



STATE OF CONNECTICUT      File # LIS-2013-3523-V      Date of Issuance: March 25, 2014

v.

RONY SCHLAPFER

AND

LINDA SCHLAPFER

CONSENT ORDER

A. The Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. Rony and Linda Schlapfer ("Respondents") are the owners of the property located at 18 Rocky Point Road in Greenwich, Connecticut ("the property"). The property is located adjacent to Long Island Sound, a tidal, coastal and navigable water of the State. Prior to April 25, 2013, the property included wetlands as defined by section 22a-29 of the Connecticut General Statutes ("CGS").
2. On or before April 25, 2013, without authorization, Respondents replaced a historic stone stacked seawall adjacent to the property with a 6.5' wide x 87' long concrete block seawall with an elevation of 6.7' NAVD 88. The replacement seawall is depicted on the Pre-Storm Site Plan & Existing Site Plan, dated August 7, 2013 and prepared by Ocean & Coastal Consultants, Inc., a copy of which is attached hereto as "Attachment A." This work was undertaken adjacent to the property waterward of the coastal jurisdiction line in tidal, coastal and navigable waters of the State, and consisted of the following work:
  - a. relocation of existing stacked stones waterward within areas of Long Island Sound and landward within areas of tidal wetlands;

- b. in-water excavation to set the concrete blocks without the use of any sedimentation or erosion control measures; and
    - c. removal of an approximately 1,811 square foot area of tidal wetlands located on the landward side of the recently constructed stone block seawall.
  3. The property and the location of the work described in paragraph A.2., above, shall hereinafter be referred to as "the site".
  4. Respondents have not received a certificate or permit from the Commissioner under sections 22a-361 and 22a-32 of the CGS for the replacement of the seawall structure and removal of the tidal wetlands described in paragraph A.2. at the site.
  5. On October 28, 2013, the Respondents submitted permit application #201305216-KZ to authorize the removal of the existing stone stacked seawall in favor of the installation of a new cast in-place concrete gravity seawall.
- B. With the agreement of the Respondents, the Commissioner, acting under CGS sections 22a-6, and 22a-32 and CGS section 22a-361, orders Respondents as follows:
1. Retention of Structures. Respondents may retain the structures described in paragraph A.2., above, pending a final determination, including a final determination on any appeal, of the permit application identified in paragraph B.2., below.
  2. Permit Application Decision. In the event that the Commissioner's final decision on permit application #201305216-KZ requires modification or removal of the concrete block seawall, the Respondents shall, not later than 30 days following issuance of a final decision, submit a timetable to the Commissioner for his review and written approval for the modification or removal of the existing structure(s) in accordance with the terms and conditions of such final decision. Upon the Commissioner's written approval, the Respondents shall modify or remove such existing structure(s) in accordance with the approved timetable and final decision.
  3. No Additional Work. Respondents shall not conduct any work waterward of the coastal jurisdiction line or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with CGS sections 22a-361 and 22a-32.
  4. Full compliance. 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 Eight Thousand Two Hundred Forty Three Dollars and Fifty Cents (\$8,243.50) 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 "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-2013-3523-V."
7. Supplemental Environmental Project. In addition to the civil penalty referenced in paragraph B.5, Respondents shall fund the following supplemental environmental project ("SEP") or make payment as follows:
  - a. On or before fourteen (14) days after the date of issuance of this Consent Order, Respondents shall pay Eight Thousand Seven Hundred Fifty-Six Dollars and Fifty Cents (\$8,756.50) to the Town of Greenwich Conservation Commission and shall certify in writing to the Commissioner that such payment was made. The SEP funds shall be used by the Town of Greenwich Conservation Commission to perform an SEP to conduct a minimum of 3,622 square feet of tidal wetlands restoration within the Town of Greenwich in accordance with the Memorandum of Understanding between the Department of Energy & Environmental Protection and The Town of Greenwich Conservation Commission, a copy of which is "Attachment B" to this Consent Order.
  - b. If Respondents fail to fund the SEP in accordance with paragraph B.7.a., Respondents shall immediately notify the Commissioner in writing of such failure and shall, upon written request by the Commissioner, remit a payment for the SEP funds equal to Eight Thousand Seven Hundred Fifty-Six Dollars and Fifty Cents (\$8,756.500 plus Twenty-Five Hundred Dollars (\$2,500). Within fourteen (14) days after the date of the Commissioner's written request, Respondents shall pay this amount by certified or bank check payable to the "Connecticut Department of Energy and Environmental Protection" and the check shall state on its face "Statewide SEP Account, Consent Order No. LIS-2013-3523-V." 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.
  - c. If and when Respondents disseminate any publicity, including but not limited to any press releases regarding funding a SEP, Respondents shall include a statement that

