



Connecticut Department of

**ENERGY &  
ENVIRONMENTAL  
PROTECTION**

79 Elm Street • Hartford, CT 06106-5127

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Affirmative Action/Equal Opportunity Employer

STATE OF CONNECTICUT

DSO-2017-1006-V

vs.

DEBORAH ROSENER &  
FRICKS POND, LLC

FRICKS POND DAM, #7004  
HIGGANUM RD, KILLINGWORTH

### **CONSENT ORDER**

- A. With the agreement of Deborah Rosener (Rosener) and Fricks Pond, LLC (Fricks) the Commissioner of Energy and Environmental Protection ("the Commissioner") finds:
1. Rosener, an individual with a mailing address at 672 Route 81 Killingworth, CT 06419 is the sole member of Frick's Pond, LLC.
  2. Rosener purchased the property at 672 Route 81 Killingworth, CT 06419 on March 3, 2008. A CT Department of Environmental Protection (DEP)\* Dam Safety permit (DS-04-10) dated October 7, 2005 that authorized repairs to the dam was issued to Robert Giannotti Jr. The repairs authorized by DS-04-10 were never undertaken.
  3. Fricks is a limited liability company organized under the laws of the State of Connecticut, with a business address at 672 Route 81 Killingworth, CT 06419.
  4. Fricks is the owner of the property located at 672 Route 81, Killingworth, CT 06419 and more particularly described in a deed from Rosener to Fricks recorded in Volume 267 at page 807 of the Killingworth Land Records and shown as Lot 1 on Map No. 2099 of the Killingworth Land Records. The entirety of Lot 1 on said map is hereinafter referred to as the Property.
  5. Fricks became the owner of the Property via a Quit-Claim Deed dated November 4, 2016.
  6. The Fricks Pond Dam (the "Dam") is an earth filled masonry dam that is approximately 280 feet long, approximately eight feet tall and is located on the southern end of the pond and Property.
  7. Fricks and Rosener as Fricks' sole member (collectively "the Respondents") have responsibility for and control of the Dam.

\*Effective July 1, 2011 the Department of Environmental Protection (DEP) was statutorily changed to the Department of Energy and Environmental Protection (DEEP).

Date Issued: August 23, 2017

8. The dam was visually inspected on September 30, 2008 by DEP staff. The corresponding inspection report identified deficiencies in the dam that needed to be corrected. These deficiencies were conveyed to Rosener in a letter from Denise Ruzicka of DEP dated April 13, 2010.
9. Rosener applied for a Department of Energy and Environmental Protection (DEEP) Dam Safety permit, DS-201105917, to be authorized to make repairs to address the previously identified deficiencies. The permit application submittal consists of plans prepared by Nemergut Consulting, entitled "Repairs to Fricks Pond Dam D.E.P. File No. 7004 Route 81 Killingworth Connecticut" dated July 15, 2005, revised 7/7/11, as well as other supplemental documents.
10. Permit DS-201105917 was issued to Rosener, dated January 7, 2013. The permitted plans were prepared by Nemergut Consulting, entitled "Repairs to Fricks Pond Dam D.E.P. File No. 7004 Route 81 Killingworth Connecticut" dated July 15, 2005, with revisions, received by DEEP on January 17, 2012 (the Permitted Plans).
11. DEEP issued a letter to Rosener signed by Cheryl Chase of DEEP dated March 7, 2013 requesting a tentative schedule for the permitted work. DEEP issued another letter to Rosener signed by Arthur Christian of DEEP dated April 28, 2016 with the same request of a tentative schedule for the permitted work. To date, no schedule has been submitted by Rosener or Fricks.
12. DEEP staff visited the Property and visually inspected the Dam on October 26, 2016 and November 30, 2016. DEEP staff observed that none of the permitted work on the Dam had begun.
13. During the visual inspections conducted in 2016, DEEP staff observed structural deficiencies that require remediation, including but not limited to an uneven dam crest, deteriorated concrete/stone masonry along a majority of the dam crest's upstream edge, accumulated debris within the spillway, scoured areas along the crest of the dam, and excessive seepage/wet areas along the toe of dam for a majority of its length. The Dam's condition since the 2008 inspection referenced in paragraph 7 above has deteriorated.
14. As a result of the structural deficiencies, the Dam is in an unsafe condition.
15. The Dam would, by breaking away, cause property damage. The access road located approximately 50 feet downstream of the dam would be damaged during a dam failure.



