



STATE OF CONNECTICUT

File # LIS-2014-3614-V

Date of Issuance: August 12, 2014

v.

RICHARD KOHLBERGER

AND

BEVERLY KOHLBERGER

RECEIVED

JUL 29 2014

DEP OFFICE OF
LONG ISLAND SOUND PROGRAM

CONSENT ORDER

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

1. Richard and Beverly Kohlberger ("Respondents") are the owners of the property located at 134 Davenport Drive in Stamford, Connecticut ("the property"). The property is located adjacent to Stamford Harbor, a tidal, coastal and navigable water of the State.
2. On or before April 4, 2014, without authorization, Respondents raised by 2 feet the height of an existing approximately 96 linear foot long stone and concrete seawall which is located along the shoreline of the property. The raised seawall elevation is depicted on Pre-Sandy Seawall Exhibit & Post Sandy Seawall Exhibit, dated May 23, 2013, prepared by Redniss & Mead, Inc., a copy of which is attached hereto as "Attachment A." This work was undertaken on the property waterward of the Coastal Jurisdiction line ("CJL") in tidal, coastal and navigable waters of the State.
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 section 22a-361 of the Connecticut General Statutes ("CGS") for the elevation of the existing seawall described in paragraph A.2. at the site.

- B. With the agreement of the Respondents, the Commissioner, acting under CGS sections 22a-6 and section 22a-361, orders Respondents as follows:
1. Retention of Structures. Respondents may retain the 2 foot seawall height increase described in paragraph A.2., above, pending a final determination, including a final determination on any appeal, of the COP application identified in paragraph B.2., below.
 2. COP Application Decision.
 - a. No later than ninety (90) days after issuance of this Consent Order, Respondents shall submit a COP application to authorize the work completed to raise the height of the seawall 2 feet described in paragraph A.2., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification for the purpose and need for the additional seawall height increase 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 2 foot seawall height increase, 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 CJL 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. 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 \$1,500 to the Long Island Sound SEP Account. The payment shall be mailed or personally

delivered to the Department of Energy & 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-2014-3614-V."

- b. If the Respondents fails to fund the SEP in accordance with paragraph 5.a. above, the Respondents shall immediately pay a civil penalty of \$1,750. The Respondents shall pay such civil penalty in accordance with the provisions of paragraph B.6 of this Consent Order.
 - c. 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 Respondent 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.
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-2014-3614-V."
7. 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.
8. 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 Respondents, 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.
10. 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.
11. 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.
12. 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."

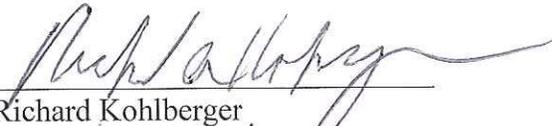
13. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
14. 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.
15. 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.
16. 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.
17. Respondents' obligations under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.
18. 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.
19. 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.

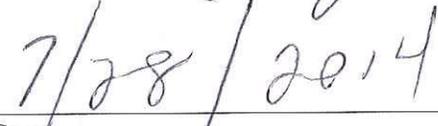
20. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.
21. Notice to Commissioner of changes. Within fifteen days of the date Respondents become aware of a change in any information 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.
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:

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

23. Joint and Several Liability. Respondents shall be jointly and severally liable for all obligations under this Order.

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


Richard Kohlberger


Date

AND


Beverly Kohlberger

7/28/14
Date

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

8/11/14, 2014.



Macky McCleary
Deputy Commissioner