- such funding is in partial settlement of an enforcement action brought by the Commissioner.
- d. 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 Respondents shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
  - e. In the event that any SEP funds paid by the Respondents are not fully expended in accordance with the Memorandum of Understanding, the Department may use the unexpended SEP funds for additional SEP(s) consistent with its "Policy On Supplemental Environmental Projects."
8. Approvals. 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 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.
  9. 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 Order is deposited in the mail or personally delivered to the Respondent, whichever is earlier.
  10. 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.
  11. 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.

12. Notification of noncompliance. In the event that 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, 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, 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 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.
13. 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 CGS Section 22a-6, under CGS Section 53a-157b and in accordance with any other applicable statute."
14. 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 Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
15. 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.
16. Notice of transfer; liability of Respondents and others. Until Respondents have fully complied with this Consent Order, 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. 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.

17. 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 Respondents pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require Respondents to undertake further investigation or further action to correct violations.
18. Respondents' obligations under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.
19. 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 Respondents pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
20. 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.
21. 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.
22. Notice to Commissioner of changes. Within fifteen days of the date Respondents become 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, Respondents shall submit the correct or omitted information to the Commissioner.
23. Joint and Several Liability. Respondents shall be jointly and severally liable for all obligations under this Order.
24. 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) 424-3034  
Fax # (860) 424-4054

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



Rony Schlapfer

3-12-14

Date

And



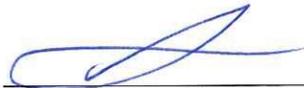
Linda Schlapfer

3-12-14

Date

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

3/24, 2014.



Macky McCleary  
Deputy Commissioner





**Attachment "B"**

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL  
PROTECTION  
AND  
THE TOWN OF GREENWICH CONSERVATION COMMISSION**

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This memorandum of understanding ("MOU") is made and concluded in Hartford, Connecticut by and between the Connecticut Department of Energy and Environmental Protection ("Department"), represented by Macky McCleary, Deputy Commissioner ("Commissioner"), and the Town of Greenwich Conservation Department, represented by Denise Savageau, Director. The purpose of this memorandum is to document the understanding between the two parties regarding the performance of a Supplemental Environmental Project ("SEP") to conduct tidal wetland restoration within the Town of Greenwich ("the project").

Whereas, upon execution of administrative Consent Order #LIS-2013-3523-V, Rony and Linda Schlapfer shall pay the amount of Eight Thousand Seven Hundred and Fifty Six dollars and Fifty Cents (\$8,756.50) directly to the Town of Greenwich Conservation Commission to fund an SEP for the purpose of performing a tidal wetlands project to restore an area of tidal wetlands within the Town of Greenwich of no less than 3,622 square feet;

Now, therefore, the Department and the Town of Greenwich Conservation Commission agree as follows:

- A. Department agrees to, within the Department's available resources:
- 1.) Provide the Town of Greenwich Conservation Commission technical assistance with the project as needed.
  - 2.) Participate in meetings and planning sessions with the Town of Greenwich Conservation Commission concerning the project.
  - 3.) Respond in a timely manner to any project submissions by the Town of Greenwich Conservation Commission requiring Department concurrence.
  - 4.) Coordinate and consolidate Department responses to project submittals by the Town of Greenwich Conservation Commission through a single point of contact. Unless otherwise specified in writing by the Commissioner, the single point of contact shall be the person identified in paragraph B.8. of this MOU.

