

Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

OCT 21 2013
DEP OFFICE OF

STATE OF CONNECTICUT File# LIS-2001-085-V Date of Issuance: October 28, 2013

v.

JONATHAN WOOTEN

AND

BARBARA WOOTEN

CONSENT ORDER

A. With the agreement of Jonathan & Barbara Wooten ("the Respondents"), the Commissioner of the Department of Energy & Environmental Protection ("the Commissioner") finds:

1. Respondents are the owners of the property located at 210 Sasco Hill Road in Fairfield, Connecticut ("the property"). The property is located adjacent to the Mill River, a tidal, coastal and navigable water of the State and containing tidal wetlands as defined by section 22a-29 of the Connecticut General Statutes ("CGS").
2. On or before May of 2002, the Respondents excavated approximately 89 cubic yards of relocated stone from an area waterward of the high tide line along the shoreline of the property north of an existing authorized pier to the approximate southern property line over an approximately 198 square foot area to construct an approximately 2' wide by 115' long by 13' high stacked stone seawall located landward of the high tide line.
3. The property and the location of the work described in paragraph A.1., above, shall hereinafter be referred to as "the site."

4. The Respondents have not received a certificate or permit from the Commissioner under section 22a-361 of the CGS for the work described in paragraph A.2., above.
5. By virtue of the above, the Respondents have violated section 22a-361 of the CGS.
6. The Respondents have not received a lawful coastal site plan approval from the Town of Fairfield for the construction of the seawall described in paragraph A.2., above, pursuant to sections 22a-105, 22a-106, and 22a-109 of the CGS.
7. This construction of the seawall has resulted in the creation of a public nuisance pursuant to section 22a-108 of the CGS.

B. With the agreement of the Respondents, the Commissioner, acting under sections 22a-6 and 22a-361 of the CGS, orders the Respondents as follows:

1. Submission of Application: Within 30 calendar days of issuance of this Consent Order, the Respondents shall submit to the Town of Fairfield an application for a Coastal Site Plan Review pursuant to section 22a-109(d) of the CGS to authorize the retention of existing seawall located landward of the high tide line as described in paragraph A.2., above, and shall use best efforts to obtain such authorization.
2. No Additional Work. The Respondents shall not conduct any work waterward of the CJL or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with sections 22a-361 and 22a-32 of the CGS.
3. Full compliance. The Respondents shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the satisfaction of the Commissioner.
4. Supplemental Environmental Project.
 - a. The Respondents have agreed to fund a supplemental environmental project ("SEP") or projects as selected by the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects." Therefore, on or before thirty (30) days after the date of issuance of this Consent Order, the Respondents shall pay \$10,000 to the Long Island Sound or Statewide SEP Account. The payment shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut," with notation thereon "Long Island Sound SEP Account" and "Consent Order No. LIS-2001-085-V."

- b. If the Respondent fails to fund the SEP in accordance with paragraph 4.a. above, the Respondents shall immediately pay a civil penalty of \$11,500. The Respondents shall pay such civil penalty in accordance with the provisions of paragraph B.5 of this Consent Order.
 - c. The Respondent shall not claim or represent that any SEP payment made pursuant to this Consent Order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and the Respondents shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
 - d. If and when the Respondents disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondents shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
5. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the "Connecticut Department of Energy & Environmental Protection," Financial Management Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to the Connecticut Department of Energy & Environmental Protection. The check shall state on its face, "Office of Long Island Sound Programs, Consent Order No. LIS-2001-085-V."
6. Approvals. If the Commissioner notifies the Respondents that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and the Respondents 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 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.
7. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of the Department of Energy & Environmental Protection or an agent of the Commissioner. The date of "issuance" of this Consent Order is the date the Order is deposited in the mail or personally delivered, whichever is earlier.
8. Dates. 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 personally delivered or the date three days after it is mailed by the

Commissioner, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Order means calendar day. Any document or action which is required by this Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal legal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or Connecticut or federal holiday.

9. Notification of noncompliance. In the event that the Respondents 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, the Respondents shall immediately notify the Commissioner 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. In so notifying the Commissioner, the Respondents shall state in writing 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 Respondents shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Respondents shall not excuse noncompliance or delay. The Commissioner's approval of any revised compliance dates shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
10. 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 a duly authorized representative of the Respondents and by the individual or individuals responsible for actually preparing such document, each of whom 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 that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, 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 in accordance with Section 22a-6 of the CGS, under Section 53a-157b of the CGS, and in accordance with any other applicable statute."
11. 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 the Respondents to an injunction and penalties under Chapters 439, and 446i of the CGS.
12. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with section 22a-6, under section 53a-157b of the CGS.

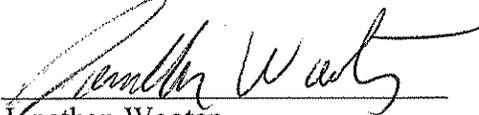
13. Notice of transfer; liability of the Respondents and others. Until the Respondents have fully complied with this Consent Order, the Respondents shall notify the Commissioner in writing no later than fifteen days after transferring all or any portion of the site, structures, obstructions, encroachments, fill, operations or facilities which are the subject of this Consent Order, or obtaining a new mailing or location address. The Respondents' obligations under this Consent Order shall not be affected by the passage of title to the site to any other person or municipality. A future owner of the site may also be subject to the issuance of an Order from the Commissioner.
14. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any action to prevent or abate violations of law, prevent or abate pollution, recover costs and damages for adverse impacts to natural resources and to impose penalties for violations of law, including but not limited to violations of any permit issued by the Commissioner. If at any time the Commissioner determines that the actions taken by the Respondents pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require the Respondents to undertake further investigation or further action to correct violations.
15. Respondents' obligations under law. Nothing in this Consent Order shall relieve the Respondents of other obligations under applicable federal, state and local law.
16. No assurance by Commissioner. No provision of this Consent Order or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the corrective actions taken by the Respondents pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
17. Access to site. Any representative of the Department of Energy & Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
18. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.
19. Notice to Commissioner of changes. Within fifteen days of the date the Respondents 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, the Respondents shall submit the correct or omitted information to the Commissioner.
20. Joint and Several Liability. Respondents shall be jointly and severally liable for all obligations under this Consent Order.

21. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

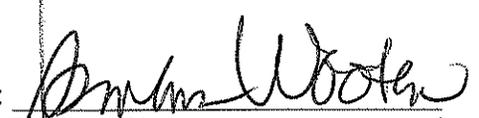
Kevin Zawoy
Department of Energy & Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3626
Fax # (860) 424-4054

The undersigned certifies that he is fully authorized to enter into this Consent Order and to legally bind the Respondents to the terms and conditions thereof.

Respondents consent to the issuance of this Consent Order without further notice.

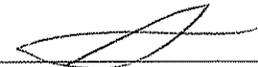
BY: 
Jonathan Wooten
October 15, 2013
Date

AND

BY: 
Barbara Wooten
October 15, 2013
Date

Issued as a final order of the Commissioner of Energy & Environmental Protection on

10/25, 2013.


Macky McCleary
Deputy Commissioner