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Land & Water Resources Division

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Affirmative Action/Equal Opportunity Emplc

STATE OF CONNECTICUT      File # LIS-2018-3962-V      Date Issued: 6/12/2019

v.

ROBERT C. MARRA

AND

LORI COOKE

### CONSENT ORDER

- A. The Commissioner of Energy & Environmental Protection ("the Commissioner") finds:
1. Robert C. Marra and Lori Cooke ("Respondents") are the owners of 11 Chandler Avenue, Old Saybrook, CT ("the Property"). The property is located adjacent to Hagar Creek, a tidal, coastal and navigable water of the State and includes tidal wetlands as defined by section 22a-29 of the Connecticut General Statutes ("CGS").
  2. Certificate of Permission (COP) #COP-2003-140-MG was issued to KLM, LLC, C/O Robert Marra on November 26, 2003 to conduct regulated activities at the Property. The COP authorized KLM LLC to maintain an existing storage shed in tidal wetlands, remove an existing pre-1980, 790 square foot residence in tidal wetlands, and to construct a new elevated residence of which 868 square feet was to occupy an area of tidal wetlands.
  3. The Respondents violated the following conditions of COP-2003-140-MG: a) Special Terms & Condition #2 which specifically prohibits the placement or deposit of any fill in any wetland or watercourse; b) General Terms & Condition #19 which prohibits work in tidal wetlands other than the work specifically authorized; and c) Special Terms & Condition #6 which prohibits any unauthorized maintenance to the gravel driveway at the site.
  4. On or before May 14, 2018, without authorization and despite the requirements of COP-2003-140-MG being known to it, Respondents conducted work at the property and

deposited fill in tidal wetlands in substantial violation of COP-2003-140-MG, and CGS sections 22a-361 and 22a-32 as follows: a) placed an approximately 30' wide x 90' long x 6" deep area of new topsoil fill along the northern property line and an approximately 9' wide x 55' long x 6" deep area of new topsoil fill along the eastern property line, and seeded and installed a sprinkler system in these areas of fill; b) installed portions of a gravel stone driveway with curbing along the southeasterly corner of the property; c) installed a stone walkway with curbing off the driveway accessing the residence; and d) placed approximately 6" to 1.5' of topsoil fill north of the stone driveway and south of the existing shed.

5. The property and the location of the work described in paragraph A.1., above, shall hereinafter be referred to as "the site."
  6. Respondents did not receive a certificate or permit from the Commissioner under CGS sections 22a-361 and 22a-32 authorizing the work described in paragraph A.4. at the site.
  7. By virtue of the above, Respondents have violated CGS sections 22a-361 and 22a-32.
- B. With the agreement of the Respondents, the Commissioner, acting under CGS sections 22a-6, 22a-32, and 22a-361 orders Respondents as follows:
1. **Removal of Fill.** Not later than **July 1, 2019**, unless otherwise authorized by the Commissioner in writing, Respondents shall have completed all of the restoration activities identified in the site survey "Restoration Plan," entitled "Property Survey Showing Proposed Grades," sheets 1 and 2 of 2 dated November 8, 2018 and revised on February 13, 2019, April 26, 2019, and May 10, 2019 which includes but not limited to, the removal of 240 cubic yards of fill over 6,893 square feet and the planting of tidal wetlands plant plugs to address the unauthorized work described in paragraph A.4., above. A copy of the Restoration Plan has been included as Attachment "A" to this document. All work completed in association with this work must be conducted as follows:
    - a. all work must be completed during low water conditions;
    - b. establish and maintain proper sedimentation and erosion control measures which will prevent the erosion or scouring of the site into adjacent tidal wetlands;
    - c. all material removed must be disposed of at an approved upland disposal location landward of the coastal jurisdiction line and outside tidal wetlands;
    - d. plant the entire area from which fill has been removed with tidal wetland plant plugs 18" on center;

