

***IN THE MATTER OF***

***: APPLICATIONS NO.  
200300427 (DIV) &  
200301081 (SD & Fill)***

***CITY OF MIDDLETOWN/ARMETTA &  
ASSOCIATES LLC***

***: SEPTEMBER 16, 2004***

***FINAL DECISION***

Hearing Officer Janice B. Deshais issued her Proposed Final Decision in this matter on August 25, 2004. In that decision, she adopted the draft decision proposed by the applicants and DEP staff and recommended that I issue the requested water diversion and structures, dredging and fill permits.

Staff filed exceptions to the proposed decision on August 31, 2004. Regs., Conn. State Agencies §22a-3a-6(y)(3). Staff asks to remove references to voluntary efforts planned by the applicants to upgrade a United States Geological Survey gaging station at the Pratt and Whitney dock in Middle Haddam. Staff also asks that if these references remain, they not be included in a decision as mitigation measures.

These exceptions are based on staff's position that the proposed diversion authorized in the draft permit would not significantly effect long-range water management and will not impair proper management and use of the water resources of the State. Therefore, staff concludes, neither this voluntary effort nor any mitigation measures were required, suggested or approved by the DEP as a condition of that permit.

Neither the proposed decision, nor this final decision, are meant to imply that the planned diversion is such that an upgrade of the gaging station is necessary or that any such efforts are required to mitigate any impacts of the diversion. The applicants' plan to upgrade the gaging station is voluntary and is not based on the nature of the diversion for which a permit has been sought. The applicants' efforts are also not mitigation measures.

Mitigation is typically employed to reduce unavoidable impacts resulting from a particular activity, which is not the case with the activity that will result from the issuance of these permits. Although listed as such in the parties' draft decision, which was adopted by the hearing officer in her proposed decision, the applicants' efforts are not mitigation measures.

In her proposed decision, the hearing officer took note of the planned actions of the applicants and endorsed their efforts. The activities authorized by the subject permits would result in no environmental harm, require no mitigation and may stand on their own. The third party agreement involved in the applicants' plans is beyond the review of DEP staff. Nonetheless, I also note and support this planned effort of the applicants that will enhance the Department's resource management responsibilities.

I therefore affirm the hearing officer's Proposed Final Decision and her recommendation that I issue the permits that are the subjects of this proceeding and attached to her proposed decision as Attachments B and C.

9/16/04

Date

/s/ Arthur J. Rocque, Jr.

Arthur J. Rocque, Jr., Commissioner