16. Larney Auker, Rosener's representative communicated with Kartik Parekh of DEEP on March 13, 2017 and indicated that the owner wants to partially remove the dam in lieu of repairing the unsafe dam.
17. By agreeing to the issuance of this Consent Order, Respondents make no admission of fact or law with respect to the matters addressed herein, other than the facts asserted in paragraphs A.3.

B. With the agreement of Respondents, the Commissioner, acting under Connecticut General Statutes (CGS) §§ 22a-6 and 22a-402, orders Respondents as follows:

1. a. Hire an Engineer. On or before 60 days following the issuance of this Consent Order, Respondents shall retain a Professional Engineer licensed to Practice in Connecticut acceptable to the Commissioner. This Engineer shall oversee the actions required by this Order. Respondents shall notify the Commissioner in writing of the identity of such engineer ("the Engineer"). Respondents shall retain the Engineer until this Consent Order is fully complied with and within 10 days after retaining any engineer other than the one originally identified under this paragraph, Respondents shall notify the Commissioner in writing of the identity of such other engineer. The Engineer shall have specific and substantial experience in such work. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable engineer unacceptable.
- b. Submit Preliminary Dam Removal Design. On or before 90 days following the issuance of this Consent Order, Respondents shall submit for the Commissioner's review and written approval a preliminary design for the removal of Fricks Pond Dam. Supplemental data shall include a Hydraulic and Hydrologic Analysis to demonstrate that after the dam is removed, no hazard remains during a 100-year storm event.
- c. Submit Contract Plans and Specifications. On or before 30 days after the Commissioner's written approval of the preliminary design Respondents shall submit for the Commissioner's review and written approval detailed contract drawings and specifications signed and sealed by the Engineer in accordance with section 20-300-10 of the RCSA ("the contract plan") for the actions necessary to remove the dam ("dam removal actions"). The contract plan shall be consistent with the recommendations for removal contained in the approved preliminary design and shall include, but not necessarily be limited to:
  - i. Soil erosion and sediment control measures including a dewatering and water handling plan to be used for the dam removal actions;
  - ii. A sequence for the construction of the dam removal actions, including an inspection schedule for critical phases of construction that are to be performed and approved by the Engineer, and;

- iii. A proposed schedule for the dam removal actions; such schedule shall provide for completion of all dam removal actions as soon as possible but in no event later than November 30, 2017.
  - d. Obtain Army Corps of Engineers Authorization. Prior to initiating the dam removal actions of this Consent Order, Respondents shall contact and obtain the required Army Corps of Engineer (ACOE), New England Division, authorization and submit appropriate documentation to DEEP. It is recommended that ACOE be contacted in the early planning stages to ensure the authorization is obtained in a timely manner.
  - e. Perform Actions to remove an unsafe Dam. Respondents shall perform the actions specified in the approved contract plan in accordance with the approved schedule(s), and, within 15 days of completing such actions, shall notify the Commissioner in writing that the actions have been completed as approved. Respondents shall not modify the approved actions without the prior written approval of the Commissioner.
  - f. Submit As-Built Construction Drawings, Certification. On or before 30 days after completing the dam removal required by this Consent Order, Respondents shall submit to the Commissioner for his review and written approval:
    - i. Two copies of as-built construction drawings of the completed work, signed and sealed by the Engineer in accordance with Section 20-300-10 of the Regulations of Connecticut State Agencies (RCSA);
    - ii. A certification signed and sealed by the Engineer in accordance with Section 20-300-10 of the RCSA that the actions required under this Consent Order to remove the dam has been completed as approved.
2. Progress reports. Within 60 days following issuance of this Consent Order, the Respondents shall submit a progress report to the Commissioner describing the actions which Respondents have taken to date to comply with this Consent Order. After the submission of this initial report, the Respondent shall submit a monthly report by the 15th of each following month and continuing until Commissioner's written approval of any as-built construction drawings submitted under paragraph B.1.f of this Consent Order. The monthly report shall describe the actions which Respondents have taken to date to comply with this Consent Order during the month preceding any such report.
3. 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.



