

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

IN THE MATTER OF:

Giuseppe Battaglia
302 Sarah Wells Trail
Campbell Hall, New York 10916

Orange Builders, LLC
2 Dikeman Drive
Goshen, NY 10924

Respondents

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No. CWA-02-2024-3601

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 2 (“Complainant”) and Giuseppe Battaglia and Orange Builders, LLC. (“Respondents”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The CWA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondents under the CWA for the violations alleged herein.

JURISDICTION

2. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
3. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13(b) of

the Consolidated Rules of Practice, which sets forth the procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through the issuance of a consent agreement and final order pursuant to 40 C.F.R. 22.13(b)(2) and (3).

4. Pursuant to Section 309(g)(1)(B), EPA has consulted with the New York State Department of Environmental Conservation (“NYSDEC”) regarding this action and will transmit a copy of this document to the appropriate NYSDEC official.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
6. Orange Builders, LLC (“Orange Builders”) is a company in the State of New York that engages in the construction and development of residential and commercial properties. Giuseppe Battaglia is the president of Orange Builders.
7. Orange Builders and Giuseppe Battaglia are “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
8. Orange Builders, LLC own property located at 2 and 6 Dikeman Drive in Goshen, New York, Parcel ID: 122-1-2.2. Giuseppe Battaglia conducted ditching/dredging activities at 6 and 10 Dikeman Drive and 1 Coates Drive (collectively the “Sites”), identified in Exhibit A, attached herein. 10 Dikeman Drive is owned by the Goshen Fire District. 1 Coates Drive is owned by Eastgate Corporate Park, LLC.
9. The Sites contain wetlands that have a continuous surface connection to an unnamed relatively permanent tributary to the Wallkill River. The tributary is located on 1 and 4 Coates Drive and 2 Dikeman Drive. The Wallkill River is a traditional navigable water. The tributaries and wetlands are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
10. Beginning in or around May 2021, Respondents, or persons acting on behalf of Respondents, operated equipment which discharged dredged and/or fill material into waters of the United States at the Sites, without authorization from the U.S. Army Corps of Engineers. Respondents have impacted approximately 0.2 acre of wetlands that have a continuous surface connection to a relatively permanent stream that is connected to the Wallkill River. *See* Exhibit B for a map with the impacts. Impacts to wetland areas over three properties include:
 - a. Sidecasting of material from newly created drainage ditches into 0.15 acre of wetlands that have a continuous surface connection to a relatively permanent stream on the 6 and 10 Dikeman Drive properties; and
 - b. Sidecasting of dredged material from a relatively permanent stream into 0.05 acre of wetlands that have a continuous surface connection to the stream on the 1 Coates Drive property.

11. On June 10, 2021, the Village of Goshen, New York issued a Stop Work Order that required Mr. Battaglia to “cease and desist all work/construction immediately” on 2 and 6 Dikeman Drive. According to the Stop Work Order, violations included: “Damage to Federal & State Protected Wetlands.”
12. On January 17, 2023, EPA conducted an inspection of 6 and 10 Dikeman Drive and on May 23, 2023, EPA conducted an inspection of 6 and 10 Dikeman Drive and 1 Coates Drive. During these inspections, EPA documented impacts from sidecasting earthen material into wetlands from Respondents’ activities.
13. The term “fill material” within the meaning of 40 C.F.R. § 232.2 includes any pollutant which replaces portions of “waters of the United States” with dry land or which changes the bottom elevation of a water body for any purpose. The term “discharge of fill material” includes “placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States.”
14. The equipment from which the dredged and/or fill material was discharged into “waters of the United States,” constitutes a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
15. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from a point source to “waters of the United States” except in compliance with a permit issued by the U.S. Army Corps of Engineers under Section 404 of the Act, 33 U.S.C. § 1344.
16. At no time during the discharge of dredged and/or fill material into waters of the United States at the Sites did Respondents have a permit from the U.S. Army Corps of Engineers as required by Section 404 of the Act, 33 U.S.C. § 1344.
17. Respondents, by discharging dredged and/or fill material into “waters of the United States” without authorization as described above in Paragraph 18, have violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

TERMS OF SETTLEMENT

18. For the purpose of this proceeding, Respondents:
 - a. Admit the jurisdictional allegations of this CAFO;
 - b. Neither admit nor deny the factual allegations contained herein;
 - c. Waive their rights to contest the allegation, a judicial or administrative hearing, or to appeal this CAFO; and
 - d. Consent to a payment of a civil penalty in the amount of three thousand and five hundred dollars (\$3,500), in accordance with the Section below.

