

Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands Agency**

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

108 Pennsylvania Ave

Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

September 3, 2020

Certified: 7018 0680 0000 9737 3573
7018 0680 0000 9737 3412

Al Smith
36 Lovers Lane
East Lyme, CT 06333

Jason Pazzaglia
27 Darrow's Ridge Road
East Lyme, CT 06333

REGULAR AND CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**RE: CEASE DESIST AND RESTORE ORDER- 297 Boston Post Road,
Assessor's Map# 30.1 Lot# 57, East Lyme, Connecticut**

Messieurs Smith and Pazzaglia:

As you know, I issued a Notice of Violation on April 18, 2019. I conducted an inspection for compliance on February 24, 2020 for the removal of the storage of equipment and construction materials. My inspection revealed a significant amount of construction equipment, construction materials, have been relocated to an area further upland away from the lake shore and the stockpiles of earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil, and other woody debris within 100-feet of a wetlands and watercourse had been removed off-site.

However, upon a subsequent site walk by the Inland Wetlands Agency on June 6, 2020, it revealed equipment still being stored within the 100-foot upland review area and additional equipment had been brought back on to the site within 100-feet of a wetlands and watercourse without an Inland Wetlands Permit for said outside storage of equipment and construction materials. As these activities are considered to have been conducted in violation of the Inland Wetland and Watercourses Regulations of the Town of East Lyme and having failed to comply with the April 18, 2019 Notice of Violation by not ceasing the above activities, I issued a Cease and Desist Order dated June 10, 2020 for failure to comply with Section 6 of the Wetlands Regulations. Subsequently, the Inland Wetlands Agency failed to hold a Show Cause Hearing within the required 10-days of the issuance of said order. Therefore, as directed by the Agency

CEASE, DESIST, AND RESTORE ORDER – 297 Boston Post Road

to address the above referenced violation, I hereby issue the attached Cease, Desist, and Restore Order.

If you have any questions regarding this letter, the enclosed Cease and Desist Order, or any of the Inland Wetlands and Watercourses Regulations please do not hesitate to contact me at (860) 691-4114 or visit our office to arrange a meeting to discuss the violation and your plans for restoration and remediation.

Sincerely,



Gary A. Goeschel II
Director of Planning /
Inland Wetlands Agent

cc: Inland Wetlands Agency
Mark C. Nickerson, First Selectman
William Mulholland, Zoning Official
Ed O'Connell, Esq. Town Attorney
File



CEASE, DESIST AND RESTORE ORDER
EAST LYME
INLAND WETLANDS AGENCY

Owner (Respondent): Al Smith 36 Lovers Lane East Lyme, CT 06333 Jason Pazzaglia 27 Darrow's Ridge Road East Lyme, CT 06333	Property: 297 Boston Post Road East Lyme, CT 06333 Assessor's Map# 30.1, Lot# 57
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RESPONDENT IS HEREBY ORDERED TO CEASE & CORRECT THE VIOLATION OF THE EAST LYME INLAND WETLANDS AND WATERCOURSE REGULATIONS ON THE ABOVE REFERENCED PROPERTY.

AUTHORITY: The East Lyme Inland Wetlands Agency is duly authorized to carry out and effectuate the purposes and policies of Sections 22a-36 TO 22A-45a, inclusive and has adopted regulations pursuant to 22a-42a of the CT General Statutes.

COMPLAINT: The outside storage of equipment, construction materials, and the stockpiling of other earthen materials including but not limited to yard debris, mulch, woodchips, gravel, topsoil, and other woody debris within the 100-foot Upland Review Area of a wetlands and watercourse (URA) without an Inland Wetlands Permit on property located at the above referenced address.

Said activity is hereby determined to be a regulated activity as defined by Section 2.1 of the Town of East Lyme Inland Wetland and Watercourses Regulations under the jurisdiction of the East Lyme Inland Wetlands Agency.

VIOLATION: In accordance with Sect. 6.1 of the Inland Wetland and Watercourse Regulations of the Town of East Lyme "No person shall conduct or maintain a regulated activity without first obtaining a permit for such activity from the East Lyme Inland Wetlands Agency of the Town of East Lyme. Any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency, or violating any other provision of these regulations, shall be subject to the enforcement proceedings and penalties prescribed in section 14 of these regulations and any other remedies as provided by law." Respondent did not obtain any permit under the East Lyme Inland Wetlands and Watercourses Regulations authorizing the regulated activities.

CORRECTIVE ACTION: Respondent shall remove all of equipment, construction materials, miscellaneous debris, and earthen materials or make an application to the East Lyme Inland Wetlands Agency to conduct such activity within the 100-foot URA.

HEARING: A hearing shall be held on September 14, 2020 whereby the Respondent will be given the opportunity to be heard and show cause why this order should not remain in effect.

