



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT

File# LIS-2009-143-V

Date of Issuance: December 17, 2010

v.

THE INDIAN HARBOR YACHT CLUB INCORPORATED

CONSENT ORDER

A. With the agreement of The Indian Harbor Yacht Club Incorporated ("Respondent"), the Commissioner of Environmental Protection ("the Commissioner") finds:

1. The property located at 710 Steamboat Road, Greenwich, Connecticut ("the property") is owned by The Indian Harbor Yacht Club Incorporated. The property is located adjacent to Greenwich Harbor and Long Island Sound, which are tidal, coastal and navigable waters of the State.
2. The Respondent claims that it has 212 members who own boats, approximately 180 of which are moored in Greenwich Harbor.
3. For some time prior to December 31, 2009 and continuing to the present, Respondent or its members independently have been maintaining moorings in two mooring fields, one located within and adjacent to the Federal Navigation Project Area 5 of Greenwich Harbor (the "harbor") composed of approximately 30 moorings, and the other located in Long Island Sound south of Steamboat Road composed of approximately 150 moorings waterward of the high tide line in tidal, coastal and navigable waters of the State.
4. The harbor described in paragraph A.3. above, shall hereinafter be referred to as "the site."
5. Respondent has not applied for or received a certificate or permit from the Commissioner under section 22a-361 of the General Statutes for the moorings fields described in paragraph A.3. above.
6. By virtue of the above, Commissioner alleges that Respondent has violated section 22a-361 of the General Statutes.
7. By agreeing to the issuance of this Consent Order, Respondent makes no admission of fact or law with respect to the matters addressed herein other than the facts asserted in paragraphs A.1. through A.3.

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

1. Stationing of Moorings. Respondent shall moor vessels in Federal Navigation Project Area 5 of Greenwich Harbor only as duly authorized under federal, state and local law.
2. Retention of Moorings. Respondent may retain the approximately 150 moorings located in Long Island Sound south of Steamboat Road described in paragraph A.3, above, pending a final determination on permit application #201005945-TS submitted on October 18, 2010.
3. Permit Application. In the event that the Commissioner's final determination on permit application #201005945-TS, requires modification or removal of the existing moorings waterward of the high tide line, Respondent shall, not later than 30 days following issuance of a final determination, submit a timetable to the Commissioner for her review and written approval for conforming the existing structure to the terms and conditions of said decision. Upon written approval, Respondent shall conform such existing structures in accordance with the permit decision and the approved timetable.
4. No Additional Work. Respondent shall not conduct any work waterward of the high tide line or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with sections 22a-361 and 22a-32 of the General Statutes, except for routine maintenance as defined in sections 22a-363a and 22a-32 of the General Statutes.
5. Full compliance. Respondent 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, Respondent shall pay a civil penalty of \$3000.00 for the alleged violation of section 22a-361 of the General Statutes described in paragraphs A.3, A.5 and A.6 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-2009-143-V."
8. Approvals. If the Commissioner notifies the Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed

disapproved, and Respondent 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.

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

13. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject Respondent to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
14. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with section 22a-6, under section 53a-157b of the CGS.
15. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with this Consent Order, Respondent 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. Respondent's obligations under this Consent Order shall not be affected by the passage of title to the site to any other person or municipality. A future owner of the site may be subject to the issuance of an Order from the Commissioner.
16. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any action to prevent or abate violations of law, prevent or abate pollution, recover costs and damages for adverse impacts to natural resources and to impose penalties for violations of law, including but not limited to violations of any permit issued by the Commissioner. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to correct violations.

17. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
18. No assurance by Commissioner. No provision of this Consent Order or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the corrective actions taken by Respondent pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
19. Access to site. Any representative of the Department of Environmental Protection may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.
20. No effect on rights of other persons. This Consent Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Consent Order.
21. Notice to Commissioner of changes. Within fifteen days of the date 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, Respondent shall submit the correct or omitted information to the Commissioner.
22. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

Kevin Zawoy
Department of Environmental Protection
Office of Long Island Sound Programs
79 Elm Street
Hartford, CT 06106-5127
(860) 424-3626
Fax # (860) 424-4054

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

Respondent consents to the issuance of this Consent Order without further notice.

BY: _____
The Indian Harbor Yacht Club Incorporated
~~Commodore, J. Mac McClellan~~

Pat D. Vito, Vice Commodore

12/13/10
Date

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

December 16, 2010.

Amey Marrella

Amey W. Marrella
Commissioner