

*IN THE MATTER OF* : *ORDER NO. SCEL-2201-1001V*

*SALVATORE RUITTO, ET AL.* : *MAY 9, 2003*

***FINAL DECISION***

The parties have agreed to resolve the appeal of the above-captioned order by issuance of the attached *Consent Order*, which the respondents have signed.

By my signature, I issue the *Consent Order* as my *Final Decision* in this matter.

May 9, 2003  
Date

/s/Elaine R. Tata  
Elaine R. Tata, Hearing Officer

<b>STATE OF CONNECTICUT</b>	)	
	)	<b>SCEL-2001-1001V</b>
	)	
<b>vs.</b>	)	
	)	
<b>SALVATORE RUITTO and JOAN RUITTO</b>	)	
	)	

**CONSENT ORDER**

- A. With the agreement of Salvatore Ruitto and Joan Ruitto (“Respondents”), the Commissioner of Environmental Protection (“the Commissioner”) finds:**
- 1. Respondents are the owners of properties located on the southerly side of Riverside Street in Portland, Connecticut (“site”). The site is more fully described in a deed which is recorded in volume 159, page 108 of the Portland Land Records and identified as lot 2 on map 11 in the Portland Assessor’s office.**
  - 2. The site is located riverward of stream channel encroachment lines, which lines are shown on Stream Channel Encroachment Line Map CONN-P-10 for the Connecticut River, established by the Commissioner on May 21, 1965 pursuant to Conn. Gen. Stat. §§ 22a-342 through 22a-349a, as amended.**
  - 3. At various times between February 14, 1989 and August 24, 2000, Respondents placed fill (“prior placed fill”) and non-fill materials (“non-fill materials”) at the site riverward of said encroachment lines.**
  - 4. Neither Respondent obtained any permit under Conn. Gen. Stat. § 22a-342 authorizing them to place or maintain the prior placed fill and non-fill materials.**
  - 5. By virtue of the above, Respondents have violated Conn. Gen. Stat. § 22a-342.**
- B. With the agreement of Respondents, the Commissioner, acting under Conn. Gen. Stat. § 22a-6, orders Respondents as follows:**
- 1. a. Cease All Unauthorized Activities. Except as may be authorized by the Commissioner in writing, Respondents shall immediately upon issuance of this Consent Order cease all filling, excavation and grading activities at the site riverward of stream channel encroachment lines. Nothing in this Consent Order shall affect the Commissioner’s authority to institute any proceeding or**

*to take any other action against Respondents if it is determined by him at any time that Respondents, without authorization, placed any new fill or non-fill materials, or are maintaining any fill or non-fill material that was placed at the site at any time subsequent to August 24, 2000.*

- b. *Apply For A Permit.* *On or before 45 days following the date of issuance of this Consent Order, Respondents shall apply to the Commissioner, in a form(s) provided by the Commissioner, for authorization to maintain the prior placed fill materials. Respondents shall enclose the following as attachments to any such permit application:*
    - i. *an as-built drawing of the site that shows the site's property boundaries and existing grades. The as-built drawing must be signed and sealed by a land surveyor licensed to practice in Connecticut and by a professional engineer licensed to practice in Connecticut;*
    - ii. *a report on the volume of the prior placed fill materials. Such report must be prepared, signed and sealed by a professional engineer licensed to practice in Connecticut and must include a detailed explanation, including technical justifications, as to why Respondents seek to maintain the prior placed fill materials. The map entitled "Map Showing Fill Within S.C.E.L. Conn. River Property of Joan & Salvatore Ruitto Riverside Street Portland Conn. Scale 1"=20' Aug. 29, 1989" [sic], prepared by Stephen F. Brittain, L.S. and made part of this Consent Order as Attachment A shall be used as the base map for any surveys and other relevant evaluations.*
  - c. *Remove Unauthorized Materials.* *Except for the prior placed fill materials, Respondents shall, on or before 45 days following the date of issuance of this Consent Order, remove all construction equipments, debris and all other unauthorized non-fill materials placed at the site riverward of stream channel encroachment lines. Within 15 days of removing the non-fill materials, Respondents shall certify to the Commissioner in writing that all such materials have been removed.*
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. *Civil penalty.* *Respondents have agreed to a civil penalty of \$18,000.00 as the total civil penalty to be sought by the Commissioner for those, and only those, violations specified under paragraphs A.3. through A.5. of this Consent Order.*
    - i. *Within 30 days following the date of issuance of this Consent Order, Respondents shall make a payment of \$3,000.00 to the Commissioner.*
    - ii. *The remaining \$15,000.00 civil penalty amount shall be paid or, in the alternative, considered discharged as follows:*

