

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **APPLICATION NO. 200101747**

LYMAN FARM, INC. : **AUGUST 31, 2004**

PROPOSED FINAL DECISION

Lyman Farm, Inc. has applied to the Department of Environmental Protection (DEP) for a water diversion permit. General Statutes §22a-369. This permit would allow the applicant to divert water from a pond on its property to irrigate its existing Gary Player Golf Course and its proposed Golf Training Center, which are primarily located in Middlefield.

The applicant, with the concurrence of staff, has submitted “Proposed Findings of Fact” for my consideration. These proposed findings include information required for the application as well as facts to demonstrate compliance with the statutory and regulatory criteria regarding issuance of a water diversion permit. General Statutes §§22a-369, 22a-373(b); Regs., Conn. State Agencies 22a-377(c)-2(f). The parties have agreed on one modification to these proposed facts, which is highlighted in bold. (See Attachment A.)

Staff of the DEP Inland Water Resources Division has prepared a draft permit that would authorize the diversion. The parties have agreed to revise this draft to permit the diversion of 350,000 gallons of water per day to supply the Gary Player Course; this revision is highlighted in bold. (See Attachment B.) The parties have agreed on all other language in the draft permit, with the exception of the length of the permit term.

Upon review of the record and the proposed findings of fact, I find that the application complies with the applicable statutory and regulatory provisions for issuance of a water diversion permit. In addition, I find that the proposed diversion is necessary and would be compatible with long-range water resource planning and proper management and use of the State's water resources. The diversion would also be consistent with the state plan of conservation and development. §22a-366.

Staff has proposed a permit term of fifteen years. §22a-373(a). The applicant seeks a term of twenty years, noting that the maximum term for a water diversion permit is twenty-five years. §22a-377(c)-2(h)(1)(D). Staff believes a shorter permit term will act to minimize and more effectively mitigate any future environmental harm. Staff is also concerned about the applicant's compliance history, notably its noncompliance with certain reporting conditions of a previous permit. (Ex. DEP-14; test. D. Hoskins, 3/11/04.) The Commissioner considers many factors when exercising his authority to issue a water diversion permit. §22a-373(f); §22a-377(c)-2(f). He may also consider an applicant's compliance history. §22a-6m.

I adopt the applicant's proposed findings of fact, as modified, as my *Proposed Final Decision* and recommend that the Commissioner issue the water diversion permit incorporating the terms and conditions set forth in the draft permit. I advise that the Commissioner issue this permit for the fifteen-year term proposed by DEP staff, as included in the attached draft. (Attachment B.)

8/31/04
Date

/s/ Janice B. Deshais
Janice B. Deshais, Director
(Elaine R. Tata, Hearing Officer)¹

¹ Ms. Tata left the employ of the DEP in July 2004; before her departure, we reviewed the record in this matter and she advised me as to the status of pending issues then under consideration. I have also communicated with the parties to ensure the accuracy of the information in this proposed decision.

ATTACHMENT A
Lyman Farm, Inc.
Proposed Findings of Fact²

a
Procedural History

1. The Applicant filed with the Department of Environmental Protection (“Department” or “DEP”) its application for a water diversion permit in May 2001. (APP Ex. 8)
2. Notice of this filing was published in accordance with Connecticut General Statutes §22a-6g in the Middletown Press. (APP Ex. 7)
3. In response to the notice of publication, Charles Berger of the DEP received notification from Marianne Corona in June and August, 2001 requesting a public hearing. (DEP Ex. 16 and 17)
4. The Department reviewed the water diversion application (See DEP and APP Ex.), requested additional information of the Applicant (DEP Ex. 10, 12, etc.) and received additional information and responses from the Applicant (including APP Ex. 3, 4, 11, 12, 13, etc. and DEP Ex. 19, 20, 21, 22, etc.)
5. The Department also received information from the Petitioner.
6. Following the Department’s technical review of the Application and all supplemental information provided by the Applicant and the Petitioner, the Department published a notice in February 2004 of its tentative determination to approve the Application. The Department determined that the Application was complete. (DEP Ex. 23)
7. A hearing was scheduled for March 11, 2004 at the Middlefield Community Center, Middlefield, Connecticut (Pre-Hearing Conference Summary dated February 11, 2004).
8. In the afternoon prior to the hearing, representatives of the Applicant, DEP and Petitioner walked the subject property and other contiguous properties with the Hearing Officer.

² This attachment has been reformatted and certain editorial changes have been made that do not affect its contents. Except for these changes and substituted language in finding #12, highlighted in bold, these proposed findings are unchanged.

9. During the hearing, evidence was received from the Applicant and DEP staff as to the completeness of the Application and its compliance with applicable statutory and regulatory requirements. Representatives of the Petitioner presented information challenging portions of the Applicant's and DEP staff's technical information and conclusions. Members of the public spoke in favor of the Application.³
10. At the hearing, the Department recommended issuance of a permit to authorize the requested water diversion for a total daily maximum of 350,000 gallons from Pond A to supply irrigation water for the existing Gary Player Golf Course and a total daily maximum of 105,000 gallons per day from Pond A to supply irrigation water to the proposed 9-hole Golf Training Center.
11. The Hearing Officer issued a post-hearing directive on March 12, 2004 permitting the record to remain open until April 11, 2004.

b
Project Description

12. On July 28, 1992, the Department issued a water diversion permit to Lyman Farm, Inc. for the purpose of providing "additional water supply for the irrigation of a new 18-hole golf course..." which has been designated as the Gary Player Golf Course (DEP Ex. 14) ("1992 Permit"). The Commissioner of the Department of Environmental Protection determined that the 1992 Permit had expired and the Applicant and Commissioner entered into a Consent Order on December 14, 2001, authorizing continued irrigation of the Gary Player Golf Course (DEP Ex. 1). The pending Application seeks to continue the water diversion for purposes of irrigation of the Gary Player Golf Course and for irrigation of a proposed 9-hole Golf Training Center (APP Ex. 8 and 9). The Applicant has represented that it obtained the requisite municipal approvals to authorize construction of the 9-hole Golf Training Center. **The Town of Middlefield placed conditions on the construction of the 9-hole Golf Training Center, including, but not limited to, the requirement to mitigate the impact**

³ The March 11, 2004 hearing was recorded and tapes are on file in the Office of Adjudications.

on wetlands and to require the Applicant to grant a conservation easement. Additionally, department staff has offered a draft permit with conditions for the Commissioner's consideration in determining consistency of the proposed activities with the policies and requirements of chapter 440 of the General Statutes (Wetlands and Watercourses) and regulations thereunder as required under RCSA §22a-337(c)-2(f)(2). (APP Ex. 1 and 2).

