

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **CEASE AND DESIST ORDER**  
**FILE # LIS-05040088 FV**

**SALVATORE H. MAROTTOLI** : **MARCH 23, 2005**

**FINAL DECISION**

The parties have agreed to resolve the above-captioned *Cease and Desist Order* by issuance of the attached agreement. The parties have confirmed their review, understanding and assent to this agreement. I hereby issue this order as my final decision in this matter.

March 23, 2005  
DATE

/s/ James Malcolm  
James Malcolm, Hearing Officer

STATE OF CONNECTICUT

File# LIS-05-40088-FV

v.

Salvatore H. Marottoli

### AGREEMENT OF THE PARTIES

A. This Agreement is entered into by the Respondent, Salvatore H. Marottoli and Staff of the Office of Long Island Sound Programs, Department of Environmental Protection ("Staff") in order to resolve Cease and Desist Order LIS-05-40088-FV ("the Order"). Staff and Respondents hereby agree as follows:

1. Salvatore H. Marottoli ("Respondent") is the owner of the property located at 31 Halls Point Road, Branford, Connecticut ("the property"). The property is located adjacent to Long Island Sound, a tidal, coastal and navigable water of the State.
2. On September 29, 1999, the Commissioner of Environmental Protection ("the Commissioner") issued to the Respondent general permit registration no. 199902372-MG pursuant to section 22a-361 of the General Statutes ("the permit"). The permit authorized the installation of a 4' wide by 8' long fixed timber pier supported by two timber piles with railings, a 3' wide by 22' long ramp with railings and a 10' wide by 10' long timber float and two anchor piles along the southwestern corner of the site. On or before February 16, 2005, Respondent constructed and has since maintained a 6'11" wide by 11' long fixed timber pier supported with two timber piles.
3. On or before February 16, 2005, Respondent constructed and has since maintained an approximately 50 linear foot long, 2 foot thick by 10-foot tall crescent shaped stone seawall with associated stone backfill within areas waterward of the high tide line along the southeastern corner of the site.
4. The property and the location of the work described in paragraphs A.2. and A.3., above, shall hereinafter be referred to as "the site".
5. Respondent has not received a certificate or permit from the Commissioner under section 22a-361 of the General Statutes for the erection and maintenance of the fixed pier and seawall described in paragraphs A.2. and A.3. at the site.
6. Respondent has not complied with the requirements of permit no. 199902372-MG.

7. By virtue of the above, Respondent has violated section 22a-361 of the General Statutes, and has violated permit no. 199902372-MG.
8. By agreeing to this Agreement, 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 and A.3, inclusive.

B. Respondent and Staff agree to request that the Hearing Officer in the Order proceeding issue a Final Decision containing the following provisions:

1. Removal of Structures. Within 60 days of issuance of the Hearing Officer's Final Decision on the Order, Respondent shall modify the 6'11" wide fixed timber pier described in paragraph A.2, above, to a dimension of 4' wide and 11' long.
2. Retention of Structures. Respondent may retain the two timber piles and fixed pier described in paragraph A.2., above, as modified pursuant to paragraph B.1., above, and may install and use the ramp and float authorized in permit no. 199902372-MG pending a final determination on the permit application submitted pursuant to paragraph B.3.a., below.
3. Permit Application.
  - a. Not later than 60 days after issuance of the Hearing Officer's Final Decision on the Order, Respondent shall submit a permit application pursuant to section 22a-361 of the General Statutes to authorize the structures as modified pursuant to paragraph B.2, above. Such application shall include all information required on forms prescribed by the Commissioner, including a justification of the structures, and may include additional work proposed by Respondent for the site.
  - b. In the event that the Commissioner's final determination on the permit application requires modification or removal of existing structures 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 his review and written approval for conforming the existing structures 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. Restoration Plan.
  - a. Within 30 days of the effective date of the Hearing Officer's Final Decision on the Order, Respondent shall submit to Staff, for review and written approval, a plan to remove the seawall and all associated backfill to restore the site to its condition prior to the commencement of any unauthorized work ("restoration plan"). Such restoration plan shall be sealed by a licensed engineer or surveyor,

and include site plans containing "plan views" and "cross-sections" that depict previous and existing site conditions, including the location of high tide line (HTL), mean high water (MHW), and mean low water (MLW) lines, and coastal resources on-site. Such plan shall include provisions for restoration of the site, including: removal of all fill waterward of the HTL; method of disposal of the material removed to an area landward of the existing seawall on the site; a detailed construction methodology; provisions for implementing and maintaining proper sedimentation and erosion controls; a timetable for accomplishing all such restoration work; and any other measures as are appropriate to prevent adverse environmental impacts and ensure compliance with this Agreement and with all applicable statutes and regulations. Such plan shall provide for the completion of all restoration work no later than 90 days after Staff's written approval of such plan.

