



STATE OF CONNECTICUT

File# LIS-2012-3426-V

Date of Issuance: November 13, 2012

v.

Colin Abernethy

CONSENT ORDER

A. With the agreement of Colin Abernethy ("Respondent"), the Commissioner of Energy and Environmental Protection ("Commissioner") finds:

1. The Respondent is the owner of the property located at 23 Glen Avon Drive in Greenwich, Connecticut ("the property"). The property is located within tidal wetlands adjacent to Cos Cob Harbor a tidal, coastal and navigable water of the State.
2. On or about April 25, 2012, the Respondent rebuilt the following structures at and adjacent to the property waterward of the high tide line and within tidal wetlands in tidal, coastal and navigable waters of the State:
 - a. a 5' x 18.5' timber pier, a 16' x 21.5' pierhead with four support piles and a ladder, a 2.5' x 25' aluminum ramp, and a 12' x 16' float anchored by two float restraint piles.
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 Respondent has not received a certificate or permit from the Commissioner under sections 22a-361 and 22a-32 of the Connecticut General Statutes (CGS) for the erection and maintenance of the structures described in paragraph A.2. at the site.
5. By virtue of the above, Respondent has violated CGS sections 22a-361 and 22a-32.

B. With the agreement of the Respondent, the Commissioner, acting under CGS sections 22a-6, 22a-361 and 22a-32, orders the Respondent as follows:

1. Retention of Structures. The Respondent may retain the structures described in paragraph A.2., above, pending a final determination on a Certificate of Permission ("COP") application submitted pursuant to paragraph B.2.a., below.
2. Certificate of Permission Application.
 - a. Not later than November 16, 2012, the Respondent shall submit all information necessary to sufficiently complete COP application #201205708-TS, to authorize the structures retained pursuant to paragraph B.1., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification of the dock.
 - b. In the event that the Commissioner's final determination on the COP application submitted pursuant to paragraph B.2.a., above, requires modification or removal of existing structures waterward of the high tide line, the Respondent 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 structures to the terms and conditions of said decision. Upon written approval, the Respondent shall conform such existing structures in accordance with the permit decision and the approved timetable.

3. No Additional Work. The Respondent shall not conduct any work waterward of the high tide line or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with CGS section 22a-361 and CGS sections 22a-32, except for routine maintenance as defined in CGS section 22a-363a.
4. Full compliance. The Respondent 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. Penalty for past violations. On or before November 16, 2012, the Respondent shall pay a civil penalty of \$800 for the violations of CGS sections 22a-361 and 22a-32 described in paragraph A.2 above.
6. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the Department of Energy & Environmental Protection, Accounts Receivable 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-2012-3426-V."
7. Approvals. The Respondent 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 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 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.
8. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of Energy and 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.
9. 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.

10. Notification of noncompliance. In the event that the Respondent becomes aware that he 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 Respondent 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 Respondent 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 Respondent shall comply with any dates that may be approved in writing by the Commissioner. Notification by the Respondent 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.
11. 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 Respondent 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 CGS Section 22a-6, under CGS Section 53a-157b and in accordance with any other applicable statute."
12. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this Consent Order may subject the Respondent to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
13. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with CGS section 22a-6, under CGS section 53a-157b.
14. Notice of transfer; liability of the Respondent and others. Until the Respondent has fully complied with this Consent Order, the Respondent 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 Respondent's 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 an Order from the Commissioner.

15. 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 Respondent pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require the Respondent to undertake further investigation or further action to correct violations.
16. Respondent's obligations under law. Nothing in this Consent Order shall relieve the Respondent of other obligations under applicable federal, state and local law.
17. 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 Respondent pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
18. Access to site. Any representative of the Department of Energy and 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.
19. 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.
20. Notice to Commissioner of changes. Within fifteen days of the date the Respondent 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 Respondent shall submit the correct or omitted information to the Commissioner.
22. 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:

Tonia L. Selmeski
Department of Energy & Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3034
Fax # (860) 424-4054

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

The Respondent consents to the issuance of this Consent Order without further notice.

BY: Colin Abernethy
Colin Abernethy
10/23/12
Date

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

11/9, 2012.

Macky McCleary
Macky McCleary
Deputy Commissioner