13. The proposed water diversion for both the Gary Player Golf Course and the 9-hole Golf Training Center is from Pond A, the identical location used for past irrigation of the Gary Player Golf Course (DEP Ex. 1 and 14, APP Ex. 8 and 9). The Applicant seeks authorization to divert for irrigation purposes up to an additional 155,000 gallons per day above the amount authorized in the Consent Order (DEP Ex. 1, APP Ex. 8 and 9), so as to allow up to 350,000 gallons per day for irrigation of the Gary Player Golf Course and up to 105,000 gallons per day for irrigation of the 9-hole Golf Training Center.
14. Pond A is connected to Pond B and Pond C by a 12" PVC pipe and Pond C is connected to Pond 1 on the Robert Trent Jones Course, which in turn is connected to the Saw Mill Brook (See Diagrams contained in APP Ex. 8). The in-flow pipe at the Saw Mill Brook is fixed and when the level of the Brook drops below the pipe during the summer, the water in the Brook no longer flows to Pond C. The Saw Mill Brook diversion is a separate registered water diversion, which the Department maintains is not part of the current Application for diversion from Pond A (See testimony of Doug Hoskins, March 11, 2004). The Applicant concurs in the Department's conclusion but received a request from the Department to undertake a hydrogeologic study which was to consider the cumulative impacts on the Coginchaug River withdrawals not only for the Gary Player Golf Course and 9-hole Golf Training Center from Pond A, but also for the Robert Trent Jones Golf Course from the Saw Mill Brook (DEP Ex. 10 and 11). A Hydraulic Report dated December 2002 was completed and submitted to the Department (APP Ex. 11) and further responses were submitted to the Department on the Report through 2003 (APP Ex. 12, etc.).

15. The Hydrogeologic Report discusses the results of a pump test previously approved by the Department to stress the aquifer in excess of 1,000,000 gallons per day. The Water Conservation Plan, as modified, submitted by the Applicant discusses water conservation measures to reduce pumping based on the elevation of water in Pond A. The Report and Plan were reviewed by the Department, which concluded that it did “not anticipate any adverse effect on the stream flows attributable to the proposed withdrawals, and recommended issuance of the Permit incorporating the Applicant’s proposed Water Conservation Plan as a means of managing withdrawals.” (DEP Ex. 3)
16. The Department recommends issuance of a water diversion permit to the Applicant authorizing a withdrawal from Pond A to allow a total daily maximum of 350,000 gallons for irrigation of the Gary Player Golf Course and a total daily maximum of 105,000 gallons for irrigation of the 9-hole Golf Training Center. The Department recommends that usage be separately monitored. (Testimony of Doug Hoskins, March 11, 2004.) The Applicant has asked the Department to consider authorizing a single total daily maximum of 455,000 gallons (Applicant's Brief, footnote 1, May 25, 2004.)

c
Site Description

17. The Lyman properties include the Robert Trent Jones and Gary Player Golf Courses and the proposed 9-hole Golf Training Center, which are located mostly in Middlefield, Connecticut. The Saw Mill Brook lies to the south and partly runs through the Robert Trent Jones Golf Course. The Coginchaug River runs to the east. There are ponds, spillways, drainage ditches and wetlands located on and about these golf courses (APP Ex. 8 and 9, See Diagrams).
18. The Robert Trent Jones Golf Course was constructed in 1969 and the Gary Player Golf Course was constructed in 1993. Both golf courses are irrigated (Attachment A-2 to APP Ex. 8). The site tour disclosed that the proposed 9-hole Golf Training Center is presently agricultural land used the prior year for growing corn.

19. The proposed water diversion from Pond A will draw from surface and ground waters of the Coginchaug River watershed (APP Ex. 8, Attachment A-2).

d

The Application

20. The Applicant submitted its request for water diversion permit in May 2001, and thereafter, supplemented its Application with an Addendum to include the 9-hole Golf Training Center in January 2002. The Application was submitted on forms prescribed by the Department (APP Ex. 8 and 9).
21. The Application for water diversion seeks to continue the irrigation of the Gary Player Golf Course and to irrigate a proposed 9-hole Golf Training Center. While the Applicant initially requested the Department to authorize a greater diversion volume, subsequent discussions between the Applicant and the Department resulted in the Applicant requesting an authorization to divert 455,000 gallons per day from Pond A for use on the Gary Player Golf Course and the 9-hole Golf Training Center (APP Ex. 8, Attachment A-2 Paragraph 5 and APP Ex. 9). Of the 455,000 gallons, 350,000 gallons were allocated to the Gary Player Golf Course and 105,000 gallons were allocated to the 9-hole Golf Training Center. The Applicant has asked the Department to consider allowing a single limit of 455,000 gallons per day without separate allocations, as the source of the water is from a single location, Pond A (Applicant's Brief, May 25, 2004).
22. The Department made two written requests for additional information, including, but not limited to, the request of Robert Smith to Patrick Benjamin relating to the maximum daily withdrawal limits and the effect of the diversion on low flows, water quality instream habitants and fishery resources (DEP Ex. 12), and; the requests of Denise Ruzicka to Brad Kargl relating to a hydrogeologic analysis to determine the effects of water withdrawal (DEP Ex. 10 and 11). In addition to the foregoing, the Applicant responded to various verbal requests from the Department, including but not limited to the requests of, Ugochukwu Uzoh regarding water usage (DEP Ex. 20, 21 and 22), and; Doug Hoskins regarding documentation of irrigation requirements for the Gary Player Golf Course (APP Ex. 13). In addition to the foregoing, the Applicant was asked to respond to

various comments appearing on DEP staff memorandum, including but not limited to comments of, Mary Jane Dapkus relating to her hydrology review (DEP Ex. 3 and 4); Brian Murphy relating to his fisheries review (DEP Ex. 5); Sharon Yurasevecz relating to her engineering review (DEP Ex. 6); Charles Fredette relating to his water quality review (DEP Ex. 8); and Darrell Smith relating to his public water supply review (DEP Ex. 9) (Ad hoc responses were made but not in relation to all of these listed reports. Most of these comments ended up in DEP's Request for Information, individual follow-up occurred primarily with S. Yurasevecz). The Applicant responded to these requests for information by verbal clarification or submission of additional written documentation, including but not limited to, correspondence of Patrick Benjamin providing information on maximum daily water withdrawal rates (APP Ex. 5); submission of the Middlefield Inland/Wetland approval for the 9-hole Golf Training Center (APP Ex. 1); correspondence of Patrick Benjamin relating to erosion and sediment controls, drainage, construction and storm water and flow plan information (APP Ex. 4); letter of Patrick Benjamin relating to the construction sequence for the 9-hole Golf Training Center (APP Ex. 3); Report of Brian Kargl regarding his hydrogeologic investigation (APP Ex. 11 and 12); submission of the form of conservation easement with the Town of Middlefield (APP Ex. 2); submission of the plan of development for the 9-hole Golf Training Center (APP Ex. 10); correspondence of Patrick Benjamin documenting the water diversion request for the Gary Player Golf Course (APP Ex. 13); correspondence of Jerry Walsh relating to monthly water usage (DEP Ex. 19), and; correspondence from Steve Ciskowski and Patrick Benjamin regarding water usage (DEP Ex. 20 through 22). Based on the Applicant's responses, the Department determined "the application to be complete and the proposed diversion (1) is necessary, (2) will not significantly affect long range water resource management, and (3) will not impair proper management and use of the water resources of the State." (DEP Ex. 23)

e
Proposed Permit

23. In conjunction with the Department's tentative determination to issue a permit, it prepared a draft permit with special conditions (DEP Ex. 25). The Applicant has requested modification to five provisions of the draft permit, including approval of a total daily maximum of 350,000 gallons for the Gary Player Golf Course, which approval was announced by the Department during the hearing; an increase in the permit term from 15 to 20 years (Paragraph 10), and language revision to Paragraphs 8, 11 and 12 to clarify that the jurisdiction with regard to municipal approvals lies with the Town of Middlefield (Applicant's Brief, May 25, 2004).

