.

If the Respondent fails to submit such verification in writing to the Department by October 20, 2007 or within 90 days of the Department's written approval, whichever is later, that the drinking water quality management plan is being implemented, the Respondent shall pay a penalty of \$1,000.00 per day for each day that the Respondent remains out of compliance with this item.

Thereafter, if the Respondent violates any provision of the water quality management plan or fails to implement any provision of the approved water quality management plan, the Respondent shall pay a penalty of \$2,000.00 per day per violation for each day that the Respondent remains out of compliance with the water quality management plan or fails to implement any provision of the approved water quality management plan.

12. The Respondent shall budget and provide for all necessary funds to fulfill its obligations herein.
13. It shall be responsibility of the Respondent to ensure that the drinking water quality management plan is reviewed and updated at least (1) every ten years and upon written notification by the Department, or (2) sooner, if a significant component of the existing drinking water quality management plan is no longer valid. A revised plan or an amendment shall be prepared by the advisory group in the same manner as the drinking water quality management plan as set forth in paragraphs 11(c) through 11(f) and in accordance with a written schedule provided by the Department. The respondent shall give written notice to the Department that it intends to revise, update or amend the drinking water quality management plan at least 30 days prior to the convening the advisory group for such purposes. The revised plan or an amendment shall be submitted to the Department for review and approval.

If the Respondent fails to comply with this paragraph, the Respondent shall pay a penalty of \$500.00 per day for each day that the Respondent remains out of compliance with this item.

14. The Respondent shall submit to the Department all documents required by this Consent Order in a complete and approvable form. If the Department 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 the Respondent shall correct the deficiencies and resubmit it within the time specified by the Department in its notice of deficiencies. However, the Department may in its sole discretion elect not to provide Respondent any opportunity to cure such deficiencies and instead seek remedies for breach of this Consent Order. In approving any document or other action under this

Consent Order, the Department shall do so in a fair and timely manner, and may impose such conditions or modifications as it deems necessary to assure the purity and adequacy of the public water supply. Nothing in this paragraph shall excuse noncompliance or delay in meeting any compliance date specified in the Consent Order.

15. In the event that the Respondent becomes aware that it may not comply in a timely fashion with any requirement of the Consent Order or of any other compliance date imposed by the Department hereunder, the Respondent shall immediately notify the Department and shall take all steps necessary to ensure that any noncompliance is avoided. In so notifying the Department, the Respondent shall state in writing the reasons for noncompliance or delay and propose dates by which compliance will be achieved. The Department shall notify the Respondent in writing of any modification of compliance dates in response thereto, and the Respondent shall comply with any dates which may be specified in writing by the Department. Notification by the Respondent shall not excuse noncompliance or delay, and the Department's approval of any extended compliance date shall not excuse noncompliance or delay with respect to any subsequent compliance date specified in the Consent Order or otherwise imposed by the Department. The Department may in its sole discretion waive any penalty or excuse any such delay.
16. Except as provided in paragraphs 14 and 15, this Consent Order may be modified only with the consent of both parties in writing.
17. The Respondent shall not be considered in full compliance with this Consent Order until all actions required by the Consent Order or required by the Department under paragraphs 14 and 15 have been completed to the satisfaction of the Department.
18. All submittals required of the Respondent shall be sent to: Mr. Gary Johnson, Supervising Environmental Analyst, Connecticut Department of Public Health, Drinking Water Division, 410 Capitol Avenue, MS#51WAT, P.O. Box 340308, Hartford, CT 06134-0308.
19. In carrying out its obligation under this Consent Order, the Respondent shall abide by all requirements of law. Nothing in this Consent Order shall relieve the Respondent of its duty to comply with applicable federal, state and, to the extent local law does not conflict with the requirements of this Consent Order, local law.
20. The Respondent's obligations under this Consent Order shall not be affected by the passage of title to any property to any other person, corporation, municipality or other legal entity. The terms of this Consent Order shall be binding upon and enforceable against the Respondent's successors and assigns.
21. THIS CONSENT ORDER IS A FINAL ORDER OF THE DEPARTMENT WITH RESPECT TO THE MATTERS ADDRESSED HEREIN AND IS ENFORCEABLE PURSUANT TO Conn. Gen. Stat. § 25-36(b). The Department may at any time take any and all legal, administrative or equitable action necessary to assure the purity and adequacy of this public water system, except as agreed to in paragraph 5. The Department may take any other such action as provided by federal law or state law on all matters not covered specifically in the Consent Order. Failure to comply with any provision of this Consent Order may subject the Respondent to a court order pursuant to

Section 25-36(b) and/or fines pursuant to Section 25-37 of the Conn. Gen. Stat. to aid in the enforcement of the provisions of this Consent Order.

22. The Respondent has had the opportunity to consult with an attorney prior to signing this document.
23. In the event that this consent order or any provision of this consent order is invalidated by subsequent legislative act, the Department of Public Health may elect to rescind this consent order and act and pursue any remedy available under the circumstances that existed at the time the Department Orders DWD 04-157-183 and DWD 04-157-200 were issued that have not been abrogated by current law.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order to be executed by their officers and officials authorized and empowered to act on their behalf. The undersigned representative of the Respondent certifies that the First Selectman is fully authorized to enter into this Consent Order and to legally bind the Respondent to the terms and conditions of the Consent Order. A resolution granting such authorization is attached hereto as Exhibit A.

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Gerald R. Iwan, Ph.D.,  
Section Chief  
Drinking Water Section  
Department of Public Health

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Woody Bliss, First Selectman  
Town of Weston

FINAL ORDER OF THE AGENCY

\_\_\_\_\_  
NAME, Hearing Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: J. Robert Galvin, M.D., M.P.H.,  
Commissioner  
Department of Public Health

\_\_\_\_\_  
Date

ORDER NO. DWD-04-157-274  
GRI/gj

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