



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

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Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

RICHARD K. SULLIVAN JR.  
Secretary

KENNETH L. KIMMELL  
Commissioner

Town of Holland  
Board of Selectmen  
27 Sturbridge Road  
Brimfield, MA 01521

January 27, 2011

RE: ACO-WE-10-6W009  
Administrative Consent Order with Penalty  
Hamilton Reservoir, Holland

Dear Board Members:

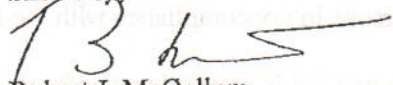
Enclosed please find a signed Administrative Consent Order (ACO), ACO-WE-10-6W006. Please pay particular attention to the landmark dates and specific performance requirements set forth within the document. Please be advised that a press release may be issued with respect to this matter.

The Department is in receipt of your proposal as outlined in a letter dated December 20, 2010 signed by Anthony Zerilli and George D. Naslas of Weston and Sampson in partial fulfillment of the requirements of ACO-WE-10-6W006. The use of the Bay State Roads program is acceptable. The Department is reviewing the proposal and will respond with specific program comments.

Should you have any questions relative to this matter, please contact Timothy McKenna at 413-755-2260 or the undersigned at this office.

Sincerely,

*Brandon Hampton*  
for

  
Robert J. McCollum  
Wetlands Program Chief

Enclosures

Certified Mail #7008 0500 0000 7958 3639, return receipt requested.

W:ACO-WE-10-6W009 Town of Holland . Letter-.doc

cc Holland Conservation Commission  
Steven Ellis, Enforcement Coordinator, DEP-WERO

**COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of: \_\_\_\_\_ )  
 )  
 )  
 )

Town of Holland \_\_\_\_\_ )

File No.: ACOP-WE-10-6W0009

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY  
AND  
NOTICE OF NONCOMPLIANCE**

**I. THE PARTIES**

1. The Department of Environmental Protection ("Department" or "MassDEP") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Western Regional Office at 436 Dwight Street, Springfield, Massachusetts 01103.
2. Town of Holland ("Respondent") is a Municipality having an address at Town Hall, Town of Holland, 27 Sturbridge Road, Holland, MA 01521. Respondent's mailing address for purposes of this Consent Order is Office of the Selectmen, Town Hall, Town of Holland, 27 Sturbridge Road, Holland, Massachusetts 01521.

**II. STATEMENT OF FACTS AND LAW**

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 131, § 40 and the Wetlands Regulations at 310 CMR 10.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.
4. Respondent holds no valid wetlands permit
5. The following facts and allegations have led MassDEP to issue this Consent Order:
  - A. On June 23, 2010 MassDEP received a complaint from a resident of the Town of Holland after observing construction taking place on the Bank and Land Under Water of Hamilton Reservoir (the "Reservoir"), and within the 100 ft. Buffer



Zone to the Bank of the Reservoir. The complainant provided information and photographs indicating that the Town of Holland DPW crews were undertaking construction with equipment in the Reservoir, without a DEP File Number sign, provisions for control of erosion and sedimentation and without any protection should a spill occur while heavy equipment was operating in the Reservoir. The construction work reportedly took place within the Reservoir, and the 100 ft. Buffer Zone to the Bank of the Reservoir along the east side of Mashapaug Road, opposite PJ's Restaurant, (the "Site").