Signed: 
Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent

Date: 9/4/2020

CORRECTIVE ACTION PROCEDURE

- a. **Retain a Professional Land Surveyor, Engineer and a Soil Scientist.** On or before 30 days following issuance of this Cease, Desist and Restore Order, Respondent shall retain a professional land surveyor and engineer, licensed in the State of Connecticut, and a soil scientist, as defined under Connecticut General Statutes section 22a-28, (“the Soil Scientist”) acceptable to the Agency, to prepare the studies and documents required by this Cease, Desist and Restore Order, and to oversee the actions required by this Cease, Desist and Restore Order and by that date, notify the Agency in writing of the identity of the Land Surveyor, Engineer, and Soil Scientist (henceforth collectively referred to as “the Consultants”). Respondent shall retain the Consultants until this Cease, Desist and Restore Order is fully complied with. Within 10 days after retaining any other consultant, engineer or soil scientist, than one originally identified under this paragraph, Respondent shall notify the Agency in writing of the identity of such other consultant. Nothing in this paragraph shall preclude the Agency from finding a previously acceptable consultant unacceptable.
- b. **Submit Restoration Plan.** On or before September 30, 2020, Respondent shall submit to the Agency for its review and written approval, a plan for restoring the disturbed area adjacent to and including the watercourse and wetlands at the site (“restoration plan”). The goal of the restoration plan shall be to replicate the watercourse and habitat conditions that existed at the site prior to the activities that were conducted without a permit from the Agency. The restoration plan shall include, but not necessarily be limited to:
 - i. site drawings and cross sections that delineate the site’s property boundaries, existing grades at the site, proposed grades at no greater than one-foot contour intervals, proposed spot elevations at the site, a description of materials that would be used to restore the grades that existed at the site prior to the disturbance, and a list of native wetland tolerant plant species to be planted or sown at the site,
 - ii. details on erosion and sediment controls to be used during and after implementation of the restoration plan including but not limited to, dewatering/water handling techniques during construction and permanent stabilization of exposed or disturbed soils at the site, and
 - iii. a schedule for the initiation and completion of actions provided for in the restoration plan. Such schedule shall provide for completion of all actions as soon as possible, but in no event later than October 31, 2020.The restoration plan shall be signed and sealed by the Land Surveyor and Soil Scientist.
- d. **Implement the Plan.** Following the Agency’s written approval of any restoration plan submitted pursuant to this Cease, Desist and Restore Order, Respondent shall immediately perform the actions specified in the approved restoration plan and within 15 days of completing the performance of such actions, the Consultants shall certify to the Agency in writing that the actions have been completed in accordance with the restoration plan(s).
- e. **Revision of Approved Plan(s).** Respondent may revise any approved plan only with the Agency’s prior written approval.
- f. **Submit an As-built Drawing.** Respondent shall perform all actions required by the restoration plan in accordance with the approved schedule(s), and within 45 days of completing the required actions, submit to the Agency for its review and written approval, an as-built drawing (“as-built drawing”) that verifies conformance with the restoration plan. The as-built drawing shall show restored grades at the site at no greater than one-foot contour intervals and shall identify final spot elevations at the site. The as-built drawing shall be signed and sealed by the Land Surveyor, Engineer and Soil Scientist.

- o. No assurance by Agency.** No provision of this Cease, Desist and Restore Order and no action or inaction by the Agency shall be construed to constitute an assurance by the Agency that the actions taken by Respondent pursuant to this Cease, Desist and Restore Order will result in compliance or prevent or abate pollution.
- p. Access to the site.** Any representative of the East Lyme Inland Wetlands Agency may enter the site without prior notice for the purposes of monitoring and enforcing the actions required or allowed by this Cease, Desist and Restore Order.
- q. No effect on rights of other persons.** This Cease, Desist and Restore Order neither creates nor affects any rights of persons that are not parties to this Cease, Desist and Restore Order.
- r. Notice to Agency of changes.** Within 15 days of the date Respondent becomes aware of a change in any information submitted to the Agency under this Cease, Desist and Restore Order, 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 the Agency.
- s. Notification of noncompliance.** In the event that 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 Cease, Desist and Restore Order or of any document required hereunder, Respondent shall immediately notify by telephone the Inland Wetlands Officer 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, Respondent 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 Agency, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Agency. Notification by Respondent shall not excuse noncompliance or delay, and the Agency's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically stated by the Agency in writing.
- t. Submission of documents.** Any document required to be submitted to the Agency under this Cease & Desist and Restore Order shall, unless otherwise specified in writing by the Agency, be directed to:

Gary Upton, Chairman
East Lyme Inland Wetlands Agency
Town of East Lyme
P.O. Box 519, 108 Pennsylvania Avenue
Niantic, Connecticut 06357
(860) 739-6931 ext. 4114

- g. **Full compliance.** Respondent shall not be considered in full compliance with this Cease, Desist and Restore Order until all actions required by this Cease, Desist and Restore Order have been completed as approved and to the Agency's satisfaction.
- h. **Dates.** The date of issuance of this Cease, Desist and Restore Order is September 4, 2020. The date of submission to the Agency of any document required by this Cease & Desist Order shall be the date such document is received by the Agency or an authorized agent of the Agency. The date of any notice by the Agency under this Cease, Desist and Restore 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 Cease, Desist and Restore Order, the word "day" as used in this Cease, Desist, and Restore Order means calendar day. Any document or action which is required by this Cease, Desist and Restore 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.
- i. **Certification of documents.** Any document, including but not limited to any notice, which is required to be submitted to the Agency under this Cease, Desist and Restore Order shall be signed by Respondent, and by the individual(s) responsible for actually preparing such document, and Respondent 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 section 53a-157b of the Connecticut General Statutes and any other applicable law."
- j. **Noncompliance.** Failure to comply with this Cease, Desist and Restore Order may subject Respondent to an injunction and penalties.
- k. **False Statements.** Any false statement in any information submitted pursuant to this Cease, Desist and Restore Order is punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes.
- l. **Notice of transfer; liability of Respondent and others.** This order is being filed on the land records for this property as described herein. Respondent's obligations under this Cease, Desist and Restore Order shall not be affected by the passage of title to any property to any other person or municipality.
- m. **Agency's powers.** Except as provided hereinabove with respect to payment of civil penalties, nothing in this Cease, Desist and Restore Order shall affect the Agency'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 past, present, or future violations of law. If at any time the Agency determines that the actions taken by Respondent pursuant to this Cease, Desist and Restore Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Agency may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.
- n. **Respondent's obligations under law.** Nothing in this Cease, Desist and Restore Order shall relieve Respondent of other obligations under applicable federal, state and local law.