f
The Hearing

24. A hearing on the water diversion application was held at 6:30 p.m., March 11, 2004 at the Middlefield Community Center, Middlefield, Connecticut (Pre-Hearing Conference Summary, February 11, 2004).
25. Representatives of the Applicant, DEP, Petitioner and the public were present during the hearing. (Hearing Recording)
26. Sworn testimony was provided by Doug Hoskins, Mary Jane Dapkus, Brian Murphy, and Sharon Yurasevecz of the DEP; by John Lyman, Steve Ciskowski, Patrick Benjamin, Brian Kargl, and Michael Klein for the Applicant and George Logan and Sigrun Gadwa for the Petitioner. (Hearing Recording)
27. All of the representatives of the Department supported the Application (Hearing Recording). Mary Jane Dapkus addressed the hydrogeologic investigations conducted at the site and concluded that "the effects of the proposed withdrawal at the proposed level maintained in accordance with the Applicant's plan to conserve water in the ponds are unlikely to produce either noticeable or adverse effects on the River." (DEP Ex. 33) Brian Murphy provided testimony with regard to fishery resources and other stream impacts and concluded that "adverse impacts to the fisheries community in the Coginchaug River are not anticipated from the continued operation of this irrigation system..." (DEP Ex. 31) Sharon Yurasevecz provided testimony with regard to several matters relating to civil

engineering, including storm water drainage, flood plain, structures, and erosion and sediment controls. She concluded that the proposed storm water drainage systems and outlet protections are designed in accordance with Flood Management Regulations for the State Agencies; the proposed activity will not adversely affect the hydraulic characteristics of the flood plain; the bridge structures have been designed to prevent a hazard in the event of a base flood; and the erosion and sediment controls are designed in accordance with Connecticut erosion and control guidelines. Finally, Doug Hoskins, the project manager, summarized his Department's investigations relating to the Application and addressed several matters not discussed by the prior DEP attendees, including the national diversity database, diversion alternatives, mitigation measures, comments raised by the Petitioner and others and concluded that "the Applicant has met its burden of proof regarding the water diversion permit decision criteria as listed under Section 22a-373 of the Connecticut General Statutes and Section 22a-377(c)-2(f) of the Regulations of Connecticut State Agencies and recommends approval of the Application" with special conditions. (DEP Ex. 35) Mr. Hoskins also addressed the quantity of discharge and affirms that he concurred with a diversion of 350,000 gallons per day for the Gary Player Golf Course (Page 4 of DEP Ex. 35).

28. The Applicant's evidence included the testimony of five individuals. John Lyman provided testimony relating to the background of the project, the family businesses and the financial and recreational importance of the Gary Player Golf Course and the 9-hole Golf Training Center to the community and the Towns of Middlefield and Durham. He explained that the Gary Player Golf Course could not maintain its prestige in the golfing community or its role as a TPC qualifying course without proper irrigation. Mr. Ciskowski provided information relating to the 9-hole Golf Training Center and the importance such center would provide to junior, senior and new golfers by expanding recreational opportunities for families and the community. Brad Kargl provided testimony with regard to the hydrogeologic study, and more specifically, about the pump test which was conducted to determine the effect on the aquifer and Coginchaug River during

maximum irrigation of the two golf courses and training center. He explained how the findings of the hydrogeologic study relate to the Water Conservation Plan's reduced pumping when levels at the diversion point, Pond A, drop below various elevations. Michael Klein provided information relating to wetlands including his observations that the wetlands had not been adversely impacted by existing withdrawals since inception of the water diversion at the Gary Player Course in 1992. He did not anticipate any further adverse impact on the wetlands based on the additional pumping of another 155,000 gallons per day. Finally, Pat Benjamin testified with regard to other matters in the Application, including but not limited to, storm water management, best management practices, wetlands mitigation, conservation easement, irrigation systems, competing water resources, water diversion alternatives and other application submissions or questions raised during the hearing.

29. Marianne Corona, the Petitioner, introduced George Logan and Sigrun Gadwa of REMA, Associates who challenged some of the technical conclusions relating to stream flow and its effect on the stream habitat. However, Mr. Login testified their review may have comprised only 25% of the administrative record. Brian Murphy and Michael Klein responded to REMA's questions relating to fish habitat and wetlands issues and did not modify their support for the diversion based on REMA's comments. The Petitioner offered written evidence, which was objected to by the Applicant, in part, due to relevancy based on the age of the documents and/or their preparation for other matters.
30. Members of the public and community provided unsworn comments during the hearing. Margaret Minor expressed concern regarding the "grandfathered" water diversion registration for the Robert Trent Jones Golf Course, however, Doug Hoskins had explained earlier that the Department did not consider this water diversion registration to be a proper subject matter for this Application. The Applicant also pointed out that the pump test considered the water usage for irrigation of the Robert Trent Jones Golf Course. All the remaining members of the public, including State and local government officials, golf coaches and local residents, spoke in favor of the Application and commented positively on the

Lyman family's contribution to the community, support for area schools and open space preservation. Town officials favorably commented on the tax base and employment opportunities provided by the golf course and other Lyman businesses.