- 5.) Direct any correspondence to the Town of Greenwich Conservation Commission as follows:

Denise Savageau  
Greenwich Town Hall, 2nd Floor  
101 Field Point Road  
Greenwich CT 06830

B. The Town of Greenwich Conservation Commission agrees to:

1. Within three (3) business days from the date of receipt of SEP funds under this MOU, notify the Commissioner in writing of the amount of such funds that were received and deposit such funds in a federally insured, interest bearing account. Such SEP funds, including any interest accruals, shall be kept separate from all other assets or accounts held by the Town of Greenwich Conservation Commission and used solely for the purposes of fulfilling the Town of Greenwich Conservation Commission's obligations under this MOU.
2. Submit for the Department's review and written approval, a proposal for the restoration of no less than 3,622 square feet of tidal wetlands restoration within the Town of Greenwich.
3. Upon approval of the proposal by the Department, the Town of Greenwich Conservation Commission shall submit an application to the Department to complete the project. Prior to the commencement of work, the Town of Greenwich Conservation Commission shall obtain all necessary federal, state and local approvals to complete the restoration work.
4. Not later than October 31, 2015, complete the SEP project for the restoration/enhancement of no less than 3,622 square feet of tidal wetlands within the Town of Greenwich or as otherwise approved by the Commissioner in writing.
5. Submit bi-annual progress reports to the Department on or before fifteen (15) days after the end of each calendar-year half (i.e., on or before July 15 for the first half and January 15 for the second half), until completion of the project as specified in the proposal. Each bi-annual progress report shall include, but not be limited to, the following information:
  - Progress of the project;
  - A complete accounting of actual project costs incurred to date;
  - Planning for the remaining project tasks to be performed;
  - Any other activities, occurrences, and significant findings related to this project; and
  - Any other information if requested by the Department for the purpose of evaluating the progress of the project.

6. Within thirty (30) days after completion of the project, prepare and submit a comprehensive final report for the Department review and written approval that shall include, but not be limited to:
  - Written certification that the project has been completed as approved.
  - A complete accounting of actual project costs and all interest accruals on the SEP funds including an itemized list of expenditures and copies of receipts and invoices;
  - Discussion of the environmental benefits resulting from the project;
  - Level of success and results; and
  - Recommendations for improvements, if any.
7. Schedule and hold meetings at appropriate times for the purposes of coordinating with the Department staff listed in paragraph 8., below.
8. Direct any correspondence to the Department as follows:

Kevin Zawoy  
Department of Energy and Environmental Protection  
Office of Long Island Sound Programs  
79 Elm Street  
Hartford CT 06106-5127

C. Reimbursement of Unexpended SEP Funds:

Within seven (7) days after the submission of the final report or upon the expiration of this MOU, whichever is later, the Town of Greenwich Conservation Commission shall remit the total amount of any unexpended SEP funds, including any unexpended interest accruals, to the Commissioner. Such payment shall be mailed or personally delivered to the Department of Energy and 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 and Environmental Protection. The check shall state on its face, "Office of Long Island Sound Programs, Consent Order No. LIS-2013-3523-V."

D. Time of Performance:

This MOU shall be in effect until October 31, 2015. This MOU may be extended by mutual agreement of the parties in writing.

CONNECTICUT DEPARTMENT OF ENERGY and ENVIRONMENTAL PROTECTION

By:   
Macky McCleary,  
Deputy Commissioner

Date: 2/19/14

Town of Greenwich Conservation Commission

By:   
Denise Savageau, Director  
Town of Greenwich Conservation Commission

Date: 1/23/2014