- B. Bank, and Land Under Water for Hamilton Reservoir are protected "Resource Areas" as set forth under Wetland Regulations 310 CMR 10.54, and 10.56 respectively.
- C. A review of MassDEP files indicates that the Town of Holland does not have a valid Order of Conditions authorizing construction work on the Bank and Land Under Water, and 100 ft. Buffer Zone of Hamilton Reservoir. No prior Emergency Certification had issued under the Wetlands Protection Act allowing the work to abate an imminent threat to public health and safety.
- D. On July 7, 2010 MassDEP contacted Brian Johnson of the Town of Holland DPW and who verified the information reported by the complainant. Brian Johnson stated that the DPW crews were undertaking repair/reconstruction of a collapsed manhole and stormwater discharge pipe, with equipment on the Banks and in the Reservoir. Brian Johnson further indicated that the DPW had met with the Town of Holland Conservation Commission (HCC) with plans and a project description prior to commencement of the work. Mr. Johnson stated that the HCC issued verbal approval thereby allowing the project to take place.
- E. On July 7, 2010 MassDEP contacted the HCC and verified that the HCC had issued a verbal approval of the work undertaken by the Town of Holland DPW at the Site.
- F. On July 15, 2010, the Holland Conservation Commission issued an Order of Conditions, DEP File #184-0240, which purports to amend DEP File #184-0240 which had been issued for the construction of other stormwater structures, to allow the work at the Site.
- G. The work at the Site resulted in additional impacts to areas protected under the Wetlands Protection Act, beyond those permitted in the original Order of Conditions issued under DEP File #184-0240.
- H. On July 26, 2010, MassDEP notified The Town of Holland that it was intervening in accordance with its authority at 310 CMR 10.05(7)(a)6. and appealing the Order of Conditions.
- I. Commencement of construction work at the Site on the Banks and Land Under Water of the Reservoir without a valid Order of Conditions constitutes a violation of the following:
  - 1. Mass Wetlands Protection Act, (G.L. c. 131, s. 40), and regulations 310 CMR 10.05, and the performance standards under 310 CMR 10.54 & 10.56.
  - 2. Mass Clean Waters Act, (G.L. c. 21, ss 26-53, and regulations 314, CMR 9.03(1))



- J. Hamilton Reservoir is not a Great Pond of the Commonwealth, and is not subject to the Public Waterfront Act.

### III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

6. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

7. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

8. The Respondent does not admit to the facts or allegations asserted by MassDEP in Section II Statement of Facts and Law above.

9. Respondent shall perform the following actions:

A. Supplemental Project

1. MassDEP has determined that it is appropriate to include a Supplemental Environmental Project ("SEP") in the resolution of this matter. Such SEP is included for the purpose of mitigating the administrative penalty and not in lieu thereof.
2. The terms of the SEP are set forth in Attachment A, which is attached hereto and incorporated herein.
3. Respondent hereby certifies that, as of the effective date of this Consent Order, Respondent is not required to perform the actions of the SEP by: (1) any contractual or other legal obligation; (2) any federal, state or local law or regulation; or (3) any agreement, grant or as injunctive relief.
4. Within thirty (30) days of completing the SEP, Respondent shall submit to MassDEP a SEP Completion Report, which shall document completion of the SEP by including: (1) a description of the actions taken to complete the SEP; (2) verification and documentation that the required expenditures were made and the dates of such expenditures; and (3) the following certification signed by the Chairman of the Board of Selectmen:

I, \_\_\_\_\_, hereby attest under the pains and penalty of perjury that (i) I have personally examined and am familiar with the information contained herein; (ii) the information contained herein is true, accurate and complete to the best of my knowledge and belief; (iii) Respondent implemented the SEP in accordance with the requirements of this Consent Order; and (iv) I am fully authorized to make this attestation on behalf of Respondent. I am aware that there are significant penalties, including without limitation possible fines and imprisonment, for willfully submitting false, incomplete or inaccurate information.

- B. Respondent shall not violate any provision or requirements as set forth under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40, and wetland regulations 310 CMR 10.00, and the Massachusetts Clean Waters Act, G.L. c. 21, §§26-53 or regulations 314 CMR 9.00 for a period of 5 years commencing with the date of issuance of this Consent Order.

10. Except as otherwise provided, all notices, submittals and other communications required by this Consent Order shall be directed to:

Robert J. McCollum, Program Chief  
Wetlands & Waterways  
MassDEP  
436 Dwight St.  
Springfield, MA 01103

Such notices, submittals and other communications shall be considered delivered by Respondent upon receipt by MassDEP.

11. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

12. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.



13. Respondent shall pay to the Commonwealth the sum of twelve thousand dollars (\$12,000.00) as a civil administrative penalty for the violations identified in Part II above, as follows:

A. MassDEP hereby agrees to suspend payment of the sum of the entire penalty amount of twelve thousand dollars (\$12,000.00); provided, however, that if Respondent violates any provision of this Consent Order, or further violates any of the regulations cited in Part II above within two years of the effective date of this Consent Order, Respondent shall pay to the Commonwealth the remaining amount of twelve thousand dollars (\$12,000.00) within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. This paragraph shall not be construed or operate to bar, diminish, adjudicate, or in any way affect, any legal or equitable right of MassDEP to assess Respondent additional civil administrative penalties, or to seek any other relief, with respect to any future violation of any provision of this Consent Order or any law or regulation.

14. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

15. This Consent Order may be modified only by written agreement of the parties hereto.

16. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

19. This Consent Order shall be binding upon Respondent, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.



20. In addition to the penalty set forth in this Consent Order (including any suspended penalty), if Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$100.00 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

21. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts. Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
P.O. Box 3982  
Boston, Massachusetts 02241-3982

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.



22. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

23. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the Site located on Mashapaug Road for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

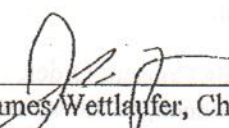
24. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

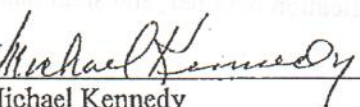
25. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

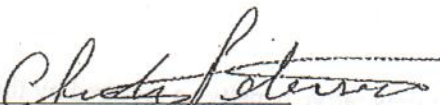
26. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:

Board of Selectmen:

By:   
James Wettlaufer, Chair  
Selectmen  
Date:

By:   
Michael Kennedy  
Selectmen  
Date: 1-18-2011

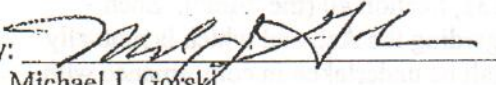
By:   
Christian Peterson  
Selectmen  
Date:



Issued By:

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By:

  
Michael J. Gorski  
Regional Director  
MassDEP  
436 Dwight Street  
Springfield, MA 01103

Date:

1/29/11



ATTACHMENT A

The Respondent shall perform a Supplemental Environmental Project (SEP) that consists of preparing a full-day "brown bag" seminar directed at municipal department of public works staff and conservation commissioners and general contractors who perform work under the Massachusetts Wetlands Protection Act, MGL Chapter 131, Section 40 (the "Act"). Such seminar shall focus on a topic of practical application regarding the Act, and which is mutually acceptable to the Department and the Respondent and shall be undertaken in conformance with the details as set forth in the proposal submitted to the Department from the Town of Holland, dated October 20, 2010. This topic shall include at a minimum both procedural and technical issues involved with applicants seeking approval to undertake construction in and within close proximity to protected resource areas as is defined under Wetland Regulations 310 CMR 10.02(1) & 10.02(2)a-d. The Respondent shall invite attendees and municipal staff likely to be involved with wetland protection issues in the immediate communities of Wales, Monson, Palmer, Brimfield, Ware, and Warren in a fashion mutually acceptable to both the Department and the Respondent.

The Respondent shall submit a seminar agenda, together with a list of topics and speakers, including each speaker's qualifications, to the Department for its approval within sixty (60) calendar days of the effective date of this Consent Order. The Department shall within thirty (30) calendar days either (1) approve of the agenda or (2) notify the Respondent in writing that portions of the agenda must be changed, and provide a reasonable date for the submission of a revised agenda. In submitting the agenda, the Respondent shall identify how the seminar will secure environmental or public health protection and improvements for citizens and public entities within the Commonwealth of Massachusetts.

The Respondent shall hold the seminar on or before October 31, 2011, or within ninety (90) calendar days of the approval of the agenda by the Department, if later.

Upon completion of the seminar, the Respondent shall provide to the Department a list of those attending or registering for the seminar as proof that the seminar was held. The Department will, in its reasonable discretion, determine whether the seminar has been conducted in accordance with the agenda approved by the Department.

The Respondents shall maintain a copy of all course materials for a period of one year and shall, upon request, provide a copy to any commissioner of any municipal conservation commission within the neighboring communities around Holland such as Wales, Monson, Palmer, Brimfield, Ware, and Warren.

The Respondent and the Department agree that the seminar to be held pursuant to the SEP shall not be approved by the Department unless it concurs with the Respondent's assertion in its submission of the agenda that the seminar shall serve as a benefit to both the environment and the general public.