31. Applicant Exhibits 1 through 13 and DEP Exhibits 1-35 were accepted. Petitioner Exhibits were accepted but, in some cases, were qualified as to the weight or historic value of such exhibit.

g

Need for the Diversion

32. Information provided during the hearing and the Applicant's documentation has established the need for the diversion to irrigate the Gary Player Golf Course and 9-hole Golf Training Center. The Gary Player Golf Course has been irrigated since the early 1990s (DEP Ex. 14). Testimony provided by John Lyman, contained in the Application (APP Ex. 8 and 9) and observed by the Hearing Officer, demonstrate the current existence of a quality golf course requiring irrigation. The Department has determined that the proposed diversion is necessary. (DEP Ex. 23). The Applicant documented the need for a diversion of 455,000 gallons per day (APP Ex. 13).

h

Effect on Long-Range Water Resource Management

33. The proposed diversion will not significantly effect the long-range water resource management of the Coginchaug basin. Testimony of Patrick Benjamin and the information and diagrams provided in the Application (APP Ex. 8) confirm the rural setting of this water diversion. Figure 1 in the Application discloses no active community wells in the near vicinity and the non-community wells in the vicinity are on the property of or controlled by the Applicant. The water systems of the neighboring Towns of Middletown, Meriden and Wallingford would not be affected by this water diversion due, in part, to their distance from the point of diversion. Finally, the special permit condition, Paragraph 7 Restrictions, affords protections to the State should conditions change in the future. The Department

has concluded that the water diversion will not significantly affect long-range water resource management (DEP Ex. 23).

i

Management and Use of Water Resources

34. In part, for the reasons expressed in the previous paragraph, the water diversion will not impair proper management and use of the water resources of the State. The Applicant's hydrogeologic report (APP Ex. 11 and 12) and the Applicant's testimony through Brad Kargl and the Department's testimony through Mary Jane Dapkus confirm no adverse effect of the diversion on the Coginchaug River. The Applicant has prepared and the Department has reviewed and approved the Water Conservation Plan to provide for reduced pumping during dry periods so as to avoid impact to the Coginchaug River (APP Ex. 8, 9, 10, 11). The Department has concluded that the water diversion will not impair proper management and use of water resources of the State. (DEP Ex. 23)

j

Section 22a-373(b) Considerations

35. The Applicant has met the considerations for issuance of a water diversion permit as set forth in Connecticut General Statutes Section 22a-373(b) through its testimony during the hearing, the testimony of DEP representatives during the hearing, and the exhibits of the Applicant and the DEP which have been admitted into evidence.

j(1)

Effect of the Proposed Diversion on Related Needs for Public Water Supply

36. The Applicant has fully evaluated the effect of the proposed diversion on the needs for public water supply. The proposed point of diversion occurs in rural Middlefield, which lies a substantial distance from the community well fields that serve the more populated towns of Wallingford, Meriden and Middletown (Figure 1, APP Ex. 8). The hydrogeologic information provided by the Applicant (APP Ex. 8, 9, 10, 11) and confirmed by the Department demonstrates that the diversion would not have an adverse effect on the Coginchaug River watershed. The

closest reservoir, Laurel Brook Reservoir, is more than a mile from the diversion point (Figure 1, APP Ex. 8). The proposed diversion would not affect the needs for public water supply including existing and projected uses, safe yield of reservoir systems and reservoir and ground water development. If circumstances were to radically change in the future, the Applicant's Water Conservation Plan would require reduced pumping.

j(2)

The Effect of the Proposed Diversion on Existing and Planned Water Uses in the Area Affected

37. The proposed water diversion will not have an adverse effect on existing and planned water uses in the area affected. The proposed diversion continues the irrigation of the Gary Player Golf Course and increases the withdrawal rate by up to 155,000 gallons per day for additional irrigation. The Gary Player Golf Course and 9-hole Golf Training Center are situated in the rural communities of Middlefield and Durham. The proposed 9-hole Golf Training Center was formerly used for agricultural purposes. Figure 1 of Applicant's Exhibit No. 8 demonstrates the scarcity of private wells and the absence of hydropower in the vicinity of the withdrawal. According to Mr. Kargl, the existing water uses along the Coginchaug River are primarily agricultural in nature and are not expected to be adversely impacted by the proposed water diversion. The withdrawal of an additional 155,000 gallons per day from the proposed diversion would be effectively managed through the Water Conservation Plan by maintaining a minimum water level in the ponds beyond which no additional pumping can occur and by setting specific trigger water levels in the ponds by which pumping is reduced to coincide with a drop in pond levels and the availability of water. The effective management of the proposed withdrawal would insure that the Coginchaug River is not adversely affected and, therefore, existing water uses that may rely upon the Coginchaug River will not be adversely affected. In addition, the Applicant is not aware of any planned water uses along the Coginchaug River that would be adversely affected by the proposed water diversion.

38. Information submitted by the Applicant in testimony provided by Michael Klein concludes that there has been no adverse impact on the wetlands habitat as a result of the 1992 Permit for diversion to irrigate the Gary Player Golf Course and that the additional withdrawal of 155,000 gallons would not result in an adverse impact to the wetlands habitat. The Town of Middlefield has reviewed local wetlands issues and has issued a permit to the Applicant. (APP Ex. 1) (See also APP Ex. 8 and 9). The Applicant has also submitted the form of a Conservation Easement (APP Ex. 2) that has been required by the Town of Middlefield in consideration for the construction of the 9-hole Golf Training Center that includes wetlands habitat.
39. The Coginchaug River flows more than five miles before it enters the Connecticut River, which does have POTW discharge sources (Diagram, APP Ex. 8 and 9). The proposed diversion is not anticipated to have an adverse effect on stream flow of the Coginchaug River and, therefore, should not adversely affect the current wastewater treatment and waste assimilation capabilities of the river. The hydrogeologic study demonstrated and the December 3, 2003 review memorandum from Mary Jane Dapkus, PERD (DEP Ex. 3), DEP concurs that the hydraulic gradient introduced by pumping will be relatively low and has to extend relatively far to reach the river. Consequently, the effects on stream flow would occur very gradually and be distributed over time (Testimony by B. Kargl). In addition, implementation of the Water Conservation Plan and the subsequent reductions in pumping that coincide with the availability of water would insure that the flow of the Coginchaug River will not be adversely affected and, therefore, will not diminish the waste assimilation capacity of the river.
40. The Applicant's submissions discussed water based recreation activities including boating and fishing. Information contained in its Application (APP Ex. 8 and 9) as well as responses to inquiries by Brian Murphy (DEP Ex. 5), and his comments during the hearing, conclude that there would be no adverse impact to the fish habitat and the water levels in the Coginchaug River would not be adversely impacted by the withdrawal that is regulated, in part, by the Water Conservation Plan. (DEP Ex. 31)

41. The Application discusses the rural and agricultural setting in Middlefield and Durham. John Lyman testified that his family businesses (i.e. golf courses, produce, orchard) comprise one of the largest agricultural holdings in the Town of Middlefield. Testimony and information was provided by Patrick Benjamin demonstrating that there were not any authorized diversions for agricultural purposes along the Saw Mill Brook and Coginchaug River that would be adversely affected.
42. The Applicant has provided information on the record that its water diversion would not have an adverse effect on existing and planned water uses in the area affected and, if any unforeseen circumstances occur in the future, the Applicant's Water Conservation Plan would reduced its withdrawal and, thereby, minimize any adverse impact.

j(3)

