

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **ORDER NO. IW-2001-1025V**

**CONNECTICUT DEPARTMENT OF
TRANSPORTATION, ET AL.** : **APRIL 5, 2004**

FINAL DECISION

The parties have agreed to resolve the appeal of the above-captioned matter by issuance of the attached Consent Order. The parties have confirmed their review, understanding and assent to this Order. By my signature, I hereby issue this Consent Order as the Final Decision in this matter.

April 5, 2004
Date

/s/ Jean F. Dellamarggio
Jean F. Dellamarggio, Hearing Officer

cc: Ugo Uzoh, DEP Inland Water Resources Division
Charles Walsh, Esq.
Mark Malley, Esq.

STATE OF CONNECTICUT)	
)	IW-2001-1025V
vs.)	
)	
CONNECTICUT DEPARTMENT OF)	PLYMOUTH
TRANSPORTATION, and)	
JAMES E. TURNER)	
)	

CONSENT ORDER

- A. With the agreement of the Connecticut Department of Transportation and James E. Turner, the Commissioner of Environmental Protection (“the Commissioner”) finds:
1. James E. Turner (“Respondent Turner”) is the owner of a property located at 13 Poland Brook Road (a.k.a. Route 72) in Plymouth, Connecticut (“the site”). The site is more fully described in a deed, which is recorded in volume 282, page 314 of the Plymouth Land Records and is identified as lot 029-002A on map 032 in the Plymouth Assessor’s office.
 2. The Connecticut Department of Transportation (“Respondent DOT”) owns and maintains a drainage system that runs through the site, and owns a drainage easement for the said drainage system including that portion that runs through the site (“drainage system”).
 3. On September 23, 1998 the Commissioner issued to Respondent DOT an authorization for coverage under the general permit for Inland Water Resources Division Activities, DEP-IWRD-GP-002, issued by the Commissioner on June 27, 1997 (“the authorization”). The authorization expired on June 27, 2002.
 4. Respondent DOT was authorized to conduct certain maintenance activities with respect to some of its structures including the drainage system. However, the authorization, in addition to other requirements and limitations, was limited to activities that did not require or involve placement of fill materials within wetlands or watercourses in excess of the cubic yards specified in the authorization.
 5. On approximately June 1, 2000 Respondent DOT, while conducting certain activities in maintenance of the drainage system, placed fill materials at the site within wetlands in excess of the cubic yards specified in the authorization, and altered a drainage path (“drainage path”) by constructing a berm which impounded runoff and surface water that previously drained southwest towards

the Poland Brook.

6. At some time prior to January 22, 2001 but subsequent to June 1, 2000, Respondent Turner placed fill materials at various locations at the site within wetlands, and also placed additional fill materials on top of the excess and unauthorized fill materials placed by Respondent DOT.
 7. Respondent DOT did not obtain any permit under Conn. Gen. Stat. §22a-39 for its excess fill materials, and Respondent Turner did not obtain any permit under Conn. Gen. Stat. §22a-42a to place the fill materials.
 8. By virtue of the above, Respondent DOT has violated Conn. Gen. Stat. §22a-39, and Respondent Turner has violated Conn. Gen. Stat. §22a-42a.
 9. On September 30, 2003, Respondent Turner submitted to the Commissioner a plan, including drawing and technical specifications, depicting actions to be taken to remediate the site entitled “Map Showing Site Rehabilitation . . .,” dated June 10, 2003 revised September 26, 2003 (“remediation plan”), prepared by Bill A. Schultz, a professional engineer, and Robert C. Green, a licensed land surveyor, both retained by Respondent Turner (“ the Consultants”).
 10. On November 12, 2003, Respondent Turner notified the Commissioner that the Town of Plymouth has approved the remediation plan.
 11. Respondent DOT and Respondent Turner are collectively referred to in this Consent Order as “Respondents.”
- B. With the agreement of Respondents, the Commissioner acting under Conn. Gen. Stat. §§ 22a-6 and 22a-39, the Commissioner orders Respondents as follows:
1. a. Retain the Consultants. The Commissioner hereby approves: (i) the remediation plan and (ii) the Consultants. Respondent Turner shall retain the Consultants until this Consent Order is fully complied with. Within 10 days after retaining any engineer or land surveyor other than the Consultants, Respondent Turner shall notify the Commissioner in writing of the identity of such other engineer and/or land surveyor. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable engineer and/or land surveyor unacceptable.
 - b. Implement the Plan. On or before October 1, 2004, Respondent Turner shall perform the actions specified in the remediation plan.
 - c. Submit an As-built Drawing. Respondent Turner shall perform all actions

required by the remediation plan in accordance with the approved schedule(s) and within 45 days of completing the required actions, submit to the Commissioner for his review and written approval an as-built drawing (“as-built drawing”) that verifies conformance with the remediation plan. The as-built drawing shall show restored grades at the site at no greater than one-foot contour interval and shall identify final spot elevations at the site. The as-built drawing shall be signed and sealed by the Consultants.

