



STATE OF CONNECTICUT File # LIS-2019-4142-V Date Issued: 11/6/2019

v.

TOWN OF MONTVILLE

AND

MACHNIK BROS., INC,

CONSENT ORDER

A. The Commissioner of Energy & Environmental Protection ("the Commissioner") finds:

1. The Town of Montville ("Respondent 1") is the owner of two culvert crossings: Site 1, located over Fox Brook; and Site 2, located over a tributary of Fox Brook, in the vicinity of 836 Old Colchester Road, Montville, CT. ("The Property"). Machnik Bros., Inc. ("Respondent 2") is a Connecticut corporation with a business address of 125 Mile Creek Road, Old Lyme, CT 06371 and is the contractor who was hired by Respondent 1 to conduct the work to replace the culverts at the Property. Collectively, Respondent 1 and Respondent 2 will be referred to as the Respondents. The Property includes the Old Colchester Road right-of-way, Fox Brook, and a tributary of Fox Brook both watercourses of the State as defined by section 22a-38 of the Connecticut General Statutes ("CGS"), and associated wetlands as also defined by section 22a-38.
2. The Commissioner issued Section 401 Water Quality Certification #2018007027-PGP (the "License") to Respondent 1 on August 8, 2018. The License requires the authorized work at the Property to be conducted in accordance with application 2018-07027-PGP (the "Application"). The Application included the set of plans referenced in the License and titled "Town of Montville, Connecticut, Plan for Culvert Replacements on Old Colchester Road Over Fox Brook", Sheets 1-23, dated March 22, 2018, prepared by WMC Consulting Engineers (the "Approved Plans"). The Approved Plans included a detailed water handling plan approved by the Department of Energy and Environmental Protection's fisheries division ("Department" or "DEEP") on September 11, 2017 (the

“Water Handling Plan”), that allowed authorized work to occur while simultaneously allowing the flow of Fox Brook to continue through the work site.

3. On or before September 24, 2019, without any other authorization, the Respondents: a) violated GENERAL CONDITION #3 of the License at Site 1 by failing to follow the Water Handling Plan (copy enclosed) and implemented an alternative water handling plan by installing an approximately 30' wide x 50' long steel sheet pile cofferdam which dammed off Fox Brook. This violation of the License at Site 1 and the implementation of an unauthorized water handling plan has caused approximately 400 linear feet of Fox Brook to run dry resulting in fish mortality and a continuing loss and interruption of fisheries reproductive habitat; b) violated GENERAL CONDITION #3 of the License at Site 1, by diverting portions of Fox Brook to an unnamed tributary of Fox Brook for approximately 200 linear feet; c) violated GENERAL CONDITIONS #3 of the License at Site 1 by placing two silt bags in the watercourse of Fox Brook, and within associated inland wetlands, which is inconsistent with the Approved Plans and which is causing an unauthorized discharge of pollution to the water of the state; d) violated GENERAL CONDITION #6.c., 6.e., and 6.f. of the license by failing to install or maintain any sedimentation and erosion control measures at the Property as shown on the Approved Plans; and e), violated GENERAL CONDITION #6.h of the License at Site 2 by allowing erosion of the streambank and the deposition of approximately 6" of sediment material within an approximately 240 square foot area of the tributary of Fox Brook at the southern side of the culvert at Site 2, which resulted in an unauthorized discharge of pollution to the waters of the state. Furthermore, Respondents failed to report the discharge of such pollution to the Department and the U.S. Army Corps of Engineers as required in the condition.
4. The violations of the License specified in paragraph 3 of this order constitute substantial and continuous violations of the License that must be addressed immediately due to the continuing impact on fish, fisheries spawning habitat, and the waters of the state. The violations specified in paragraph 3.b. above constitute an unauthorized water diversion in violation of CGS section 22a-368(b). The uncorrected violations of the License will also result in substantial and imminent harm to a fisheries resource due to the continuing loss and interruption of finfish spawning habitat during the height of the spawning season and to the waters of the state because of the continued unauthorized discharge of sediment into the waters of state, specifically the unnamed tributary of Fox Brook. The implementation of the alternative water handling plan and any discharge to the waters of the state require authorization by the Commissioner and no such authorization was granted to the Respondents for those activities.
5. By virtue of the above, Respondents have violated the License, sections 22a-426-4 and 22a-426-8 of the Regulations of Connecticut State Agencies, CGS section 22a-368(b), and CGS section 22a-430.

