

Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

Date Issued March 30, 2012

STATE OF CONNECTICUT

File# LIS-2008-123-V

v.

LOUIS SMUTNY

AND

LORRAINE SMUTNY

CONSENT ORDER

A. With the agreement of Louis and Lorraine Smutny ("the Respondents"), the Commissioner of Environmental Protection ("the Commissioner") finds:

1. The Respondents are the owners of property known as 222 South Water Street in Greenwich, Connecticut ("the site"). The site is located adjacent to the Byram River, a tidal, coastal and navigable water of the State.
2. Before April 1, 2009, the Respondents conducted the following work waterward of the high tide line at the site:
 - a. constructed a concrete seawall, approximately 90' long, 3' wide at the base and 1' wide at the top, ("the concrete seawall"). The concrete seawall sits waterward of a preexisting stone block seawall which, according to a Town of Greenwich Tax Card was installed circa 1940 and sits along the shoreline of the site;
 - b. placed approximately 535 square feet of backfill between the concrete seawall and the pre-existing stone block seawall described in paragraph A.2.a., above, ("the fill"); and
 - c. installed and maintained a commercial marina within the Byram River and waterward of the concrete seawall described in paragraph 2.a. above, consisting of an approximately 4' wide by 20' long ramp used to access an approximately 6' wide by 100' long main floating dock which provides access to three finger floats each measuring approximately 2' wide by 20' long, 2' wide by 19.8' long, and 4' wide by 19.6' long, ("the marina docking structures").

3. Prior to commencing and completing the work described in paragraph A.2 of this Consent Order, the Respondents did not obtain a permit as required under section 22a-361 of the Connecticut General Statutes
4. The Respondents submitted permit application #201005311-TS to the Commissioner on August 17, 2010.
5. By virtue of findings 1 through 3 above, the Respondents have violated section 22a-361 of the General Statutes.

B. With the agreement of the Respondents, the Commissioner, acting under sections 22a-6 and 22a-361 of the General Statutes, orders Respondents as follows:

1. Retention of Structures. The Respondents may retain the concrete seawall, fill, and marina docking structures described in paragraph A.2, above, pending a final determination on permit application #201005311-TS.
2. Permit Application Modification. Within 60 calendar days following issuance of this Consent Order, the Respondents shall modify pending permit application #201005311-TS to propose:
 - a. a Supplemental Environmental Project (“SEP”) described in paragraph B.8; and
 - b. the excavation of 535 square feet of existing on-site upland material located adjacent to the northern property line.

The details of such proposal are set forth in plans attached hereto, dated April 26, 2011, labeled Attachment “A.”

3. Permit Application Decision. In the event that the Commissioner’s final decision on permit application #201005311-TS requires modification or removal of all or any part of the concrete seawall, fill, and/or marina docking structures, 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.
4. Work Waterward of High Tide Line. The Respondents shall not conduct any work waterward of the high tide line at the site unless it is in accordance with all applicable local, state and federal law, including, but not limited to, C.G.S. §§ 22a-361 and/or 22a-32.

5. Full compliance. The 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.
6. Penalty for past violations. On or before 30 days after issuance of this Consent Order, the Respondents shall pay a civil penalty of one thousand dollars (\$1,000) for the violations of C.G.S. § 22a-361 described in paragraph A. above.
7. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to Mr. Dennis Thibodeau, Department of 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 Environmental Protection." The check shall state on its face, "Office of Long Island Sound Programs, Consent Order No. LIS-2008-123-V."
8. Supplemental Environmental Project. In addition to the civil penalty referenced in paragraph B.6, above, the Respondents shall make every reasonable effort to complete the SEP described in paragraph B.8.a and detailed in Attachment A. Reasonable efforts shall include, but not be limited to, seeking, within sixty (60) days of issuance of this Consent Order, all necessary local, state and federal permits and approvals necessary for the construction of the SEP, and, implementing, within thirty (30) days of issuance of all such permits and approvals, the SEP plans as set forth in Attachment A in accordance with the terms of such permits and approvals.
 - a. The proposed SEP includes the installation of a public access kayak/canoe launch, which shall be incorporated into the existing public marina docking structures, the installation of public access stairs with slide rail to provide access to the kayak/canoe launch, and the posting of public access signage. See Attachment A.
 - b. The total estimated cost for the SEP, as determined by the Commissioner, is twenty-three thousand dollars, (\$23,000.00).
 - c. On or before 30 days after completion of the SEP, the Respondents shall submit for the Commissioner's review a final report that certifies completion of the SEP. Such final report shall include drawings showing the installed public access kayak-canoe launch, slide rail, parking areas, and signage, photographs of the completed work, a complete final accounting of actual project costs incurred including receipts, and any other reasonable information requested by the Commissioner for the purpose of evaluating completion of the SEP.