- b. Upon written approval of the restoration plan by Staff, Respondent shall immediately perform, in conformance with the approved plan and with the approved timetable, all removal and restoration work as specified in the restoration plan.
  - c. Respondent shall contact Staff no later than 24 hours prior to initiation of the work required under this paragraph.
  - d. Respondent shall notify Staff in writing within 24 hours subsequent to completion of all required work at the site.
  - e. Respondent shall complete all removal and restoration work to the satisfaction of Staff prior to submission of any new applications pursuant to Paragraph 5 below.
5. Future Applications. The Parties acknowledge that the Respondent may apply, pursuant to the Coastal Management Act, to the local zoning authority to construct a new wall or place fill in the southwest corner of his Property if such activities are deemed, to the satisfaction of the Staff, to be outside the jurisdiction of the Commissioner. Respondent understands that the Commissioner will have the opportunity to comment on such application pursuant to Section 22a-109(d) of the General Statutes. Furthermore, if it is determined that an area of the southwest corner of the Property is outside the jurisdiction of the Commissioner, the Respondent may apply to relocate said area to the far southwest corner of his Property so as to consolidate the uplands, provided there is no impact on coastal resources and no net increase in upland area. It is also understood between the Parties that the Respondent will likely apply for a permit to reconstruct or repair the existing seawall on the northeast corner of the Property.
6. No Additional Work. Except as required herein, 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.

7. Full compliance. Respondent shall not be considered in full compliance with this Agreement until all actions required by the Hearing Officer's Final Decision on the Order have been completed as approved and to the satisfaction of the Commissioner.
8. Supplemental Environmental Project.  
Respondent has agreed to fund the following supplemental environmental project ("SEP") as follows:
  - a. On or before fourteen (14) days after the date of issuance of this consent order, Respondent shall pay \$1,250 to SoundWaters Community Center for Environmental Education and shall certify in writing to Staff that such payment was made. The SEP funds shall be used by SoundWaters Community Center for Environmental Education to fund environmental educational programs relating to Long Island Sound.
  - b. If Respondent fails to fund the SEP in accordance with paragraph B.8.a, Respondent shall immediately pay a civil penalty of \$1,500. Respondent shall pay such civil penalty in accordance with the provisions of paragraph B.9 of this Agreement.
  - c. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding a SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
  - d. Respondent shall not claim or represent that any SEP payment made pursuant to this Agreement constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment under this paragraph.
9. Payment of penalties. Payment of any penalties under this Agreement as incorporated into the Hearing Officer's Final Decision on the 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, Order No. LIS-05-40088-FV".
10. Approvals. Respondent shall use best efforts to submit to Staff all documents required by the Hearing Officer's Final Decision on the Order in a complete and approvable form. If Staff 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 Staff or, if no time is specified by Staff, within thirty days of the Staff's notice of deficiencies. In

approving any document or other action under this Agreement, Staff 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 Agreement. Nothing in this paragraph shall excuse noncompliance or delay.

11. Definitions. As used in this Agreement, "Commissioner" means the Commissioner of Environmental Protection or an agent of the Commissioner. The date of "issuance" of the Hearing Officer's Final Decision on the Order is the date such Decision is signed.
12. Dates. The date of submission to Staff of any document required by this Agreement shall be the date such document is received by Staff. The date of any notice by the Staff this Agreement, 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, whichever is earlier. Except as otherwise specified in this Agreement, the word "day" as used in this Agreement means calendar day. Any document or action which is required by this Agreement 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 Respondent becomes aware that he did not or may not comply, or did not or may not comply on time, with any requirement of this Agreement or of any document required hereunder, Respondent shall immediately notify Staff 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 Staff, Respondent shall state in writing the reasons for the noncompliance or delay and propose, for the review and written approval of Staff, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by Staff. Notification by Respondent shall not excuse noncompliance or delay. Staff's approval of any revised compliance dates shall not excuse noncompliance or delay unless specifically so stated by Staff in writing.
14. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to Staff under this Agreement 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."

15. Noncompliance. Failure to comply with the Hearing Officer's Final Decision on the Order may subject Respondent 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 the Hearing Officer's Final Decision on the Order may be punishable as a criminal offense in accordance with section 22a-6, under section 53a-157b of the CGS.
17. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with the Hearing Officer's Final Decision on the 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 Agreement, or obtaining a new mailing or location address. Respondent's obligations under this Agreement 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 Agreement 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 Agreement 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.
19. Respondent's obligations under law. Nothing in this Agreement shall relieve Respondent of other obligations under applicable federal, state and local law.
20. No assurance by Commissioner. No provision of this Agreement 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 Agreement will result in compliance with regard to any statute, regulation, permit, Agreement or other authorization not identified hereunder.
21. 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 Agreement.
22. No effect on rights of other persons. This Agreement shall neither create nor affect any rights of persons who or municipalities which are not parties to this Agreement.

23. Notice to Commissioner of changes. Within fifteen days of the date Respondent becomes aware of a change in any information submitted to Staff under this Agreement, 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 Staff.
  
24. Submission of documents. Any document required to be submitted to Staff or to the Commissioner under this Agreement or any contact required to be made with Staff or 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) 424-3034  
Fax # (860) 424-4054

Respondent consents to the issuance of this Agreement without further notice.



Office of Long Island Sound Programs

BY: /s/ Charles H. Evans  
Charles H. Evans, Director

Date 3/22/05

Respondent, Salvatore H. Marottoli

/s/ S. Marottoli

Date 3/22/05

Issued as the final order of the Commissioner of Environmental Protection, resolving Cease and Desist Order File # LIS-05040088.

March 23, 2005  
Date

/s/ James Malcolm  
James Malcolm, Hearing Officer