

Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

STATE OF CONNECTICUT File# LIS-2011-3381-V Date of Issuance: March 29, 2012

v.

CARL J. FAPPIANO

AND

VALERIE A. FAPPIANO

CONSENT ORDER

A. With the agreement of Carl J. and Valerie A. Fappiano (" the Respondents"), the Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. The Respondents are the owners of property located at #4 (a.k.a #10) Morgan Terrace in East Haven, Connecticut ("the property"). The property is located adjacent to the Long Island Sound, a tidal, coastal and navigable water of the State.
2. On or before December 1, 2011, the Respondents utilized heavy equipment to reconstruct portions of an existing stone and concrete groin and capped and repaired an existing stone and concrete patio waterward of the high tide line at the property.
3. The property and the location of the work described in paragraph A.2. above, shall hereinafter be referred to as "the site."
4. The Respondents have not applied for nor received any certificate or permit from the Commissioner under section 22a-361 of the Connecticut General Statutes (General Statutes) for the activities described in paragraphs A.2 of this consent order.
5. By virtue of the above, the Respondents have violated section 22a-361 of the General Statutes.

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

1. Retention of Structures. The Respondents may retain the reconstructed groin and patio described in paragraph A.2, above, pending a final determination on Certificate of Permission (COP) application #201200316-KR submitted on January 27, 2012.
2. COP Application. In the event that the Commissioner's final determination on COP application #201200316-KR, requires modification or removal of the existing groin or patio waterward of the high tide line, the Respondents shall, not later than 30 days following issuance of a final determination, submit a timetable to the Commissioner for his review and written approval for conforming the existing structure to the terms and conditions of said decision. Upon written approval, the Respondents shall conform such existing structures in accordance with the COP decision and the approved timetable.
3. Work Waterward of High Tide Line. The Respondents shall not conduct any work waterward of the high tide line at the site unless it is in accordance with General Statutes sections 22a-361 and/or 22a-32.
4. 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.
5. Supplemental Environmental Project. The Respondents shall make every reasonable effort to complete the SEP described in paragraph B.5.a and detailed in Attachment A. within sixty (60) calendar days of issuance of this Consent Order for the violations of General Statutes section 22a-361 described in paragraph A.2., above. Respondents shall obtain all necessary local, state and federal permits and approvals necessary for the construction of the SEP.
 - a. The proposed SEP includes the installation of a public access ladder on the northern side of the existing stone and concrete capped pier just waterward of mean high water. The public access ladder shall be installed and maintain in perpetuity, and be composed of a fabricated stainless steel ships ladder bolted to the stone and concrete capped pier and exposed bed rock. Respondents shall make every effort to modify existing stones waterward of mean high water to provide safe foot passage from the ladder. In addition, Respondents shall post public access signage atop the stone and concrete capped pier identifying the ladder's usage. See Attachment A.
 - b. The total estimated cost for the SEP, as determined by the Commissioner, is one thousand eight hundred and ninety dollars, (\$1,890.00).

- c. On or before 30 days after completion of the SEP, the Respondents shall submit for the Commissioner's review a final report that certifies completion of the SEP. Such final report shall include photographs showing the installed public access stairway and public access signage. Included with the report shall include a complete final accounting of actual project costs incurred including receipts, and any other reasonable information requested by the Commissioner for the purpose of evaluating completion of the SEP.
- d. Should the Commissioner determine that the actual cost to the Respondents of the completed SEP is less than one thousand eight hundred and ninety dollars (\$1,890.00), the Respondents shall pay the difference between such actual cost and the estimated cost, one thousand eight hundred and ninety dollars (\$1,890.00), to the Commissioner as unexpended SEP funds. The Commissioner shall determine the amount of any such unexpended SEP funds owed and shall notify the Respondents in writing that such amount is due. The Respondents shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state on its face "Statewide SEP Account, Consent Order No. LIS-2011-3381-V." The Respondents shall mail or personally deliver such payment to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.
- e. If the Respondents fail to complete the SEP, the Respondents shall immediately notify the Commissioner in writing and shall, within fourteen (14) days of a written request by the Commissioner, remit a payment of one thousand eight hundred and ninety dollars (\$1,890.00). The Respondents shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.5.d. of this Consent Order.
- f. If and when the Respondents disseminate any publicity, including, but not limited to, any press releases regarding the SEP, the Respondents shall include a statement that such funding is in settlement of an enforcement action brought by the Commissioner.

- g. The Respondents 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.
6. Approvals. The Respondents shall use best efforts to submit to the Commissioner all documents required by this consent order in a complete and approvable form. 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 Energy & Environmental Protection or an agent of the Commissioner. The date of "issuance" of this Consent Order is the date the Consent 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 consent order means calendar day. Any document or action which is required by this consent 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 become aware that they 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 the 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 Connecticut General Statutes, under Section 53a-157b of the Connecticut General Statutes, and in accordance with any other applicable statute."
11. Noncompliance. Failure to comply with this consent order may subject the Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
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 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 be subject to the issuance of a Consent 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. The 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 Consent Order will result in compliance with regard to any statute, regulation, permit, consent 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. 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

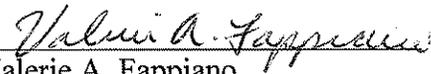
21. Joint and Several Liability. The Respondents shall be jointly and severally liable for compliance with this Consent Order.

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.

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

BY: 
Carl J. Fappiano
3/19/12
Date

AND

BY: 
Valerie A. Fappiano
3/19/2012
Date

Issued as a final order of the Commissioner of Energy & Environmental Protection on
3/27, 2012.


Macky McCleary
Deputy Commissioner

ATTACHMENT "A"

Concrete Creations LLC
281 Chapel Street
New Haven, CT 06511
Phone: (203) 481-0161
Fax: (203) 481-0161

Quote

Carl Frapano Morgan Point

Re: Estimate for ship ladder

To fabricate stainless steel ship ladder approximately 8 feet high. To be installed on slight incline from concrete jetty to exposed solid bed rock. To be installed with stainless steel anchor bolts drilled in concrete and bed rock.

Stainless Steel material for ladder fabrication	\$600.00
Labor for ladder fabrication	\$560.00
Miscellaneous materials-Stainless steel anchors	\$50.00
Labor to install ship ladder	<u>\$680.00</u>
Total Labor, Materials, and Equipment	\$1,890.00