**Compatibility of proposed diversion with the
policies and programs of Connecticut**

43. The proposed water diversion is consistent with the policies and programs of the State of Connecticut dealing with long-range planning, management, allocation and use of water resources. The proposed water diversion is consistent with the State of Connecticut's Conservation and Development Policies Plan. The Plan shows a population in Middlefield in 2000 of 3,980 projected to grow to a population of 4,130 in 2020. The Plan provides, "Connecticut is fortunate in that the landscape and historical growth patterns have concentrated urban development largely within confined corridors...consequently, the western and eastern uplands of the State and areas along the lower Connecticut River offer some of the last major rural expanses in the heavily urbanized Washington-Boston corridor." The goals for these areas include the preservation and protection of land, water, farm, open space, forest resources, which characterize the State's rural areas. (Pg. 123) The continued irrigation of the Gary Player Golf Course, the construction of the 9-hole Golf Training Center and conservation easement to conserve open space operate to maintain the rural integrity of the area. Mr. Lyman testified about the importance of income from the golf courses

being able to sustain and support other operations including the farm and orchards, which encompass larger areas of open space. Preservation of the orchards and golf courses as open space is critical to the character of Middlefield according to Mr. Lyman and other Town officials who spoke during the hearing. Sharon Yurasevecz also testified that the construction of the 9-hole Golf Training Center was consistent with the State's flood management and erosion and sediment policies (DEP Ex. 34). The water diversion is also consistent with the State's current allocation and use of water resources (DEP Ex. 23). The Applicant's obligations include compliance with a Water Conservation Plan in the event of reduced water supplies and the proposed permit contains provisions to allow adjustments in pumping rates should future conditions warrant. (DEP Ex. 25)

j(4)

Relationship of Proposed Diversion to Economic Development

44. The Applicant's proposed water diversion is consistent with Connecticut's Conservation and Development Policies Plan, the rural characteristic of the community and the statements of municipal officials. It is self-intuitive that the construction of the 9-hole Golf Training Center and operation of the Center and Gary Player Golf Course will create employment opportunities. Further, the communities of Middlefield and Durham wish to maintain their rural character (Testimony of John Lyman and statements of local officials and residents), which is consistent with the character of this project as it will maintain open space within the communities.

j(5)

Effect of the Proposed Diversion on Existing Water Conditions

45. The proposed diversion will not have an adverse effect on existing water conditions. The 18-hole Gary Player Golf Course is an existing facility and continued irrigation would not change the watershed characterization. Michael Klein provided testimony that the irrigation of the Gary Player Golf Course since 1993 had not had an adverse effect on the wetlands watershed and he did not anticipate any adverse impact by withdrawal of additional volumes of water

sought by the Applicant. The construction of the 9-hole Golf Training Center replaces principally agricultural land that, due to the absence of ground cover, can result in sediment and erosion problems and, thereby, affect water quality. Further, construction of the 9-hole Golf Training Center requires that a substantial acreage be placed in a conservation easement, protecting this area from future development and preserving the watershed characterization.

46. Pat Benjamin provided testimony with regard to evapotranspiration, ground water availability and water quality. He explained that during the dry season Pond A would be fed by ground water and, further, that other ground water uses (i.e. portable wells) would not be adversely affected (see also Figure 1, APP Ex. 8 and supporting documentation). He explains that the Water Conservation Plan took into consideration mitigation measures to minimize the water loss associated with evaporation (see APP Ex. 8 and 9). On the subject of water quality, John Lyman provided testimony with regard to the Applicant's pesticide management plan and the draft permit contains a special condition prohibiting use of the irrigation system for distribution of pesticides without further authorization from the Commissioner (Paragraph 4, DEP Ex. 25). The proposed water diversion would not have an adverse effect on existing water conditions, with due regard to watershed characterization, ground water availability potential, evapotranspiration conditions and water quality.

j(6)

Effect on Fish and Wildlife as a Result of Flow Reduction or Alteration

47. The proposed water diversion would not have an adverse effect on fisheries or wildlife. The diversion is not expected to have a thermal impact or affect surface water bodies as, for the most part, water is being used for irrigation and not for cooling purposes.
48. The Department required that the Applicant study the effect on the Coginchaug River of the volume used on the Robert Trent Jones, Gary Player and 9-hole Golf Training Center golf courses (DEP Ex. 10 and 11). Brad Kargl submitted hydrogeologic reports (APP Ex. 10 and 11). These reports contained information with regard to stream gauging and pump tests which were conducted to determine

the impact of pumping on water bodies including the Coginchaug River and concludes that there would not be an adverse effect on the water levels and flow rates of withdrawal when conducted in accordance with the Applicant's Water Conservation Plan. (DEP Ex. 33)

49. Brian Murphy provided testimony that the withdrawal would not have an adverse impact on fisheries and water habitat. (Hearing Recording)

j(7)

Effect of the Proposed Diversion on Navigation

50. The proposed diversion would not have an adverse effect on navigation. Navigable traffic (e.g. kayak, canoe, motor boat, etc.) on the area watercourses is largely confined to the Coginchaug River. (APP Ex. 8 and 9, Site Tour).
51. The Applicant's pump test (APP Ex. 10 and 11) and the resulting Water Conservation Plan (APP Ex. 8 and 9) demonstrate that the withdrawal from Pond A would not have an adverse effect on water levels or water flow in the Coginchaug River. The Department requested the pump test of the Applicant to determine the effect of pumping on the Coginchaug River (DEP Ex. 3 and 4). As a result, the "Department requested the Applicant provide stream gauging data for the Coginchaug River to link water levels in the River with flows in the River at the Route 147 bridge" to determine the effect of pumping (DEP Ex. 33).
52. After reviewing the Applicant's data, Mary Jane Dapkus, DEP, concluded that the Applicant's data demonstrates that, "it is unlikely under any circumstances that lowering water levels in the Pond will cause leakage from the River to occur at the maximum potential rate (of pumping)." (DEP Ex. 33)

j(8)

**The Necessity of the Water Diversion and Extent to Which
Water can be Derived from other Alternatives**

53. The water diversion requested by the Applicant for purposes of irrigation is necessary. The Applicant has evaluated other alternative sources of water (APP Ex. 8, Attachment J) and has agreed to implement its Water Conservation Plan. The testimony of John Lyman and Steve Ciskowski substantiated that the Gary Player Golf Course is a quality facility and that such quality is dependent, in large

part, upon irrigation of the Course. They confirm that construction of the 9-hole Golf Training Center will and must be of the same character in order to maintain its reputation of a premiere facility in Connecticut and a qualifying course for the TPC Tournament.

