

**TOWN OF FAIRFIELD  
SHELLFISH COMMISSION  
MEETING MINUTES – February 13, 2013**

The Shellfish Commission of the Town of Fairfield held a regular meeting on February 13, 2013 at 7:30 PM in the First Floor Conference Room of the Fairfield Sullivan Independence Hall, 725 Old Post Road, Fairfield, Connecticut

**MEMBERS PRESENT:** Sanford J. Wakeman, Chairman; Robert Bilek, Vice-Chairman; David Thornton, Secretary; Sally Harold; Cathy Raynor-Catropa

**MEMBERS ABSENT:** Paul Nelson

**ALSO PRESENT:** Annette Jacobson, Conservation Department; Don Ganyea, DEEP; Jillian Baker, DEEP; Mary von Conta, HMC; members of the public and press

**CALL TO ORDER:** Sanford J. Wakeman, Chairman, called the meeting to order at 7:30 PM

**I. BILLS AND COMMUNICATIONS**

A. Meeting Minutes of January 9, 2013

Robert Bilek *moved*, Cathy Raynor-Catropa *seconded* to accept the minutes of January 9, 2013. *Motion passed unanimously.*

B. Meeting Minutes of January 23, 2013

David Thornton *moved*, Cathy Raynor-Catropa *seconded* to accept the minutes of January 23, 2013. *Motion passed unanimously.*

C. Meeting Minutes of January 30, 2013

The Commissioners unanimously agreed to include the January 30, 2013 minutes on the agenda.

Cathy Raynor-Catropa *moved*, David Thornton *seconded* to accept the minutes of January 30, 2013. *Motion passed unanimously.*

D. Committee Reports

1. *Clam Relay/Planting:* Bilek, Thornton – Robert Bilek reported that they plan to postpone a study of the natural beds for one to two months while attention is focused on the Exide application.

2. *Water and Habitat Quality*: Bilek, Wakeman, Harold, Raynor-Catropa – Robert Bilek reported that the beds are open and he is working with the police department about opening on weekends when no town staff are available. He expects to meet with public works as well.
3. *Permits and Access*: Thornton – No report presented this evening
4. *Commercial Shellfish Regulations*: Wakeman, Harold – No report presented this evening
5. *Oyster Bed Development*: Thornton, Harold – No report presented this evening

## II. OLD BUSINESS

### A. Proposed Remediation of the Mill River Estuary associated with the former Exide Battery Site, 2190 Post Road, Fairfield, CT

2. CT DEEP Tentative Determination to issue a National Pollutant Discharge Elimination System (NPDES) Permit to the Exide Group, Inc. for the discharge into the waters of the State of Connecticut at 2190 Post Road, Fairfield.

Robert Bilek outlined the Commission's concerns including protecting water quality and shellfish resources, as well as coordinating clean-up with Superior Plating. He inquired as to whether DEEP process is in accordance with the consent order of October 20, 2008. Don Gonyea of DEEP noted that Exide is in compliance with DEEP. The NPDES permit does not need to be approved by the Shellfish Commission before Exide applies to DEEP for the permit, but the SedRAP must be approved by the Commissioner before works begins. He explained the difference between SedRAP and NPDES, that SedRAP includes the entire process of removing contaminated sediment, while NPDES is limited in scope to what the quality of the discharge from the dewatering of the sediment. Annette Jacobson discussed the Commission's concerns that certain details of the SedRAP need to be known before the Commission can comment on the NPDES permit. Don Gonyea responded that he is considering Annette Jacobson's inquiry an inquiry as part of the NPDES comment period and would discuss with DEEP management and legal staffs and would respond as part of the permit issuance.

David Thornton clarified how the dredging would occur and confirmed that the Mill River water would meet federal Clean Water Act standards. Annette Jacobson reiterated Thomas J. Steinke's and the Commission's concerns over re-suspended sediment, discharge time, and impact on spawning shellfish and river herring. There are continuing questions as to the amount of cubic yards of sediment to be removed, whether the difference between 21,000 cubic yards or 27,000 cubic yards triggers a different sort of monitoring and discharge allowance.