- a. *in the event the Commissioner finds or solely determines that Respondents have violated or are violating any provision of this Consent Order, Respondents shall, within 14 days from the date of any notice from the Commissioner advising them of such violation, pay the remaining \$15,000.00 civil penalty amount to the Commissioner, or*
  - b. *if Respondents fully comply with the terms and conditions of this Consent Order to the Commissioner's satisfaction, the remaining \$15,000.00 civil penalty remainder shall, upon the issuance of a notice of compliance by the Commissioner, be considered permanently discharged for those, and only those, violations described under paragraphs A.3. through A.5. of this Consent Order.*
- iii. *Penalty for late payment. The civil penalty assessed in this paragraph B.3. herein shall increase by five percent if it is not paid on or before the due date, provided that if it is not paid until 31 or more days after it is due, the civil penalty shall increase by ten percent. In addition, interest at the compounded rate of two-thirds percent per month shall accrue on any unpaid balance of the civil penalty.*
4. *Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Administration - Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to "Treasurer, State of Connecticut." Such check shall state on its face, "Water Mgmt. Civil Penalty - IWRD Consent Order# SCEL-2001-1001V." Copies of any check used for payment and any transmittal letter for such payment shall also be sent to the individual identified under paragraph B.20. of this Consent Order.*
5. *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 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 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.*
6. *Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner.*

7. **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 is 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 Connecticut or federal holiday.*
  
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 and by the individual(s) responsible for actually preparing such document, and each such individual 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, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that 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 is punishable as a criminal offense under Conn. Gen. Stat. § 53a-157b and any other applicable law.”*
  
9. **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.*
  
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’.** *Until Respondents have fully complied with this Consent Order, Respondents shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the site 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 to any property to other person or municipality.*
  
12. **Commissioner’s powers.** *Nothing in this Consent Order shall affect the Commissioner’s authority to institute any proceeding or to 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 past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondents pursuant to this Consent Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondents to undertake further investigation or further action to prevent or abate violations or pollution.*

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. *Access to site. Any representative of the Department of Environmental Protection may inspect the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Consent Order.*
16. *No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons or municipalities that are not parties to this Consent Order.*
17. *Notice to Commissioner of changes. Within 15 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, Respondents shall submit the correct or omitted information to the Commissioner.*
18. *Notification of noncompliance. In the event that either Respondent becomes 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 by telephone the individual identified under paragraph B.20. of this Consent Order and shall take reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within 5 days of the initial notice, Respondents shall submit in writing the date, time, and duration of the noncompliance and 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 either Respondent 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.*

19. *Joint and several liability.* *Respondents shall be jointly and severally liable for compliance with this Consent Order.*
20. *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, Environmental Analyst*  
*DEP - Inland Water Resources Division*  
*79 Elm Street*  
*Hartford, CT 06106-5127*  
*(860) 424 – 3713*

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

By: \_\_\_\_\_  
*Salvatore Ruitto*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Joan Ruitto*

\_\_\_\_\_  
*Date*

*Issued as the Final Decision resolving appeal of Order SCEL-2001-1001V.*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Elaine R. Tata Hearing Officer*

*Attachment A: Copy of Map entitled "Map Showing Fill Within S.C.E.L. Conn. River Property of Joan & Salvatore Ruitto Riverside Street Portland Conn. Scale 1"=20' Aug. 29, 1989" [sic], prepared by Stephen F. Brittain, L.S.*

*P A R T Y L I S T*

Final Decision in the matter of Salvatore Ruitto, et al.  
(Order NO. SCEL-2001-1001V)

PARTY

Salvatore and Joan Ruitto

REPRESENTED BY

Walter J. Sidor, Esq..  
Two Wethersfield Avenue  
Hartford, CT 06114

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Department of Environmental Protection  
Bureau of Water Management  
79 Elm Street  
Hartford, CT 06106

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Ugo Uzoh  
Inland Water Resources Division



*IN THE MATTER OF* : *ORDER NO. SCEL-2001-1001V*

*SALVATORE RUITTO, ET AL.* : *MAY 14, 2003*

**ERRATA SHEET**

This Errata Sheet is for the sole purpose of correcting the Final Decision issued May 9, 2003 from Order No. SCEL-2201-1001V to Order No. SCEL-2001-1001V, as listed above.

May 14, 2003  
Date

/s/ Elaine R. Tata  
Elaine R. Tata, Hearing Officer

cc: Walter J. Sidor, Esq.  
Ugo Uzoh, DEP Inland Water Resources Division  
Marla Butts, DEP Inland Water Resources Division