- d. Revision of the Remediation Plan. Respondents may revise the remediation plan only with the Commissioner’s prior written approval.
 - e. Access to the Site. Respondent DOT hereby grants access to Respondent Turner to its drainage system for the sole purposes of performing the actions required by this Consent Order. 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.
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 Commissioner’s satisfaction.
 3. Progress reports. Beginning July 1, 2004 and continuing until Commissioner’s written approval of any as-built drawing submitted under paragraph B.1.c. of this Consent Order, Respondents shall submit quarterly progress reports to the Commissioner describing the actions which each Respondent has taken during the quarter preceding any such report to comply with this Consent Order. Such quarterly report for any applicable quarter shall be due for submission within 15 days after the following scheduled quarterly dates: January 1, April 1, July 1 and October 1, of each year.
 4. 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 either Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and such notified Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 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.

5. Definitions. As used in this Consent Order, “Commissioner” means the Commissioner or an agent of the Commissioner.
6. Dates. The date of issuance of this Consent Order is the date the Consent Order is deposited in the U.S. mail or personally delivered whichever is earlier. 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 deposited in the U.S. mail or personally delivered, whichever is earlier. Except as otherwise specified in this Consent Order, the word “day” as used in this Consent Order means calendar day. Any document or action which is required by this Consent Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or a Connecticut or federal holiday.
7. Notification of noncompliance. In the event that either Respondent 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 any document required hereunder, such Respondent 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, such Respondent 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 shall comply with such dates which may be approved in writing by the Commissioner. Notification by either Respondent under this paragraph shall not excuse noncompliance or delay, and the Commissioner’s approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically stated by the Commissioner in writing.
8. 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 Respondents or by a duly authorized representative of either 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 and 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, and I understand that any false statement made in this document or its attachments is punishable as a criminal offense.”

9. Noncompliance. Failure to comply with this Consent Order may subject Respondents to an injunction and penalties under Conn. Gen. Stat. Chapters 439 and 440.
10. False statements. Any false statement in any information submitted pursuant to this Consent Order is punishable as a criminal offense under Conn. Gen. Stat. § 53a-157b and any other applicable law.
11. 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 or property which is the subject of this Consent Order, or after obtaining a new mailing or location address. Respondents’ obligations under this Consent Order shall not be affected by the passage of title of any property in issue herein to any other person or municipality. The terms of this Consent Order shall apply to and be binding upon Respondents’ successors and assigns, as provided by law.
12. Commissioner’s powers. Nothing in this Consent Order shall affect the Commissioner’s authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, 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 fully restored the altered wetlands, stabilized the disturbed soils at the site, re-established the drainage path and successfully eliminated any on-site ponding or runoff, the Commissioner may institute any proceeding to require further action to restore the altered wetlands, stabilize any disturbed soils, re-establish the drainage path and eliminate any on-site ponding or runoff.
13. Respondents’ obligations under law. Nothing in this Consent Order shall relieve Respondents of other obligations under applicable federal, state and local law.
14. No assurance by Commissioner. No provision of this Consent Order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondents pursuant to this Consent Order will result in compliance or prevent or abate pollution.

15. No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons that are not parties to this Consent Order.
16. Notice to Commissioner of changes. Within fifteen days of the date either Respondent 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, such Respondent shall submit the correct or omitted information to the Commissioner.
17. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in writing by the Commissioner, be directed to:
Ugochukwu Uzoh
DEP-Inland Water Resources Division
79 Elm Street
Hartford, Connecticut 06106-5127
(860) 424-3713

Respondents consent to the issuance of this Consent Order without further notice. The undersigned Commissioner certifies that he is fully authorized to enter into this consent order and to legally bind Respondent DOT to the terms and conditions of the consent order.

By: <u>/s/ James E. Turner</u>	<u>March 11, 2004</u>
James E. Turner	Date
<u>/s/James Brynes</u>	<u>March 24, 2004</u>
James Brynes	Date
Commissioner	

Issued as the *Final Decision* resolving appeal of *Order IW-2001-1025V*.

<u>April 5, 2004</u>	<u>/s/ Jean F. Dellamarggio</u>
Date	Jean F. Dellamarggio Hearing Officer