Annette Jacobson questioned whether each dredge cell could be considered a NPDES discharge as all contaminated sediment would not be contained within each cell. In her opinion it would not be minor discharge but significant and adversely affect spawning, etc.

Don Gonyea discussed the Tulloch Rule, which is a federal rule that may affect the dredging, in which the dredging may not be required to meet certain standards under the Clean Water Act concerning the types of disturbances allowed on the river bottom.

Don Gonyea responded to Robert Bilek's concern that fecal coliform bacteria may proliferate in the black dredging bags during the summer then contaminate the river when the water or sediment goes back into the river. Don Gonyea indicated that monitoring of sediment and water going back into the river will be part of the discharge permit. Any monitoring will be conducted at the discharge point. Any kind of toxicity testing done for aquatic life is regulated by federal EPA guidelines, and any "new" tests must go to the EPA for approval and meet certain testing protocols. Annette Jacobson suggested if appropriate tests were not available for shellfish larvae and river hearing, that dredging not occur during the spawning period. As an alternative, the use of coffer dams installed before the spawning period avoids a work stoppage.

Robert Bilek questioned the size and type of the manifold raft that handles the discharge. He noted discrepancies in its size of over 1,000 square feet. The problem is access and this apparatus blocking the river. He also noted that it will be essentially located on someone else's property, not Exide's, and proper permission should be obtained. Don Gonyea said that riparian rights come into play only if the apparatus has certain types of anchorages. He described how the discharge would emanate from the manifold raft, location constraints and safety.

Sanford J. Wakeman inquired whether the Commission would receive responses to its questions and comments from DEEP. Don Gonyea indicated that he is required to respond to all of the Commission's comments. Annette Jacobson clarified that the Commission wanted to receive responses before the comment period closed so that it could address any follow-up issues. Don Gonyea indicated that he could formulate some type of preliminary response, but encouraged the Commission to address any possible concerns and comments.

David Thornton brought up the remediation of the Housatonic River of the Remington Gun Club site in Stratford, which is also a lead remediation. Don Gonyea explained that the type of pollution and the remediation technology is different. The particles in the Mill River are finer and more embedded, while the lead in the Housatonic is particulated.

Don Gonyea addressed the fact that water quality and water discharge is the easiest part of the project and that it would meet standards. Robert Bilek addressed the water flow and Don Gonyea indicated he would discuss those concerns with the fisheries division in DEEP.

#### Public Comments regarding NPDES:

Kathryn Braun questioned whether the requirement of a coffer dam would change the NPDES permit. Don Gonyea responded that there are some conditions under which the permit might change, such as if a discharge was required from the coffer dam. Kathryn Braun reiterated the Commission's concerns of addressing discharge before addressing the entire SedRAP. Don Gonyea discussed the jurisdictional issues of DEEP permits.

Mary von Conta, Chair of the Harbor Management Commission, questioned the process by which DEEP receives and adequately considers comments. Don Gonyea clarified that he will respond to all comments received, and that he must justify his responses and report technical aspects. All his responses undergo review before DEEP sends them.

Mary von Conta additionally inquired how the Harbor Management Commission might obtain an extension of the comment period as their next meeting falls immediately before the comment deadline. Don Gonyea invited her to send him an email request and that he would bring it to the attention to DEEP management.

Linda Snelham Moore inquired whether there would be a meeting with DEEP staff on the SedRAP application. Robert Bilek noted there had been no response from DEEP. Don Gonyea indicated that DEEP and the local legislators are attempting to coordinate a meeting.

Geoff Steadman, consultant to the Harbor Management Commission noted that they had previously sent a letter to the remediation division in DEEP with questions, but no answers had yet been received. Regarding discharge, the Harbor Management Commission thought it best to have a monitoring station downstream from the discharge point. Don Gonyea stated that there would be several monitoring points all over the river, even points that may not likely be impacted. Geoff Steadman reiterated concerns previously expressed over approval of the discharge aspects of the plan before the approval of the entire plan.

