

***IN THE MATTER OF***

:

***GENERAL PERMIT  
DEP-WPED-GP-015***

***GENERAL PERMIT:  
DISCHARGE OF STORMWATER  
AND DEWATERING WASTEWATER  
FROM CONSTRUCTION ACTIVITIES***

:

***AUGUST 21, 2013***

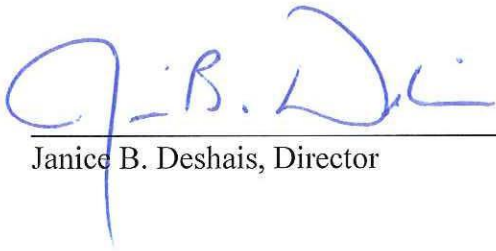
**FINAL DECISION**

The parties have submitted a modified agreed draft decision (modified decision) in response to the August 15, 2013 Proposed Final Decision, which concluded that the draft General Permit satisfied relevant legal requirements and could be issued upon identified changes being made to that Permit or made by the filing of exceptions to the Proposed Final Decision. In their initial agreed draft decision, the parties agreed to waive their right to file exceptions if the General Permit was not revised. Therefore, the parties have filed the modified decision and again waive their right to file exceptions to the Proposed Final Decision if the modified decision is accepted. General Statutes §4-179, Regs., Conn. State Agencies §22a-3a-3(y)(3)(A).

The modified decision adopts the revisions set out in the Proposed Final Decision regarding Sec. 3(c)(2), and Sec. 4(c)(2)(K)(ii) of the General Permit and describes why (after an evaluation suggested in the Proposed Final Decision) a revision to Sec. 3(g)(1) is not necessary.<sup>1</sup> The modified decision also recommends the following italicized phrase be added to Paragraph 10 of the Findings of Fact in the Proposed Final Decision to clarify that regional conservation districts are not the only entity that can review regional conservation plans: “*For those plans not reviewed in accordance with Section 3(b)(11) of the revised draft permit, regional conservation districts will review and approve plans in situations where projects are subject to local approval requirements.*”

<sup>1</sup> The last paragraph in Section 3(c)(2) will be modified to remove a reference to subsection (B), since subsections (A) and (B) are now merged into subsection (A). In sections 3(c)(2)(B)(ii) and 4(c)(2)(K)(ii) the clause "(that is not fresh/tidal)" will be changed to "(that is not a fresh-tidal wetland)" to reflect how the definition of the term appears in Section 2 of the General Permit.

I accept the modified decision and adopt its revisions to the General Permit. I therefore direct that the draft General Permit be issued as revised.

A handwritten signature in blue ink, appearing to read "J.B. Deshais". The signature is written in a cursive style with a large initial "J" and "D".

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Janice B. Deshais, Director

STATE OF CONNECTICUT  
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

In the Matter of	:	GENERAL PERMIT
	:	DEP-PED-GP-015
DISCHARGE OF STORMWATER AND	:	
DEWATERING WASTEWATERS	:	
FROM CONSTRUCTION ACTIVITIES	:	

MODIFIED AGREED DRAFT DECISION

Pursuant to Conn. Agencies Regs. § 22a-3a-6(l), the parties submit this Modified Agreed Draft Decision (“MADD”) for the Hearing Officer consideration in the above-referenced matter.

In support of this MADD the parties note the following:

1. On July 12, 2013, the parties submitted to the Hearing Officer an agreed draft decision in this matter. Paragraphs 1 through 5 inclusive of this previous draft decision are incorporated by reference and made part of this MADD. The parties now submit this modified agreed draft decision for the Hearing Officer’s consideration.

2. Paragraph 7 of the previous Agreed Draft Decision provided that if:

[t]he Hearing Officer’s Proposed Final Decision in this matter recommends the issuance of the draft General Permit, included with this ADD as Appendix A, as submitted by the parties, each party agrees to waive its right to file exceptions to such decision, pursuant to Conn. Gen. Stat. § 4-179 and Conn. Agencies Regs. § 22a-3a-(y)(3)(A). Should the Hearing Officer’s Proposed Final Decision in this matter not recommend the issuance of draft General Permit, included with this ADD as Appendix A, as submitted by the parties, each party reserves its right to file exceptions to any such decision and to seek further proceedings in this matter.

3. On August 15, 2013, the Hearing Officer issued a Proposed Final Decision (“PFD”). The PFD noted that certain provisions of the draft “General Permit for the Discharge of Stormwater

and Dewatering Wastewaters from Construction Activities” (“the draft General Permit”) needed clarification and contained recommended language. As such, as provided in paragraph 7 of the previous agreed draft decision, each party to this matter reserves its right to file exceptions to any such decision and to seek further proceedings in this matter.

4. As noted in the previous agreed draft decision, various issues were raised regarding the draft General Permit and after much discussion the parties have resolved these issues. The changes recommended by the Hearing Officer in the PFD did not alter the underlying agreement by the parties and as such, pursuant to Conn. Agencies Regs. § 22a-3a-6(l), the parties submit this modified agreed draft decision. The draft General Permit attached to the previous agreed draft decision as Appendix A, with the additional modification noted in paragraph 5 below, reflects and incorporates the resolution agreed to by the parties. To effectuate this agreement, the parties respectfully request that the Hearing Officer issue a Final Decision in this matter, directing staff to issue the draft General Permit that was included with the previous agreed draft decision as Appendix A, as modified by paragraph 5 of this MADD.