- B. With the agreement of the Respondents, the Commissioner, acting under CGS sections 22a-6(a) and section 22a-428 orders Respondents as follows:
1. Compliance with Restoration Plan. Respondents shall comply with all the requirements of the October 25, 2019 Department restoration plan approval letter, a copy of which is attached hereto as Attachment "A."
 2. 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.
 3. Penalty for past violations. The Respondents shall pay a civil penalty of Ten Thousand Dollars (\$10,000) as the total civil penalty for those and only those violations described in paragraph A.3., above.
 4. Payment of penalties. On or before 30 days after the issuance of this Consent Order, Respondents shall pay the civil penalty as follows:
 - a. \$5,000 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 and Water Resources Division, Consent Order No. LIS-2019-4142-V;" and
 - b. \$5,000 shall be paid 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." This payment shall be mailed or personally delivered to the Department of Energy & 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 "Statewide SEP Account" and "Consent Order No. LIS-2019-4142-V."
 5. If the Respondents fails to fund the SEP in accordance with paragraph B.4.b., above, the Respondents shall immediately pay the remainder of the civil penalty of \$5,000. The Respondents shall pay such remainder in accordance with the provisions of paragraph B.4.a. of this Consent Order.
 6. 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.

7. If and when the Respondents disseminate 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.
8. Approvals. Respondents shall use best efforts to submit to the Commissioner all documents required by this 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 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 Order. Nothing in this paragraph shall excuse noncompliance or delay.
9. Definitions. As used in this Order, "Commissioner" means the Commissioner of Energy & Environmental Protection or an agent of the Commissioner. The date of "issuance" of this 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 Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this 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 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 the Respondents become aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this 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.

12. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this 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."

13. False statements. Any false statement in any information submitted pursuant to this Order may be punishable as a criminal offense in accordance with CGS section 22a-6, under CGS section 53a-157b.
14. Notice of transfer; liability of Respondents and others. Until Respondents have fully complied with this 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 Order, or obtaining a new mailing or location address. Respondents' obligations under this 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.
15. Commissioner's powers. Nothing in this 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 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.

16. Respondents' obligations under law. Nothing in this Order shall relieve Respondents of other obligations under applicable federal, state and local law.
17. No assurance by Commissioner. No provision of this 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.
18. 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 Order.
19. No effect on rights of other persons. This Order shall neither create nor affect any rights of persons who or municipalities which are not parties to this Order.
20. 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 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.
21. Joint and Several Liability. The Respondents shall be jointly and severally liable for compliance with this Consent Order.
22. Submission of documents. Any document required to be submitted to the Commissioner under this 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

23. Relationship to Cease and Desist Order. This Consent Order supersedes Cease and Desist Order No. LIS-2019-4142-V issued to the Respondents on October 11, 2019. As a result,

upon the Effective Date of this Order, the Cease and Desist Order No. LIS-2019-4142-V shall no longer be considered in effect as if such Order was fully withdrawn.

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

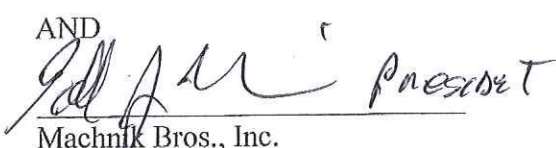


Town of Montville
Ronald K. McDaniel, Mayor

11/5/2019

Date

AND



Machnik Bros., Inc.
Todd Machnik, President

11/05/2019

Date

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

11/6/19, 2019.



Betsey C. Wingfield
Deputy Commissioner



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Affirmative Action/Equal Opportunity Employer

October 25, 2019

Town of Montville Town Hall
Mayor Ronald K. McDaniel
310 Norwich-New London Tpke.
Uncasville, CT 06382

RE: Modified Water Handling Plan, Cease & Desist Order #LIS-2019-4142-V, Vicinity of 836
Old Colchester Road
Town: Montville

Dear Mayor McDaniel:

On October 17, 2019, the Department received from your consultant WMC Consulting Engineers, a revised Water Handling Plan to install an approximately 36" diameter 78 linear foot long bypass culvert on the southeasterly side of the box cofferdam located within Fox Brook to facilitate water passage and to conduct site restoration, regrading, and stabilization to impacted inland wetlands which includes the removal of approximately 240 square feet of accumulated sediment along the southern side of the western tributary culvert of Fox Brook both of which are required by the above-referenced Cease & Desist Order, which was issued to you and Machnik Bros., Inc. on October 11, 2019.

Based upon a review of the submitted plan and coordination with Brian Murphy of the DEEP Fisheries Division, the Department hereby approves the attached plan prepared by WMC Consulting Engineers, entitled "Soil Erosion Control & Handling Water Plan Old Colchester Road over Fox Brook," Sheet 1, dated October 17, 2019 and revised dated October 22, 2019 with the following conditions:

1. All work must be completed no later than December 1, 2019, unless otherwise authorized by the Commissioner in writing;
2. All work associated with the plan such as the revised Water Handling Plan, site stabilization, and maintaining the existing box cofferdam shall be undertaken as part of this approval. Additional work such as installation of the box culverts and final roadway construction work are still subject to Cease & Desist Order #LIS-2019-4142-V;
3. Prior to the commencement of work authorized herein, all sedimentation and erosion control measures must be established and maintained until the work authorized herein is complete and the site is stabilized;
4. The remediation work associated with the Fox Brook tributary may be subject to additional

remedial requirements such as the establishment of native plants or additional remediation measures as directed by the Commissioner in writing; and

5. Within 48 hours of the completion of the work approved herein, the Licensee shall submit site photographs to the Commissioner showing the completed construction work and stabilized site conditions.