4. 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 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 30 days after 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.
5. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of the Department of Energy and Environmental Protection or his designated agent.
6. Dates. The date of "issuance" of this Consent Order is the date the Consent Order is deposited in the U.S. mail or personally delivered, whichever is earlier. 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 deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Consent Order means calendar day. Any document or action which is required by this Consent Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
7. Notification of noncompliance. In the event that Respondents becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, Respondents shall immediately notify by telephone the individual identified in paragraph B.17 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. Within five (5) days of the initial notice, Respondents shall submit in writing the date, time, and duration of the noncompliance and 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, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
8. 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 each Respondent or, if each Respondent is not an individual, by each Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in §22a-430-3(b)(2) of the RCSA, and by the individual(s) responsible for actually preparing such document, and each such individual 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, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that 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 under §53a-157b of the Connecticut General Statutes and any other applicable law."

9. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is non-appealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondent to an injunction and penalties.
10. False statements. Any false statement in any information submitted pursuant to this Order may be punishable as a criminal offense under section 53a-157b of the CGS and any other applicable law.
11. Notice of transfer; liability of Respondents' and others. Until Respondents have fully complied with this Consent Order, each Respondent shall notify the Commissioner, in writing no later than 15 days after either transferring ownership of the dam or obtaining a new mailing or location address. Respondents' obligations under this Consent Order shall not be affected by the passage of title to any property, to any other person or municipality.
12. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or to take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
13. Respondents' obligation under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.



14. No assurance by Commissioner. No provision of this Consent Order nor any action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondents pursuant to this Consent Order have or will result in compliance.

15. No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons that are not parties to this Consent Order.

16. Notice to Commissioner of changes. Within 15 days of the date that either Respondent becomes aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondents shall submit the correct or omitted information to the Commissioner in writing.

17. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in writing by the Commissioner, be directed to:

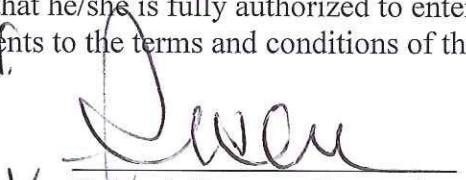
Arthur P. Christian II, P.E., Supervising Civil Engineer  
Department of Energy and Environmental Protection  
Water Planning & Management Division  
79 Elm Street  
Hartford, CT 06106  
860-424-3880

18. Joint and several liability. Respondents shall be jointly and severally liable for compliance with this consent order.

19. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the site of Fricks Pond Dam without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.

The Respondents consent to the issuance of this Consent Order without further notice. The undersigned certifies that he/she is fully authorized to enter into this consent order and to legally bind the Respondents to the terms and conditions of the consent order.

By:

  
Deborah Rosener, Respondent

Date

7/10/17

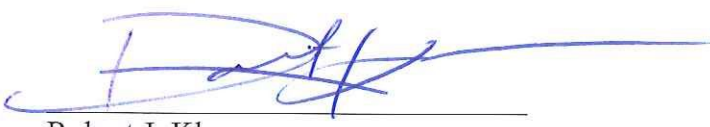
By:

  
Fricks Pond, LLC, Respondent

Date

7/10/17

Issued as the final order of the Commissioner of Energy and Environmental Protection.

  
Robert J. Klee  
Commissioner

Date

8/23/17