- e. within 21 days of the completion of the work, Respondents shall submit site photographs which show pre-work, construction work, and post-work site conditions; and
  - f. the property owner shall, for a period no less than 2 years, submit annual monitoring reports prepared by a qualified consultant, on or before September 30th of each growing season for the Commissioner's review and comment, detailing the status of the restored tidal wetlands area. Such monitoring reports shall contain at a minimum the following information: 1) visual description of the restored tidal wetland areas; 2) a description of the health and vigor of the restored tidal wetlands; 3) description of the restoration area identifying the species of plants growing; 4) status of the tidal wetland plant plugs; 5) description of any invasive plant species and recommendations to remove them; 6) any recommendations to improve the health and vigor of the growing plants; and 7) photographs of the restoration area.
2. Respondents shall contact the Commissioner within 24 hours of initiation of the work required under paragraph B.1 of this Order.
  3. Respondents shall notify the Commissioner in writing within 24 hours of the completion of the required work at the site.
  4. Final Inspection. Within 10 calendar days of the completion of work performed in accordance with the plan referenced in paragraph B.1. of this Order, the Respondents shall submit an as-built site survey prepared by a State of Connecticut licensed land surveyor showing on-site ground elevations at or below the pre-work site elevations as shown on the site survey entitled "Property Survey Plan, Showing Existing & Proposed Improvements," prepared by Angus McDonald Gary Sharpe & Associates, Inc., dated June 10, 2003.
  5. Permit Application Decision.
    - a. No later than ninety (90) days after issuance of this Consent Order, Respondents shall submit a permit application to authorize the work completed and/or modified pursuant to this Consent Order at the site as described in paragraphs A.4.a., A.4.c., and A.4.d., above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification for the purpose and need for the driveway and walkway, and their consistency with all applicable state statutes and policies.


- b. In the event that the Commissioner's final determination on the permit application submitted pursuant to paragraph B.5.a., above, requires modification or removal of the structures and/or fill, Respondents shall, not later than 30 days following issuance of a final decision, submit a timetable to the Commissioner for her review and written approval for the modification or removal of the existing structure(s) and/or fill in accordance with the terms and conditions of such final decision. Upon the Commissioner's written approval, Respondents shall modify or remove such existing structure(s) and/or fill in accordance with the approved timetable and final decision.
6. No Additional Work. Respondents shall not conduct any work waterward of the coastal jurisdiction line or in tidal wetlands at the site without prior written authorization of the Commissioner in accordance with CGS sections 22a-361 and 22a-32.
7. 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.
8. Penalty for past violations. On or before 30 days after issuance of this Consent Order, the Respondents shall pay a civil penalty of Eight Thousand Dollars (\$8,000) for the violations of CGS sections 22a-361 and 22a-32 described in paragraphs A.3. and A.4., above.
9. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the "Connecticut Department of Energy & 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 Energy & Environmental Protection. The check shall state on its face, "Land & Water Resources Division, Consent Order Nos. LIS-2018-3962-V."
10. 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 the 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 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.

11. **Definitions.** As used in this Consent Order, "Commissioner" means the Commissioner of Energy & 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 to the Respondents, whichever is earlier.
12. **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.
13. **Notification of noncompliance.** In the event that 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, 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, 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 Respondents shall comply with any dates which may be approved in writing by the Commissioner. Notification by 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.
14. **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 CGS Section 22a-6, under CGS Section 53a-157b and in accordance with any other applicable statute."


15. 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 Respondents to an injunction and penalties under Chapters 439, and 446i of the General Statutes.
16. False statements. Any false statement in any information submitted pursuant to this Consent Order may be punishable as a criminal offense in accordance with CGS section 22a-6, under CGS section 53a-157b.
17. Notice of transfer; liability of Respondents and others. Until Respondents have fully complied with this Consent Order, 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. 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.
18. 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 Respondents pursuant to this Consent Order have not successfully corrected all violations, the Commissioner may institute any proceeding to require Respondents to undertake further investigation or further action to correct violations.
19. Respondents' obligations under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.
20. 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 Respondents pursuant to this Order will result in compliance with regard to any statute, regulation, permit, order or other authorization not identified hereunder.
21. Access to site. Any representative of the Department of Energy & 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.

22. 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.
23. Notice to Commissioner of changes. Within fifteen days of the date 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, Respondents shall submit the correct or omitted information to the Commissioner.
24. Joint and Several Liability. The Respondents shall be jointly and severally liable for compliance with this Consent Order.
25. 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  
Land & Water Resources Division  
79 Elm Street  
Hartford, CT 06106-5127  
(860) 424-3626  
Fax # (860) 424-4054
26. Relationship to Cease and Desist Order. This Consent Order supersedes Cease and Desist Order No. # LIS-2018-3962-V issued to the Respondents on June 7, 2018. As a result, upon the effective date of this Order, the Cease and Desist Order shall no longer be considered in effect as if such Cease and Desist Order was fully withdrawn.

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

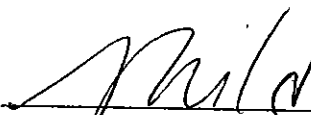
  
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Robert C. Marra  
June 3, 2019  
\_\_\_\_\_  
Date

AND

  
\_\_\_\_\_  
Lori Cooke  
6/3/19  
\_\_\_\_\_  
Date

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

June 12, 2019.

  
\_\_\_\_\_  
Betsey Wingfield  
Deputy Commissioner