Should you have questions on this matter, please do not hesitate to contact Kevin Zawoy of my staff at (860) 424-3626 or kevin.zawoy@ct.gov. Thank you.

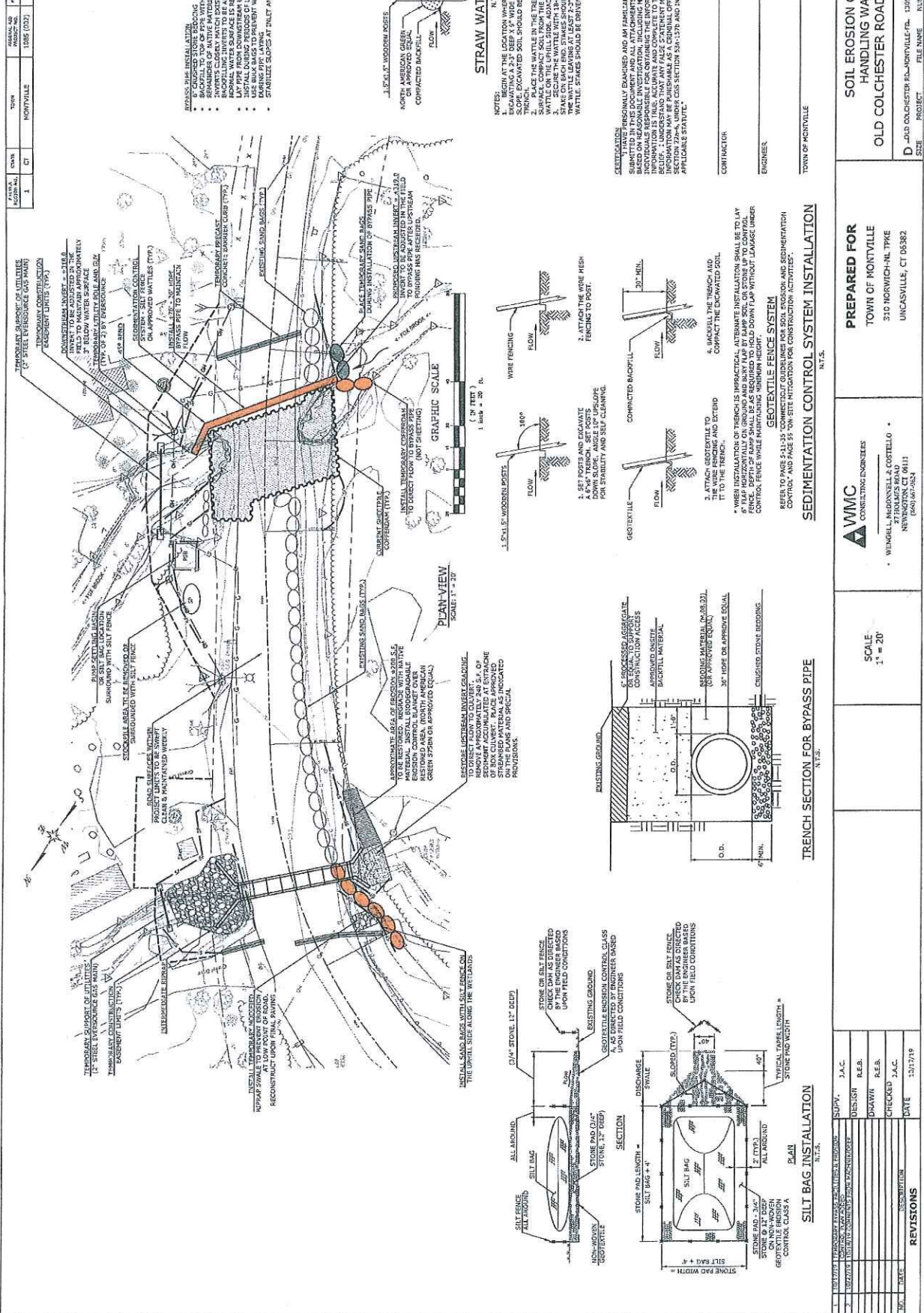
Sincerely,

A handwritten signature in blue ink, appearing to read 'B. P. Thompson', with a long horizontal flourish extending to the right.

Brian P. Thompson, Director
Land & Water Resources Division
Bureau of Water Protection & Land Reuse

cc: Machnik Bros., Inc
Ann Catino, Esq. Halloran & Sage
Kenneth M. Collette DEEP Staff Attorney
Brendan Schain, DEEP Hearing Officer

THROAT SUPPORT OF UTILITIES
(3" STEEL EVERSOURCE GAS MAIN)

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