Joy Shaw asked how dredging operations could be halted if monitoring indicates that the conditions of the permit are not being complied with regarding discharge. Don Gonyea explained that he could shut down the operation to assess the situation. The consequences to the dredging contractor would be DEEP enforcement actions. Annette Jacobson questioned the notification requirements, especially with daily monitoring reports—can Fairfield get them daily? Don Gonyea explained that there are different notice requirements for different levels, ranging from immediate to monthly. He will discuss possibly including notifying the town when certain levels are exceeded as a permit condition.

Sally Harold inquired of testing protocols for unexpected pollutants. Don Gonyea noted that there are extensive testing protocols for various kinds of metals, but said they cannot test for every kind of chemical.

Robert Bilek *moved*, Sally Harold *seconded* to ask the Conservation Department to compile all concerns and comments from this meeting and all other documents received and send to DEEP by the February 20, 2013 comment deadline. *Motion passed unanimously.*

1. Proposed Mill River Remediation at the former Exide Battery Site, 2190 Post Road, Fairfield CT--Proposed Exide SedRAP for Mill River and Southport Harbor

Robert Bilek *moved*, Sally Harold *seconded* to ask the Conservation Department to compile all concerns and comments from this meeting and all other documents received and send to DEEP by the February 28, 2013 comment deadline. *Motion passed unanimously.*

3. Consider and act upon a petition for CT DEEP Public Hearing regarding the Exide National Pollutant Discharge Elimination System (NPDES) Permit Application.

Robert Bilek *moved*, Cathy Raynor-Catropa *seconded* to provide signed petition sheets to require a public hearing on NPDES to the Conservation Department by February 15, 2013 and that they be sent to DEEP. *Motion passed unanimously.*

B. CT DEEP-OLISP, Application No. 200802577-TS, Zecchi, to retain and repair existing timber bulkhead at 1774 Fairfield Beach Road, Fairfield

No discussion; a copy of the permit has been provided to the Commissioners.

C. CT DEEP-OLISP Application #201206059-TS of Anthony Casola to replace existing bulkhead and installation of a floating dock, ramp, and access platform at 1871 Fairfield Beach Road

Sanford J. Wakeman and Robert Bilek discussed the Commission's previous conditions of maintaining the 50 foot fairway. Pursuant to the DEEP permit, there are no restrictions on maintaining the fairway. It may be that other permanent structures near this project constrict the fairway. The DEEP permit also requires cutting of the old pilings, the opposite of what the Commission required. Annette Jacobson will look into this.

### III. NEW BUSINESS

A. General Assembly Proposed Bill No. 5846, LCO No. 935, An Act Concerning the Harbor Master Program

Annette Jacobson explained that the proposed bill item was included for informational purposes.

### IV. INFORMATIONAL

None

### V. OTHER

Robert Bilek discussed whether the Commission should attempt to have the Chairman and Vice Chairman meet with the First Selectman in order to encourage contact at the state level to get some of the Commission's concerns addressed with respect to Exide. There are several different groups attempting the same.

Robert Bilek *moved*, Sally Harold and David Thornton *seconded* to authorize the Chairman and Vice Chairman to meet with the First Selectman to convey the Commission's concerns to the Governor and DEEP Commissioner to intercede and protect the Commission's interest. Motion passed unanimously.

**VI. PUBLIC COMMENT**

See Section II, Item 2

Joy Shaw inquired whether everything the Commission sends to DEEP is public and Annette Jacobson indicated it would be available to the public.

**VII. ADJOURNMENT**

There being no further business to come before the Commission, David Thornton *moved*, Sally Harold *seconded* to adjourn at 9:22 PM. *Motion passed unanimously.*

Respectfully submitted,  
Anthony Monelli