- d. Should the Commissioner determine that the actual cost to the Respondents of the completed SEP is less than twenty-three thousand dollars (\$23,000.00), the Respondents shall pay the difference between such actual cost and the estimated cost, twenty-three thousand dollars (\$23,000.00), to the Commissioner as unexpended SEP funds. The Commissioner shall determine the amount of any such unexpended SEP funds owed and shall notify the Respondents in writing that such amount is due. The Respondents shall, within fourteen (14) days after the date of such written notice, remit the full amount of the unexpended SEP funds. Payment of unexpended SEP funds shall be by certified or bank check payable to "Treasurer, State of Connecticut." The check shall state on its face "Statewide SEP Account, Consent Order No. LIS-2008-123-V." The Respondents shall mail or personally deliver such payment to the Department of Energy and Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127.
- e. If the Respondents fail to complete the SEP, the Respondents shall immediately notify the Commissioner in writing and shall, within fourteen (14) days of a written request by the Commissioner, remit a payment of twenty-five thousand five hundred dollars (\$25,500.00). The Respondents shall make such payment in accordance with the remittance procedures for unexpended SEP funds in subparagraph B.8.d. of this Consent Order.
- f. If and when the Respondents disseminate any publicity, including, but not limited to, any press releases regarding the SEP, the Respondents shall include a statement that such funding is in settlement of an enforcement action brought by the Commissioner.
- g. 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 Respondents shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.

9. Approvals. The 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

the 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.

10. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner of Energy and Environmental Protection or an agent of the Commissioner. The date of "issuance" of this Consent Order is the date this Consent Order is deposited in the mail or personally delivered, whichever is earlier.
11. 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. 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 legal holiday shall be submitted or performed on or before the next day which is not a Saturday, Sunday, or Connecticut or federal holiday.
12. Notification of noncompliance. In the event that the 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, the 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, the 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 the Respondents shall comply with any dates which may be approved in writing by the Commissioner. Notification by the Respondents shall not excuse noncompliance or delay. The Commissioner's approval of any revised compliance dates shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.
13. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by a duly authorized representative of the Respondents and by the individual or individuals responsible for actually preparing such document, each of whom shall certify

in writing as follows: "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense in accordance with Section 22a-6 of the Connecticut General Statutes, under Section 53a-157b of the Connecticut General Statutes, and in accordance with any other applicable statute."

14. Noncompliance. Failure to comply with this Consent Order may subject the Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
15. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with section 22a-6, under section 53a-157b of the CGS.
16. Notice of transfer; liability of Respondents and others. Until the Respondents have fully complied with this Consent Order, the 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. The 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 Consent Order from the Commissioner.
17. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any action to prevent or abate violations of law, prevent or abate pollution, recover costs and damages for adverse impacts to natural resources and to impose penalties for violations of law, including but not limited to violations of any permit issued by the Commissioner. If at any time the Commissioner determines that the actions taken by the Respondents pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require the Respondents to undertake further investigation or further action to correct violations.
18. Respondents' obligations under law. Nothing in this Consent Order shall relieve the Respondents of other obligations under applicable federal, state and local law.
19. No assurance by Commissioner. No provision of this Consent Order or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the corrective actions taken by the Respondents pursuant to this Consent Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.

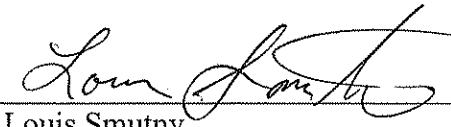
20. Access to site. Any representative of the Department of Energy and Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
21. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.
22. Notice to Commissioner of changes. Within fifteen days of the date the 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, the Respondents shall submit the correct or omitted information to the Commissioner.
23. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

Kevin Zawoy
Department of Energy & Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3034
Fax # (860) 424-4054

24. Joint and Several Liability. The Respondents shall be jointly and severally liable for compliance with this Consent Order.

The undersigned certifies that he is fully authorized to enter into this Consent Order and to legally bind the Respondents to the terms and conditions thereof.

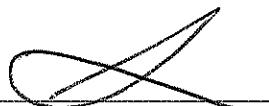
Respondents consent to the issuance of this Consent Order without further notice.

BY: 
Louis Smutny
03/13/12
Date

AND
BY: 
Lorraine Smutny
3/15/12
Date

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

3/29/12, 2012.


Macky McCleary
Deputy Commissioner

*Attachment "A"*Smutney SEP Proposal for Public Access Structures
Cost Estimate

erosion control	materials 800	labor 1000	1800
float construction	materials 2800	labor 1200	4000
kayak floats	materials 3500	installition 1000	4500
Stair area construction prep and installation	8,350		8350
Stairs- slide rail	11,238		11238
restoration/ stabilization	2,500		2500
Construction oversight	2000		2000
relocation of ramp	1500		1500
Survey Services	1800		1800
Signage	500		500
		Total Estimated cost	\$38,188

April 26, 2011

