



STATE OF CONNECTICUT File # LIS-2019-4142-V Date Issued: 10/11/2019

v.

TOWN OF MONTVILLE

AND

MACHNIK BROS., INC,

CEASE AND DESIST 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 is located within Fox Brook and a tributary of Fox Brook a watercourse of the State as defined by section 22a-38 of the Connecticut General Statutes ("CGS"), including wetlands as also defined by § 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 the section CGS 22a-268(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 water 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. The Commissioner, acting under CGS sections 22a-7 and 22a-428 orders the Respondents as follows:

1. Cessation of Activities. Effective immediately upon receipt of this Cease and Desist Order ("the Order"), Respondents shall cease and desist from engaging in any further activities at the site, such as the placement of steel sheet piling, the placement of soil, culverts, fill, or any material other than any remedial requirements Ordered by the Commissioner pursuant to paragraphs 2. and 4., below. Respondents shall not continue any construction activities at the site.
2. Installation of Sedimentation and Erosion Controls (S&E Controls). Within 48 hours of issuance of the Order, Respondents shall establish proper S & E Controls at the site. Such S & E Controls shall be installed consistent with the approved license plans and the Best Management Practices in *Department Bulletin 34, 2002 Connecticut Guidelines for Soil Erosion and Sediment Control*.
3. Water Handling Plan. Within 48 hours of issuance of the Order, Respondents shall submit for the Commissioner's review and written approval a modified Water Handling Plan which proposes to immediately modify site conditions to restore streamflow to currently de-watered section of Fox Brook and re-establish safe passage through the work site for fisheries resources. The Respondents shall immediately implement the Commissioner's approved plans.
4. Removal of Fill. Within 48 hours of issuance of this Order, Respondents shall submit for the review and written approval of the Commissioner, a plan to remove the approximately 240 square foot area of fill deposited at the southern side of the culvert installed within the tributary of Fox Brook and to restore all areas of inland wetlands disturbed as a result of the unauthorized diversion of Fox Brook. Such plan must include an existing site survey prepared by a professional licensed surveyor in the State of Connecticut. The survey must show the diverted waterway and the area of erosion and deposited material along the southern side of the Fox Brook tributary culvert crossing. The plan shall include a detailed proposal to: remove all the unauthorized deposited fill, stabilize the area, and to restore all areas of inland wetlands adversely impacted by such diversion, which may include soil replacement and plantings. Upon completion of the work, the plan must include monitoring of the site for two years to ensure successful stabilization and remediation. The plan must contain a detailed construction methodology to complete this work and leave the site in a stable condition with properly installed and maintained erosion controls. Such plan shall provide for the completion of all work no later than 21 days after the Commissioner's written approval of such plan.

5. Prior to initiation of work. Respondents shall contact the Commissioner within 24 hours of initiation of all the work required under this Order.
6. Prior to completion of work. Respondents shall notify the Commissioner in writing within 24 hours of the completion of the required work at the site.
7. Full compliance. Respondents shall not be considered in full compliance with this Order until all actions required by this Order have been completed as approved and to the satisfaction of 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 Respondent 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. 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
Fax # (860) 424-4054

22. Hearing. A hearing will be held on October 22, 2019, at 2:00 p.m. at DEEP-Headquarters, 79 Elm Street, Hartford, Connecticut as required by CGS § 22a-7 to provide the

Respondents with an opportunity to be heard and show that the conditions described in this Cease and Desist Order or that his Cease and Desist Order is otherwise improper or unlawful.

THIS CEASE AND DESIST ORDER IS IMMEDIATELY EFFECTIVE UPON RECEIPT.

Issued as a cease and desist Order of the Commissioner of Energy and Environmental Protection.


Betsey Wingfield
Deputy Commissioner

Date