5. As a result of the PFD the following modifications will be made to the draft General Permit:

1. In section 3(c)(2), “Locally Exempt Projects,” previously proposed subparagraphs (A) and (B) will be deleted and replaced with the following:

“The registration must:

- (A) Be electronically submitted, along with all required elements in subsections (B), (C) and (D), below, at least:

- (i) sixty (60) days prior to the planned commencement of the construction activity if the site has a total disturbed area of between one (1) and twenty (20) acres; or

- (ii) ninety (90) days prior to the planned commencement of construction activity if the site:

- (a) has a total disturbed area greater than twenty (20) acres;

- (b) discharges to a tidal wetland (that is not fresh/tidal) that is within 500 feet of the discharge point; *or*
  - (c) is subject to the impaired waters provisions of Section 3(b)(12).”
- 2. In section 3(c)(2), “Locally Exempt Projects” as a result of the change in item one, subparagraphs (C), (D) and (E) will be re-lettered (B), (C) and (D).
- 3. In Section 4(c)(2)(K), “A brief description of the stormwater discharge, including:” clause (ii) will be deleted and replaced with the following:
  - “(ii)Verification of whether or not the site discharges to a tidal wetland (that is not fresh-tidal) that is within 500 feet of the discharge point, to a high quality water or to an impaired water with or without a TMDL;”

6. The Hearing Officer also requested that a potential revision to section 3(g)(1) be evaluated. This section concerns the date activities will be authorized. The Hearing Officer noted that for sites with less than 20 acres of disturbance that discharge to tidal wetlands, the authorization timeline does not appear to be consistent with the registration submittal requirements and went on to suggest language addressing this situation. The Hearing Officer noted that depending upon the Department’s intent, the suggested language may not be necessary.

Upon evaluation it is recommended that this revision not be made. Determining the effective date of authorization for sites discharging to tidal wetlands (not fresh/tidal) is already covered by section 3(g)(2)(B). (The coverage stems from the reference in section 3(g)(2)(B) to section 5(a)(2) of the draft GP). Under section 3(g)(2)(B), a registration is authorized when it is approved by the Commissioner. Adding a second provision, with an authorization date that conflicts with section 3(g)(2)(B), would only confuse and make matters worse. Also, given that section 3(g)(2) deals with when an activity is authorized - as opposed to section 3(C)(2) which deals with when a registration must be submitted – the two sections do not need to use identical timeframes. For these reasons, no changes are recommended to section 3(g)(1).



7. The parties would also direct the Hearing Officer's attention to one minor issue that could benefit from further clarification. Findings of Fact at paragraph 10 says, "Regional conservation districts will review and approve plans in situations where projects are subject to local approval requirements." That is not correct in all cases, since such projects can also be reviewed by qualified professionals, something noted by the Hearing Officer in paragraph 12. To avoid any confusion, the parties recommend that the above quoted sentence in paragraph 10 be preceded by, "For those plans not reviewed in accordance with Section 3(b)(11) of the revised draft permit, regional conservation districts will review ...". With this revision, the Final Decision will better reflect the provisions of the draft General Permit.

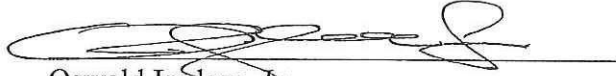
8. Provided that the Hearing Officer's Final Decision in this matter is to direct the issuance of the draft General Permit, included with the previous Agreed Draft Decision as Appendix A, as modified only by paragraph 5 above, each party, pursuant to Conn. Gen. Stat. § 4-179 and Conn. Agencies Regs. § 22a-3a-(y)(3)(A), agrees to waive its right to file exceptions to the Proposed Final Decision. If the Hearing Officer does not accept this MADD, the parties respectfully request that the Hearing Officer notify each party that this MADD has not been accepted, that each party be provided fifteen (15) days from the date of any such notification to file exceptions to the PFD and to seek further proceedings in this matter.

9. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall be part of and constitute one and the same instrument.

By Staff of the Department of Energy and  
Environmental Protection

August 21, 2013

Date



Oswald Inglese, Jr.  
Director, Water Permitting and Enforcement Division  
Bureau of Materials Management & Compliance  
Assurance  
Department of Energy and Environmental Protection

By the Home Builders and Remodelers Association of  
Connecticut, Inc.

Date

William H. Ethier, Esq.  
Chief Executive Officer  
Home Builders and Remodelers Association of  
Connecticut, Inc.

By Connecticut Fund for the Environment

Date

Roger Reynolds, Esq.  
Senior Attorney  
Connecticut Fund for the Environment

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Date

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Director, Water Permitting and Enforcement Division  
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*Aug. 21, 2013*  
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Date

*William H. Ethier*  
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By Connecticut Fund for the Environment

8/21/2013  
Date

Laura B. Saville, Esq. for  
Roger Reynolds, Esq.  
Senior Attorney  
Connecticut Fund for the Environment

