

Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

STATE OF CONNECTICUT File# LIS-2012-3431-V Date of Issuance: June 25, 2012

v.

BRIAN J. LONERGAN

AND

MELISSA A. LONERGAN

AND

GEORGE H. LINSLEY

CONSENT ORDER

A. With the agreement of the Brian J. & Melissa A. Lonergan, and George H. Linsley ("the Respondents"), the Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. The property located at 45 Sunset Beach Road, Branford, Connecticut ("the property") is owned by Brian J. & Melissa A. Lonergan. The property is located adjacent to Long Island Sound, a tidal, coastal and navigable water of the State.
2. George H. Linsley was hired by Brian J. & Melissa A. Lonergan to complete repairs to the concrete seawall located along the shoreline of the site within an area waterward of the high tide line. The repairs were to be completed in accordance with Certificate of Permission (COP) #201105976-SJ issued on September 1, 2011.
3. On or before May 16 2012, the Respondents utilized heavy equipment waterward of the high tide line to excavate and side-cast material within the intertidal zone adjacent to the existing seawall. The side-cast material was allowed to remain in-place during tidal inundations. This work was completed out of compliance with two SPECIAL TERMS AND CONDITIONS of COP #201105976-SJ. Specifically, SPECIAL TERMS AND CONDITIONS paragraph 1., that requires seawall maintenance work be completed using hand held equipment and that any construction related debris be placed atop tarps that must be placed to capture all material which was required to be removed prior to the next

high tide. SPECIAL TERMS AND CONDITIONS paragraph 5., does not allow the deposition, placement, or storage of material within any wetland or watercourse unless otherwise authorized.

4. The property and the location of the work described in paragraph A.1., above, shall hereinafter be referred to as "the site."
5. The Respondents have not received a certificate or permit from the Commissioner under section 22a-361 of the General Statutes for the work described in paragraph A.3., above.
6. By virtue of the 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 the Respondents as follows:

1. Release of Cease & Desist Order #LIS-2012-3431-V: The Respondents may continue work at the site pursuant to COP #201105976-SJ upon the release of Cease & Desist Order #LIS-2012-3431-V.
2. No Additional Work. The Respondents 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.
3. 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.
4. Supplemental Environmental Project.
 - a. The Respondents have agreed to fund a supplemental environmental project ("SEP") or projects as selected by the Department according to its February 15, 1996 "Policy on Supplemental Environmental Projects." Therefore, on or before thirty (30) days after the date of issuance of this Consent Order, the Respondents shall pay \$2,500 to the Long Island Sound or Statewide SEP Account. The payment shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut," with notation thereon "Long Island Sound or Statewide SEP Account" and "Consent Order No. LIS-2012-3431-V."
 - b. If the Respondent fails to fund the SEP in accordance with paragraph 4.a. above, the Respondents shall immediately pay a civil penalty of \$2,500. The Respondents shall

- pay such civil penalty in accordance with the provisions of paragraph B.5 of this Consent Order.
- c. The Respondent 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.
 - d. If and when the Respondents disseminates any publicity, including but not limited to any press releases regarding funding a SEP, the Respondents shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
5. 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-2012-3431-V."
 6. Approvals. 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.
 7. 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.
 8. 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.

9. Notification of noncompliance. In the event that the 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, 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 Respondent 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.
10. 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."
11. 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 the Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
12. 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.

13. Notice of transfer; liability of the 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 Order from the Commissioner.
14. 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.
15. Respondents' obligations under law. Nothing in this Consent Order shall relieve the Respondents of other obligations under applicable federal, state and local law.
16. 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 Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
17. 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.
18. 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.
19. Notice to Commissioner of changes. Within fifteen days of the date the Respondents 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, the Respondents shall submit the correct or omitted information to the Commissioner.

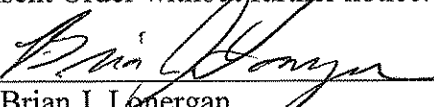
20. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order or any contact required to be made with the Commissioner shall, unless otherwise specified in writing by the Commissioner, be directed to:

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

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

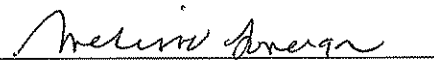
The undersigned certifies that he is fully authorized to enter into this Consent Order and to legally bind the Respondents to the terms and conditions thereof.

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

BY: 
Brian J. Lonergan

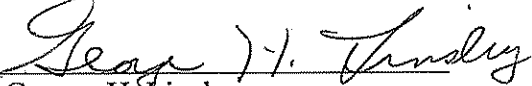
May 30, 2012
Date

AND

BY: 
Melissa A. Lonergan

May 30 2012
Date

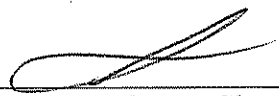
AND

BY: 
George H. Linsley

May 30, 2012
Date

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

6/22, 2012.


Macky McCleary
Deputy Commissioner