54. The proposed water alternative uses the existing diversion. Nonetheless, the Applicant considered use of alternative water sources including conservation measures. These alternatives are set forth in the Application (APP Ex. 8 and 9, Attachment J) and were also discussed during the hearing by Mr. Benjamin. The Applicant and Mr. Benjamin concluded that the best alternative was to continue the existing diversion. In response to a question raised by the Petitioners, Mr. Benjamin stated that the drilling of deep wells would not be feasible (Hearing Recording). The Applicant's Water Conservation Plan adequately takes into consideration water conservation measures. The Department concurs that the Applicant's continued use of the diversion from Pond A is the "preferred alternative". (DEP Ex. 35)

j(9)

Consistency of the Proposed Diversion with Sections 3-126 and 3-127

55. The proposed diversion is fully intrastate and does not impact interstate watercourses and, therefore, is consistent with Sections 3-126 and 3-127 of the Connecticut General Statutes.

j(10)

Interests of Municipalities Affected by the Proposed Diversion

56. The proposed diversion does not adversely affect any municipality due to the proximity of the diversion from water dependent activities in the contiguous Towns including reservoirs, community well fields and sewage treatment facilities. (See Figure 1, APP Ex. 8) The Applicant has also put forth evidence during the hearing that the neighboring communities, specifically Middlefield and Durham, are the beneficiaries of open space and taxes resulting from operation of the 9-hole Golf Training Center, two golf courses, farming and orchards of the Lyman family. The adjoining municipalities also benefit from the recreational

and job opportunities offered by operation of the facilities. (Testimony of John Lyman, Steve Ciskowski).

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Section 22a-377(c)-2(f) Considerations

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57. The Applicant has met the considerations for issuance of a water diversion permit as set forth in the Regulations of State Agencies, Section 22a-377(c)-2(f) through its testimony during the hearing, the testimony of DEP representatives during the hearing and the exhibits of the Applicant and DEP which have been admitted into evidence.

k(1)

Consistency with Standards, Criteria, Policies, and Water Quality Classifications for Ground and Surface Water

58. The proposed diversion is consistent with the standards, criteria, policy and water quality classification for ground and surface water as provided in Section 22a-426 of the Connecticut General Statutes. The proposed diversion is for consumptive use (i.e. irrigation) and, therefore, is not directly discharged to the ground or surface waters. The Applicant's hydrogeologic investigation, specifically its pump test, has determined that the proposed diversion would not have an adverse effect on water ways, including availability of the water for present and perspective future use for public water supplies.⁴ The Department concurs (APP Ex. 10 and 11, DEP Ex. 33). Also, the hydrogeologic study and other information contained in the Application demonstrate the proposed diversion does not have an adverse effect on the quality of the State waters for propagation of fish, aquatic life, wildlife, recreational activities, agriculture, industrial and other uses. The Lyman Application was supported by the testimony of Patrick Benjamin, Brad Kargl and Michael Klein. (Hearing Recording) Brian Murphy and other members of the Department testified that the diversion would not have an adverse affect on fisheries, other watershed habitat and recreational uses.

⁴ Paragraph 4 under Special Conditions of the draft permit prohibits the use of the irrigation system for dispersion of pesticides, thereby, providing additional protection to the ground and surface waters of the State (DEP Ex. 25).

59. The proposed diversion promotes economic development of the State, is protective of public health and welfare, and is consistent with the health standards established by the Department of Public Health. The Applicant's investigations confirm that the diversion would not have an adverse effect on the waters of the State (APP Ex. 10, 11, etc.). The proposed construction of a 9-hole Golf Training Center, together with continued operation of the Gary Player Golf Course, will promote the planned development of the State in a manner that is consistent with the Connecticut Conservation and Development Policies Plan for rural areas.

k(2)

**Consistency with the Policies and Requirements for Wetlands
and Water Courses**

60. The Applicant's proposed diversion is consistent with the policies and requirements of Chapter 440 of the Connecticut General Statutes and Regulations pertaining to wetlands and watercourses. The Applicant submitted with its Application information relating to wetlands and watercourses (Attachments F, H, I of APP Ex. 8 and 9, and Ex. 10 and 11). The Applicant provided testimony during the hearing through Michael Klein with regard to the impact on the wetlands and concluded that he had not observed an adverse impact to the wetlands since the original 1992 Permit for withdrawal of water to irrigate the Gary Player Golf Course and, further, testified that the additional 155,000 gallons per day requested should not have an adverse effect on the wetlands.
61. The hydrogeologic report and other information provided by Brad Kargl in conjunction with the implementation of the Water Conservation Plan confirms that withdrawal of water from Pond A would not have an adverse effect on watercourses (APP Ex. 10 and 11, etc.). The Department has confirmed the Applicant's conclusions (DEP Ex. 33).

k(3)

**The proposed diversion is designed to minimize or eliminate
flooding and flood hazards**

62. The proposed diversion (including construction of the 9-hole Golf Training Center) has been designed to minimize flooding and flood hazards and is consistent with the policies and requirements of Chapter 476a of the Connecticut

General Statutes pertaining to flood management, Section 25-68b et seq. In conjunction with the Applicant's submission, it also provided to the Department information relating to the construction sequence and plan of development for Lyman Orchards Golf Center (APP Ex. 3 and 10), together with other information relating to construction details for the 9-hole Golf Training Center. This information was reviewed by Sharon Yurasevecz of the Department who affirmed that the net fill volume within the 100-year flood plain would be 2,137 cubic yards and that this activity would "not displace meaningful flood storage". (DEP Ex. 34) She also reviewed the structures, which lie within the 100-year flood plain and concluded that the structures, as proposed, would be erected to prevent them from "floating away during flood events of the Coginchaug River". Based on the foregoing and other information, she concluded that there would be "no adverse flooding impact caused by the proposed activity." (DEP Ex. 34) The other surface structures and the irrigation system for the Gary Player Golf Course and Pond A diversion, have already been constructed as part of the 1992 Permit.

k(4)

Effect of the Proposed Diversion, if any, on Coastal Areas

63. The proposed diversion does not incur within an area defined by Subsection (a) of Section 22a-94 of the Connecticut General Statutes and, therefore, does not affect coastal areas. (APP Ex. 8 and 9)

k(5)

Consistency with the Relevant Provisions of the State Plan of Conservation and Development

64. The proposed diversion is consistent with the relevant policies of the State Plan of Conservation and Development adopted under Section 16a-24 to 16a-32 of the Connecticut General Statutes (see also paragraph 43). In part, this Plan details goals for development and preservation of differing geographic areas within the State. The proposed water diversion to irrigate the 9-hole Golf Training Center and the Gary Player Golf Course is consistent with the plans for rural development (See Page 123 et seq. of the Plan). The proposed diversion operates

to protect the land and water and preserves open space while fulfilling other recreational, community and social needs.

