

Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

STATE OF CONNECTICUT

File# LIS-2012-3435-V

Date of Issuance: June 25, 2012

v.

DAVID I. SCHEER

AND

TRACY Z. SCHEER

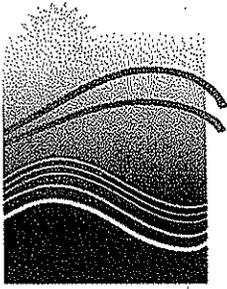
AND

FISCHER EXCAVATING, INC.

CONSENT ORDER

A. With the agreement of the David I. Scheer & Tracy Z. Scheer, and Fischer Excavating, Inc. ("the Respondents"), the Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. The property located at 2 Spring Rock Road, Branford, Connecticut ("the property") is owned by David I. Scheer & Tracy Z. Scheer. The property is located adjacent to Long Island Sound, a tidal, coastal and navigable water of the State.
2. Fischer Excavating, Inc. was hired by David I. Scheer & Tracy Z. Scheer to complete repairs to an existing 90 linear foot long granite block seawall located along the shoreline of the site within an area waterward of the high tide line. The repairs were to be completed in accordance with Certificate of Permission (COP) #201201492-SJ issued on April 26, 2012.
3. On or before May 25 2012, the Respondents have constructed an approximately 30' wide x 45' long temporary stone block staging area located waterward of the high tide line as shown on Attachment "A," out of compliance with Certificate of Permission (COP) #201201492-SJ.
4. The property and the location of the work described in paragraph A.1., above, shall hereinafter be referred to as "the site."



Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

RECEIVED

JUN 13 2012

DEP OFFICE OF
LONG ISLAND SOUND PROGRAMS

Bureau of Water Protection and Land Reuse

June 12, 2012

David I. Scheer & Tracy Z. Scheer
2 Spring Street
Branford, CT 06405

AND

Fischer Excavating, Inc.
89 Leetes Island Road
Branford, CT 06405

**Re: Consent Order No. LIS-2012-3435-V, 2 Spring Rock Road
Town: Branford**

Dear Mr. & Mrs. Scheer & Nicolas Fischer:

Please find enclosed an administrative Consent Order that addresses violations of law arising at property located at 2 Spring Rock Road, in Branford, Connecticut. The Consent Order requires the payment of a civil penalty of \$2,500 and the submission of a Certificate of Permission (COP) application not later than 30 days after issuance of this Consent Order for the authorization of temporary stone block staging area.

Please sign the enclosed original Consent Order and return it to the Department by June 25, 2012. Please do not submit payment of the civil penalty at this time. You will be provided a certified copy of the Consent Order, once it has been issued. If you have any further questions, please contact me at (860) 424-3626. Thank you.

Sincerely,

Kevin Zawoy, Environmental Analyst
Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse

KZ/

Enclosure – Consent Order #LIS-2012-3435-V

5. The Respondents have not received a certificate or permit from the Commissioner under section 22a-361 of the General Statutes for the work described in paragraph A.3. above.
6. 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 temporary staging area: Respondents may retain the temporary stone block staging area described in paragraph A.3, above, pending a final determination on the Certificate of Permission (COP) application submitted pursuant to paragraph B.2.a., below, provided the Respondents can adequately justify the need for such structure. The Respondents shall remove the temporary staging area in accordance with any time frames specified in any issued COP.
2. COP Application.
 - a. No later than thirty (30) days after issuance of this Consent Order, Respondents shall submit a COP application to request authorization of the temporary stone block staging area described in paragraph A.3., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification for the purpose and need for the staging area and its consistency with all applicable state statutes and policies.
 - 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 the existing structures waterward of the high tide line, Respondents shall, not later than 7 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, Respondents shall conform such existing structures in accordance with the COP decision and the approved timetable.
3. No Additional Work. The Respondents 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 sections 22a-361 and 22a-32 of the General Statutes.

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. Penalty for past violations. On or before 30 days after issuance of this Consent Order, the Respondents shall pay a civil penalty of \$2,500.00 for the violation of section 22a-361 of the General Statutes described in paragraph A.3 above.
6. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to Mr. Dennis Thibodeau, Department of 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 Environmental Protection. The check shall state on its face, "Office of Long Island Sound Programs, Consent Order No. LIS-2012-3435-V."
7. 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.
8. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of 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 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 Respondent 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.

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 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."

12. 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 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 section 22a-6, under section 53a-157b of the CGS.

14. 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 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 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.
16. Respondents' obligations under law. Nothing in this Consent Order shall relieve the Respondents 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 Respondents 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 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 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.
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

22. 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.

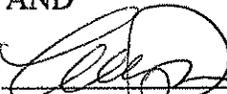
The Respondents consent to the issuance of this Consent Order without further notice.

BY: 

David I. Scheer
6/12/12

Date

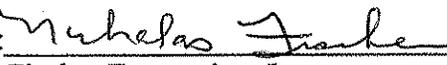
AND

BY: 

Tracy Z. Scheer
6/12/12

Date

AND

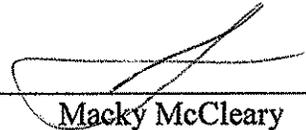
BY:  *pres*

Fischer Excavating, Inc.
Nicolas Fischer, President
6/12/12

Date

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

6/22/, 2012.



Macky McCleary
Deputy Commissioner