

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
REGULATORY SERVICES BRANCH

In re: Gary Merlone

Petition No. 2008-1126-035-002

CONSENT ORDER

WHEREAS, Gary Merlone of Shelton, CT (hereinafter "respondent") has been issued license number 00416 to practice as a registered sanitarian by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 395 of the General Statutes of Connecticut, as amended; and,

WHEREAS, the Department alleges that:

1. Respondent failed to assure the accuracy of the findings of soil tests and deep observation pits, as required by Section 19-13-B103e(d)(4)(A) of the Regulations of Connecticut State Agencies (hereinafter "the Regulations"), in that soil test results recorded by respondent in or about February 1999 for a residential property located at 30 Sara Nor Drive, Shelton, CT (hereinafter "the property") indicate that the property has wetland soils and/or miscellaneous fill material placed overtop wetland soils. Such soil conditions do not allow for the adequate absorption and distribution of effluent from a subsurface sewage disposal system; and
2. In or about April 1999, respondent issued a permit and/or approval to construct a new subsurface sewage disposal system at the property, in violation of Section 19-13-B103e(a)(4) of the Regulations, in that it was not demonstrated that the surrounding naturally occurring soils could adequately absorb or disperse the expected volume of sewage effluent without overflow, breakout or detrimental effect on ground or surface water. The system that was subsequently installed on the property experienced premature failure, beginning in or about April 2000; and
3. The above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-363(2), taken in conjunction with, without limitation, Sections 19-13-B103e, 19-13-B103e(a)(4) and 19-13-B103e(d)(4)(A) of the Regulations; and

WHEREAS, respondent has successfully completed to the satisfaction of the Department, the Soils Training Workshop, a course offered by the Department's Environmental Engineering Program; and

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest this matter and agrees that for purposes of this or any future proceedings before the Department, this Consent Order shall have the same

effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14 and 20-363 of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17 and 20-363 of the General Statutes of Connecticut, respondent hereby stipulates and agrees to the following:

1. Respondent waives his right to a hearing on the merits of this matter.
2. Respondent's registered sanitarian license number 00416 shall be placed on probation until he satisfies the following terms and conditions:
 - a. Within one year from the execution of this agreement, respondent shall attend and successfully complete the Phase II Certification Course given by the Department pursuant to §19-13-B103e(b)(2)(B) of the Regulations and respondent shall attain a grade of at least 75 on the exam administered as a part of said course.
 - b. Within one month of the completion of such coursework, respondent shall provide the Department with proof, to the Department's satisfaction, of the successful completion of such course and exam.
 - c. In the event that respondent fails to successfully complete the course work and attain a grade of at least 75 on the exam, as required by paragraph 2a above, then respondent shall immediately relinquish his Phase II certification to the Department. Upon relinquishment of respondent's Phase II certification, respondent shall not be authorized to investigate, inspect and/or approve plans for subsurface sewage disposal systems designed by a professional engineer. In addition, respondent's registered sanitarian license shall remain on probation until such time as he satisfies the conditions contained in paragraphs 2(a) and 2(b). Thereafter, respondent may resume his Phase II certification duties **only if** he satisfies the conditions contained in paragraphs 2(a) and 2(b) and **only if** he obtains written approval from the Department.
3. All correspondence and reports are to be addressed to:

Yolanda Cooley, Environmental Analyst
Department of Public Health
410 Capitol Avenue, MS #51EHS
P.O. Box 340308
Hartford, CT 06134-0308

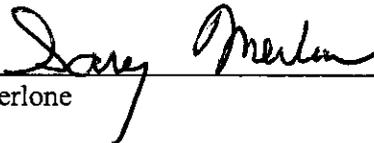
4. Respondent shall comply with all state and federal statutes and regulations applicable to his licensure.
5. Respondent shall pay all costs necessary to comply with this Consent Order.
6. Any alleged violation of any provision of this Consent Order may result in the following procedures at the discretion of the Department:

- a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.
 - b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.
 - c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 6a above to demonstrate to the satisfaction of the Department that he has complied with the terms of this Consent Order or, in the alternative, that he has cured the violation in question.
 - d. If respondent does not demonstrate compliance or cure the violation within the fifteen (15) days specified in the notification of violation to the satisfaction of the Department, he shall be entitled to a hearing before the Department which shall make a final determination of the disciplinary action to be taken.
 - e. Evidence presented to the Department by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.
7. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of his license before the Department.
 8. Legal notice shall be sufficient if sent to respondent's last known address of record reported to the Practitioner Licensing and Investigations Section of the Healthcare Systems Branch of the Department.
 9. This Consent Order is effective on the date this Consent Order is accepted by the Department.
 10. Respondent agrees that this Consent Order shall be deemed a public document, and the Department's allegations as contained in this Consent Order shall be deemed true in any subsequent proceeding before the Department in which his compliance with this Consent Order or with Chapter 395 of the General Statutes of Connecticut, as amended, is at issue.
 11. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that he may have under the laws of the State of Connecticut or of the United States.
 12. This Consent Order is a revocable offer of settlement, which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.
 13. Respondent permits a representative of the Legal Office of the Healthcare Systems Branch to present this Consent Order and the factual basis for this Consent Order to the Department. Respondent understands that the Department has complete and final discretion as to whether this executed Consent Order is approved or accepted.
 14. Respondent has the right to consult with an attorney prior to signing this document.

15. The execution of this document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau. The purpose of this Consent Order is to resolve the pending administrative license disciplinary petition only, and is not intended to affect any civil or criminal liability or defense.
- 16 This Consent Order embodies the entire agreement of the parties with respect to this case. All previous communications or agreements regarding the subject matter of this consent order, whether oral or written, between the parties are superseded unless expressly incorporated herein or made a part hereof.

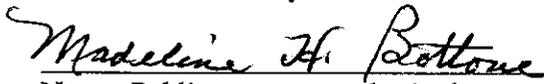
*
*

I, Gary Merlone, have read the above Consent Order, and I stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.



Gary Merlone

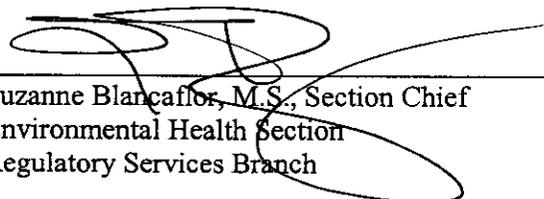
Subscribed and sworn to before me this 3rd day of September 2009.



Notary Public or person authorized
by law to administer an oath or affirmation

Madeline H. Bottone
NOTARY PUBLIC
My Commission Expires 2/28/2013

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 15th day of September 2009, it is hereby accepted.



Suzanne Blancafflor, M.S., Section Chief
Environmental Health Section
Regulatory Services Branch