CIVIL PENALTY

19. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondents consent to the assessment of a civil penalty in the amount of **Three Thousand and Five Hundred (\$3,500)**, which Respondents shall be liable to pay in accordance with the terms set forth below.
20. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including, the following: the nature, circumstances, extent and gravity of the violation(s), Respondents’ ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *Clean Water Act Section 404 Settlement Penalty Policy* (2001) which reflects the statutory penalty criteria and factors set forth at Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.
21. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender’s bank. The checks (cashier’s or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information	
Debit and Credit Card Payments	https://www.pay.gov/paygov/	
Checks from U.S. Banks Finance Center Contacts: Craig Steffen (513-487-2091)	U.S. Postal Service	UPS, Federal Express, or Overnight Mail
	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197- 9000	U.S. Bank Government Lockbox 979078 3180 Rider Trail S. Earth City, Mo. 63045 314-418-1028
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001	
Wire Transfers (any currency) Details on format and content of wire transfer – www.epa.gov/ocfo/finservices/require	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33	

d_info.htm	33 Liberty Street New York, NY 10045 Field Tag 4200 of the Fedwire message should read: “D 68010727 Environmental Protection Agency”
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express) 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

ON LINE PAYMENT:

There is now an On-Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Justine Modigliani, Acting Chief
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
Modigliani.Justine@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Maples.Karen@epa.gov

22. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents’ failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
23. The payment must be received at the above addresses on or before thirty (30) calendar days after the effective date hereof, set out below (the date by which payment must be received shall hereafter be referred to as the “due date”). Receipt by Respondents of such copy of the fully executed CAFO shall constitute receipt of written initial notice that a debt is owed EPA by Respondents in accordance with 40 C.F.R. § 13.9(a).

24. Payment of the civil penalty is due and payable immediately upon the effective date of this CAFO. Receipt by Respondents or Respondents' legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this CAFO by Respondents in accordance with 40 C.F.R. § 13.9(a).
25. INTEREST: Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this CAFO. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
26. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
27. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
28. Respondents agree not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

PUBLIC NOTICE

29. Pursuant to CWA Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondents may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.

GENERAL SETTLEMENT CONDITIONS

30. By signing this Consent Agreement, Respondents acknowledge that this CAFO will be available to the public and represents that, to the best of Respondents' knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondents.
31. Respondents certify that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such

information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondents to the EPA regarding matters relevant to this CAFO, **including information about Respondents' ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondents and their officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

OTHER APPLICABLE LAWS

32. Nothing in this CAFO shall relieve Respondents of their obligations to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

33. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondents in this CAFO. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

34. This CAFO shall apply to and be binding upon the EPA, Respondents and their officers, directors, employees, contractors, successors, agents and assigns of Respondents. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondents is acknowledging that he or she is fully authorized by Respondents to execute this Consent Agreement and to legally bind Respondents to the terms and conditions of this CAFO.

EFFECTIVE DATE

35. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued only after a 40-day public notice and comment period is concluded. This CAFO will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Director of the Enforcement and Compliance Assurance Division, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

36. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

For Respondents: Giuseppe Battaglia and Orange Builders, LLC hereby consents to the issuance of the ORDER and agrees to be bound thereby:



BY: _____
Giuseppe Battaglia
President of Orange Builders, LLC
2 Dikeman Drive
Goshen, NY 10924

DATE: 1/10/24

For the Complainant, the United States Environmental Protection Agency:

BY: _____
Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York, 10007-1866

DATE: _____

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ENVIRONMENTAL PROTECTION AGENCY
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FINAL ORDER

Docket No. CWA-02-2024-3601

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) and having further re-delegated such authority to the Director of Enforcement and Compliance Assurance Division, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: _____

Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway – 21st Floor
New York, New York, 10007-1866

Exhibit A Location of Sites

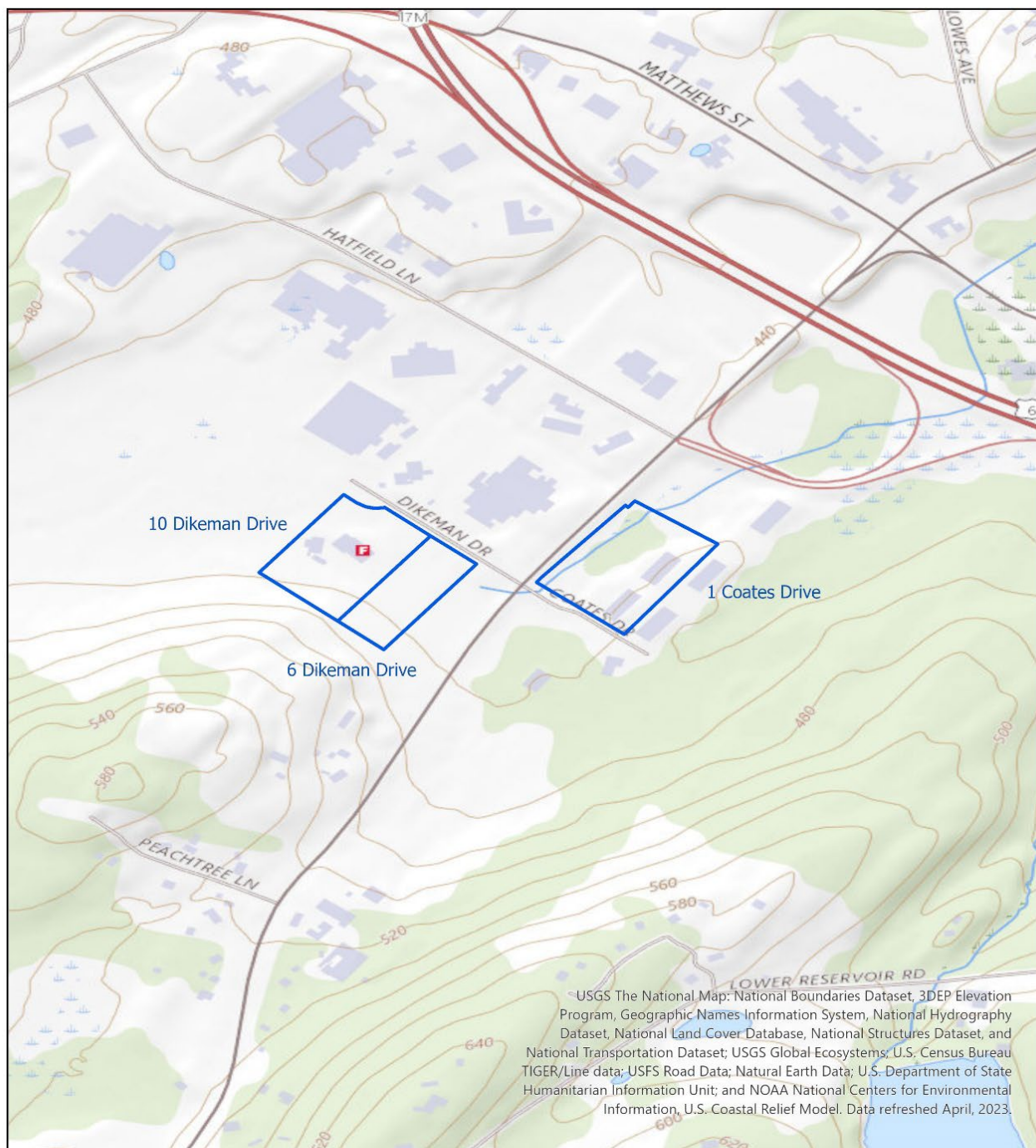



Exhibit A
Site Location Map
Dikeman Drive and
Coates Drive Properties

Exhibit B Wetland Impact Areas



Exhibit B
Wetland Impacts Map
Dikeman Drive and
Coates Drive Properties

-  Site Parcels
-  Filled Wetlands