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Draft Permit and Proposed Permit Conditions

65. The DEP staff has proposed the issuance of a water diversion permit to the Applicant authorizing the diversion for irrigation purposes of a total maximum of 350,000 gallons per day for the Gary Player Golf Course⁵, and total maximum of 105,000 gallons per day for the 9-hole Golf Training Center (DEP Ex. 25, Comments of Doug Hoskins, Hearing Record).
66. The Department has proposed both special and general conditions to the proposed permit and the Applicant has accepted the terms of the permit except that it requests consideration of five changes, including (a) authorization of a total maximum discharge from Pond A of 455,000 gallons per day allocated 350,000 for irrigation of the Gary Player Golf Course and 105,000 gallons per day for irrigation of the 9-hole Golf Training Center, unless the Department was willing to remove its separate allocation for the two irrigation systems, (b) an increase in the term of the permit from fifteen to twenty years in paragraph 10, and (c) inclusion of language in Paragraphs 8, 11 and 12 to the effect that, “The permittee shall implement the...” or words to that effect, which convey the meaning that jurisdiction for such action lies with the municipality, Middlefield, except to the extent that such action is not implemented by the Applicant (Applicant’s Brief, May 25, 2004).

⁵ Initially, the draft permit proposed a volume of 300,000 gallons per day, but testified at the hearing it recommended approval of 350,000 gallons per day for the Gary Player Golf Course.

ATTACHMENT B

DRAFT PERMIT⁶

PERMITTEE: Lyman Farm, Inc.
P.O. Box 453
Middlefield, CT 06455

PERMIT NO.: DIV-200101747
TOWNS: Middlefield
WATERS: Irrigation ponds, groundwater, Coginchaug River

Pursuant to Connecticut General Statutes section 22a-368, Lyman Farm, Inc. (the "permittee") is hereby authorized to divert the waters of the state at the Gary Player golf course of the Lyman Orchard Golf Club south of Durham Road (Rte. 147) and east of Lyman Road in the town of Middlefield (the "site") in accordance with permittee's application dated May 3, 2001, filed with this Department on May 18, 2001 and described herein. The purpose of the diversion is to continue to supply golf course irrigation water withdrawn from existing Pond A on the existing 18-hole Gary Player golf course and to expand distribution of this water to a proposed 9-hole golf course and training facilities located at the proposed Lyman Orchard Golf Center.

AUTHORIZED ACTIVITY

The permittee is authorized to withdraw a) a total daily maximum of **350,000** gallons from Pond A to supply irrigation water for the existing Gary Player Course, and b) to withdraw a total daily maximum of 105,000 gallons from Pond A to supply irrigation water for the proposed Lyman Orchard Golf Center. The withdraw will occur at a pump located on the north side of Pond A in accordance with plans entitled "As Built – Player Course", dated January 16, 1995, revised through April 15, 2003, prepared by Bascom/Magnotta, and plans entitled "Lyman Orchard Golf Center / Site Plan", sheets 5 through 9, dated November 11, 2000, last revised October 28, 2002, by Bascom/Magnotta, and documentation submitted as a part of the application.

PERMITTEE'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT SHALL SUBJECT PERMITTEE AND PERMITTEE'S CONTRACTOR(S) TO ENFORCEMENT ACTIONS AND PENALTIES AS PROVIDED BY LAW.

⁶ Certain editorial revisions have been made that do not affect the content of this draft permit.

SPECIAL CONDITIONS

1. **Metering of Withdrawals.** Within ninety [90] days of permit issuance, the permittee shall install totalizing flow meters to measure the amount of water withdrawn from Pond A to irrigate the Lyman Orchard Golf Center, the amount of water withdrawn from Pond A to irrigate the Gary Player Course, and the amount of water withdrawn from Pond 1 of the Trent Jones Course. The permittee shall for the duration of this authorization continuously operate and maintain such meters. In the event of meter malfunction or breakage, the permittee shall repair or replace such meters within 72 hours. The permittee shall secure such meter in a locked facility, with access controlled solely by the permittee or other designee.

2. **Record Keeping and Reporting.** The permittee shall maintain a daily record of the amount of water withdrawn from Pond A to irrigate the Lyman Orchard Golf Center, the amount of water withdrawn from Pond A to irrigate the Gary Player Course, and the amount of water withdrawn from Pond 1 of the Trent Jones Course. The permittee shall, for the duration of this authorization, submit a copy of said withdrawal records for the preceding calendar year annually to the Commissioner no later than January 15 of each year. Such records shall be signed by the permittee and individual(s) responsible for actually preparing such record, 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 a false statement made in this document or its attachments may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53-157b of the General Statutes, and in accordance with any other applicable statute.”

3. **Meter Calibration and Reporting.** The permittee shall annually test and calibrate each source meter and calibrate to within two percent accuracy as shown through a post-calibration test, and shall submit the results of the accuracy test and calibration for the preceding year annually to the Commissioner no later than January 15 of each year.

4. **Chemigation.** The permittee shall not use the irrigation systems for the purpose of chemigation without the appropriate discharge permit and pesticide application permit from the Commissioner.

5. **Sawmill Brook Registered Diversion.** The permittee may not cause or allow any modifications to the existing Sawmill Brook diversion structures, including but not limited to an increase in withdrawal capacity, without having first obtained a permit under sections 22a-365 through 378, inclusive of the Connecticut General Statutes and 22a-377(c)-2 of the Regulations of Connecticut State Agencies.

6. **Water Conservation Plan.** The permittee shall adhere to the plan entitled “Revised Long Range Water Conservation Plan”, as contained within their Hydrogeologic Report dated December 2002, including but not limited to the maintenance of minimum surface water elevations in Ponds A, B and C of 141.50 feet.
7. **Restrictions.** The DEP shall have the right to restrict the diversion authorized in this permit at any time the Commissioner in his judgment determines: a) a declared local, regional or state-wide drought advisory, watch, warning or emergency necessitates curtailment of non-essential water uses, b) the continuation of the diversion would have an adverse effect on water quality, fisheries resources or aquatic habitat of the Coginchaug River. The permittee shall have the full ability to resume the diversion as authorized herein once adequate flow within the Coginchaug River, as determined by the Commissioner, has been re-established.
8. **Compensatory Wetland Mitigation.** The permittee shall conduct compensatory mitigation for wetland impacts occurring as a result of the construction of the Lyman Orchard Golf Center in accordance with a) a plan entitled “Lyman Orchard Golf Center- Site Plan”, sheet 18, dated November 11, 2000, last revised October 28, 2002, by Bascom/Magnotta, b) a report entitled “Wetland Inventory and Evaluation – Proposed Golf Instruction Facility / Middlefield, CT”, dated May 22, 2001, revised to July 10, 2001, and c) a report entitled Mitigation Monitoring and Maintenance Plan and Protocol – Golf Learning Center / Lyman Orchards / Middlefield, CT”, dated October 29, 2001, by Environmental Planning Services.
9. **Mitigation Reporting.** The permittee shall forward to the Commissioner an annual Lyman Orchard Golf Center wetland mitigation monitoring report as the Middlefield Inland Wetlands and Watercourses Agency has required for a period of five (5) years. These reports are to be submitted to the Commissioner no later than January 15 of each monitoring year.
10. **Golf Center As-Built.** The permittee shall complete and submit to the Commissioner, no later than one hundred and twenty (120) days after completion of construction an “As Built/As Completed” A-2 survey of the Lyman Orchard Golf Center. This survey shall include details of golf cart path bridges, storm water outlets, catch basins, irrigation system, and biofilter/detention areas.
11. **Signage.** The permittee shall place, every fifty (50) feet signs reading “Conservation Area - Out of Bounds - No Play ” at the perimeter of the “Area[s] of No Activity” and those areas designated to be naturalized, as delineated on plans entitled “Lyman Orchard Golf Center / Site Plan”, sheets 5 through 9, dated 11/1/00, by Bascom/Magnotta. The term “Conservation Area” may be omitted from those signs placed adjacent to the property of others.

