

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **UNDERGROUND STORAGE
TANK ENFORCEMENT**

MILLANE NURERIES, INC. : **FEBRUARY 4, 2009**

FINAL DECISION

JURISDICTION

Subdivision (2) of §22a-449(g) provides:

“Not later than two business days after placing a notice or disabling device on a nonresidential underground storage tank system pursuant to subdivision (1) of this subsection, the commissioner shall provide the owner or operator of the affected underground storage tank system with an opportunity for a hearing. Any such hearing shall be limited to whether the violation upon which the commissioner took action under subdivision (1) of this subsection occurred and whether such violation is continuing.”

FINDINGS OF FACT

1. This hearing was held on February 4, 2009 in the DEP Welch Room, 79 Elm Street in Hartford. The following persons were present Andrew Lord, Esq., Michael Millane and Connie Millane for Millane Nurseries (facility); and Lori Saliby and Omar Tyson (staff) for the DEP Storage Tank Enforcement Unit.
2. The Department disabled (“red tagged”) three underground fuel storage tanks and associated dispenser at the facility on February 2, 2009. The red-tagged tanks include a 4000-gallon gasoline tank, a 2,000-gallon gasoline tank, and a 2,000-gallon diesel fuel tank. DEP staff served a “Notice of Disabled UST Systems” on Michael Millane, and he accepted service on behalf of the facility. General

Statutes §22a-449(g). This Notice, which included the date, time and place of the hearing, was placed into evidence, (Test. DEP staff.)¹

3. The DEP conducted an unannounced compliance inspection on February 2, 2009. The tanks were found to lack an automatic tank gauging (ATG) system to monitor for leakage or other problems and the facility's inventory reconciliation efforts did not comply with regulations. Counsel for the respondent indicated that the respondent does not contest that these violations occurred and are continuing and that it is out of compliance with relevant regulations. Regs., Conn. State Agencies §§22a-449(d)-1; 22a-449(d)-101 through 22a-449(d)-113. (Test. DEP staff; Notice of Disabled UST Systems)
4. The product remaining in the tanks will be pumped out of the tanks in consultation with DEP staff. The facility intends to come into compliance and will remain in contact with Mr. Tyson as it implements an agreed upon compliance plan. (Test. DEP staff.)

CONCLUSION

There was probable cause to support and sustain this enforcement action taken by the DEP with regard to the three disabled tanks and associated dispensers owned and operated by Millane Nurseries, Inc.

/s/ Kenneth M. Collette
Kenneth M. Collette, Hearing Officer

¹ All references to testimony are from the hearing held on February 4, 2008 at DEP Headquarters in Hartford. The recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

APPENDIX A
PARTY LIST

FINAL DECISION
In the Matter of Millane Nurseries, Inc.

PARTY

Millane Nurseries, Inc.
604 Main Street
Cromwell, CT

REPRESENTED BY

Andrew Lord, Esq.
Murtha Cullina, LLP
City Place I, 185 Asylum Street
Hartford, CT 06103

Department of Environmental Protection

UST Enforcement
79 Elm Street
Hartford, CT 06106

Lori Saliby
Omar Tyson