12. **Conservation Area Restrictions.** Unless as otherwise stipulated in a) a plan entitled “Lyman Orchard Golf Center- Site Plan”, sheet 18, dated November 11, 2000, last revised October 28, 2002, by Bascom/Magnotta, b) a report entitled “Wetland Inventory and Evaluation – Proposed Golf Instruction Facility / Middlefield, CT”, dated May 22, 2001, revised to July 10, 2001, c) a report entitled Mitigation Monitoring and Maintenance Plan and Protocol – Golf Learning Center / Lyman Orchards / Middlefield, CT”, dated October 29, 2001, by Environmental Planning Services and d) the permittee’s Conservation Easement to be placed on certain areas of this parcel, there shall be no removal, destruction or cutting of trees, shrubs or plants, use of fertilizers or pesticides, or disturbance or change in the natural habitat in any manner in those areas designated as “Area[s] of No Activity” and those areas designated to be naturalized, as delineated on plans entitled “Lyman Orchard Golf Center / Site Plan”, sheets 5 through 9, dated 11/1/00, by Bascom/Magnotta.
13. **Wetland Boundaries and Disturbance Limits.** Prior to the start of construction, the permittee shall locate and re-flag the limits of wetlands adjacent to construction areas as well as the limits of disturbance within such wetlands. The re-flagging of these limits shall be maintained for the duration of construction.
14. **Recording and Reporting Violations.** Within 48 hours after the permittee learns of a violation of this permit, the permittee shall report the violation in writing to the Commissioner. Such report shall include the following information:
- a. The provision(s) of this permit that has been violated;
 - b. The date and time the violation(s) was first discovered and by whom;
 - c. The cause of the violation(s), if known;
 - d. If the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and time(s) it was corrected;
 - e. If the violation(s) has not ceased, the anticipated date when it will be corrected;
 - f. Steps taken and steps planned to prevent a reoccurrence of the violation(s) and the date(s) such steps were implemented or will be implemented;
 - g. The signatures of the permittee and of the individual(s) responsible for actually preparing such report, each of whom shall certify as follows:

“I have personally examined and am familiar with the information submitted in this document, 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 a false statement made in this document or its attachments may be punishable as a criminal offense, in accordance with Section 22a-6 of the General Statutes, pursuant to Section 53a-157b of the General Statutes, and in accordance with any other applicable statute.”

GENERAL CONDITIONS

1. The permittee shall notify the Commissioner in writing two weeks prior to: (A) commencing construction or modification of structures or facilities authorized herein; and (B) initiating the diversion authorized herein.

2. The permittee may not make any alterations, except de minimis alterations, to any structure, facility, or activity authorized by this permit unless the permittee applies for and receives a modification of this permit in accordance with the provisions of section 22a-377(c)-2 of the Regulations of Connecticut State Agencies. Except as authorized by subdivision (5) of section 22a-377(b)-1(a) of the Regulations of Connecticut State Agencies, the permittee may not make any de minimis alterations to any structure, facility, or activity authorized by this permit without written permission from the Commissioner. A de minimis alteration means an alteration that does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.
3. All structures, facilities, or activities constructed, maintained, or conducted pursuant hereto shall be consistent with the terms and conditions of this permit, and any structure, facility or activity not specifically authorized by this permit, or exempted pursuant to section 22a-377 of the General Statutes or section 22a-377(b)-1 of the Regulations of Connecticut State Agencies, shall constitute a violation hereof which may result in modification, revocation or suspension of this permit or in the institution of other legal proceedings to enforce its terms and conditions.
4. Unless the permittee maintains in optimal condition any structures or facilities authorized by this permit, the permittee shall remove such structures and facilities and restore the affected waters to their condition prior to construction of such structures or facilities.
5. In issuing this permit, the Commissioner has relied on information provided by the permittee. If such information was false, incomplete, or misleading, this permit may be modified, suspended or revoked and the permittee may be subject to any other remedies or penalties provided by law.
6. If construction of any structures or facilities authorized herein is not completed within three years of issuance of this permit or within such other time as may be provided by this permit, or if any activity authorized herein is not commenced within three years of issuance of this permit or within such other time as may be provided by this permit, this permit shall expire three years after issuance or at the end of such other time.
7. This permit is subject to and does not derogate any rights or powers of the State of Connecticut, conveys no property rights or exclusive privileges, and is subject to all public and private rights and to all applicable federal, state, and local law. In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee may not cause pollution, impairment, or destruction of the air, water, or other natural resources of this State. The issuance of this permit shall not create any presumption that this permit should be renewed.
8. In constructing or maintaining any structure or facility or conducting any activity authorized herein, or in removing any such structure or facility under paragraph 4 hereof, the permittee shall employ best management practices to control storm water discharges, to prevent erosion and sedimentation, and to

otherwise prevent pollution of wetlands and other waters of the State. The permittee shall immediately inform the Commissioner of any adverse impact or hazard to the environment which occurs or is likely to occur as the direct result of the construction, maintenance, or conduct of structures, facilities, or activities authorized herein.

9. This permit is not transferable without the prior written consent of the Commissioner.
10. This permit shall expire on [15 years].
11. **Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this permit shall be signed by the permittee or a responsible corporate officer of the permittee, a general partner of the permittee, 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 and 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, and I understand that any false statement made in this document or its attachment may be punishable as a criminal offense in accordance with Section 22a-376 under 53a-157 of the Connecticut General Statutes."

12. **Submission of Documents.** Any document or notice required to be submitted to the Commissioner under this permit shall, unless otherwise specified in writing by the Commissioner, be directed to:

Director
DEP/Inland Water Resources Division
79 Elm Street
Hartford, CT 06106-5127

The date of submission to the Commissioner of any document required by this permit shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this permit, including but not limited to notice of approval or disapproval on 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 permit, the word "day" as used in this permit means any calendar day. Any document or action which is required by this permit to be submitted or performed by a date which falls on a Saturday, Sunday or legal holiday shall be submitted or performed by the next business day thereafter.

This authorization constitutes the permit required by section 22a-368(b) of the Connecticut General Statutes.

Issued as a permit of the Commissioner of Environmental Protection on

Arthur J. Rocque, Jr.
Commissioner