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U.S. EPA REGION 1
HEARING CLERK

REGION 1

IN THE MATTER OF)
Grafton & Upton Railroad Company, Inc.)
42 Westboro Road)
North Grafton, MA 01536)
Respondent.)
Site:)
364 West Street)
Hopedale, MA 01747)

DOCKET NO: CWA-01-2026-0034
CONSENT AGREEMENT AND
FINAL ORDER FOR CIVIL
PENALTY UNDER THE
CLEAN WATER ACT

INTRODUCTION

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the U.S. Environmental Protection Agency (“EPA”) and Grafton & Upton Railroad Company, Inc. (“Respondent”) pursuant to Section 309(g)(2)(B) of the Clean Water Act (the “CWA” or “Act”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, at 40 C.F.R. Part 22 (“the Consolidated Rules”) to resolve violations of Section 301 and 404 of the CWA, 33 U.S.C. §§ 1311, 1344, involving the unpermitted discharge of dredged and/or fill material to jurisdictional wetlands and other waters of the United States.

2. The authority to enter into CAFOs has been delegated to the Regional Administrator, EPA Region 1, and has been re-delegated to the undersigned Director of the Enforcement and Compliance Assurance Division, EPA Region 1.

3. Pursuant to Section 22.13(b) of the Consolidated Rules, 40 C.F.R. § 22.13(b), the parties agree to simultaneously commence and conclude this action for civil penalties by the issuance of this CAFO. An Administrative Compliance Order on Consent will be issued separately to address the injunctive relief required to come into compliance with the CWA.¹

4. Respondent agrees to the effect of this CAFO and agrees to carry out the terms and conditions described herein.

STATUTORY AND REGULATORY AUTHORITY

5. EPA takes this action under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), for violations of Section 301(a), 33 U.S.C. § 1311(a), and Section 404, 33 U.S.C. § 1344, of the Act.

6. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), EPA notified the Massachusetts Department of Environmental Protection (“MassDEP”) of this action and has given MassDEP an opportunity to consult with EPA.

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, including dredged and/or fill material, from a point source to navigable waters by any person, except as authorized by a permit issued pursuant to Sections 402 or 404, 33 U.S.C. §§ 1342 or 1344, or as otherwise authorized under the CWA.

8. Each discharge of pollutants from a point source that is not authorized by such a permit or other authorization constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

9. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), authorizes the Secretary of the

¹ See CWA-AO-R01-FY26-13.

Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (the “Corps”), to issue permits for the discharge of dredged or fill material to waters of the United States at specified disposal sites, after notice and opportunity for public comment.

10. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include, *inter alia*, “an individual, corporation, partnership, [or] association.”

11. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

12. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, and agricultural waste.

13. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

FINDINGS OF FACT

15. Respondent Grafton & Upton Railroad Company, Inc. is a Massachusetts corporation located at 42 Westboro Road in North Grafton, Massachusetts.

16. Since August 2021, and at all times relevant to this case, Respondent has owned and/or continuously operated the property located at 364 West Street in Hopedale, Massachusetts and depicted on Exhibit 1 (“the Site”).

17. Prior to disturbance, and as generally depicted on Exhibit 1, the Site contained extensive undisturbed forested wetlands as well as multiple tributaries to the Mill River, including the unnamed tributary identified on Exhibit 1 and referred to herein as “the Central

Tributary.” *See Exhibit 1.*

18. Between approximately August 2021 and May 2023, Respondent operated, directed, supervised and/or controlled the operation of earthmoving equipment, including excavators and backhoes, to mechanically clear large portions of the Site. *See Exhibit 2.*

19. During the Site clearing activities referenced in Paragraph 18, Respondent mechanically cleared, stumped, and graded areas of the Site containing vegetated and forested wetlands as well as various tributaries to the Mill River.

20. Approximately 5.83 wetland acres impacted by the activities described in Paragraphs 18 and 19 above physically abut and have a continuous surface connection to the Mill River and/or physically abutted and had a continuous surface connection to the Central Tributary to the Mill River. *See Exhibit 3.*

21. In addition, Respondent rerouted and/or filled approximately 1,500 feet of the Central Tributary, as well as approximately 200 linear feet of other site tributaries. *Id.*

22. The Central Tributary is a relatively permanent tributary that connects to the Mill River.

23. The Mill River is a traditional navigable water. It is currently used, has been used in the past, and may be susceptible to future use in interstate commerce.

24. Accordingly, the wetland abutting the Mill River, the Central Tributary, and the wetlands adjacent to the Central Tributary, including the 5.83 acres impacted during the Site work referenced in Paragraphs 20 and 21, above, are all waters of the United States subject to the CWA.

25. Respondent neither sought nor obtained a permit or other authorization from the Corps under Section 404 of the CWA, 33 U.S.C. §1344, for the work described in Paragraphs 18

through 21 above.

26. In doing so, Respondent engaged in the unauthorized “discharge” of “pollutants,” specifically “dredged” and/or “fill” material, by a “person” from a “point source” to “waters of the United States” in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

CONCLUSIONS OF LAW

27. Paragraphs 1 through 26 are repeated and the allegations therein are realleged.

28. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(5).

29. The materials that Respondent, and/or persons acting on its behalf, caused to be discharged during performance of the activities referenced in Paragraphs 18 through 21, above, including, but not limited to, stumps, soil, sediments, stone, and other materials, constitute “dredged and/or fill” material as defined by 40 C.F.R. § 232.2 and are therefore “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

30. The movement of soils and placement of dredged and/or fill materials to the wetlands and other waters on the Site constitute a “discharge of pollutants” under Section 502(12) of the Act, 33 U.S.C. § 1362(12).

31. The earthmoving and/or mechanical equipment referenced in Paragraphs 18 through 21, above, are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

32. The impacted adjacent wetlands, the Central Tributary, and the Mill River are all “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

33. Respondent’s discharges of dredged and/or fill materials were not authorized by

any permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, nor were they authorized under any other permit or provision of the CWA.

34. Respondent is therefore liable under the CWA for the unauthorized discharge of dredged and/or fill material to waters of the United States. 33 U.S.C. §§ 1311(a) and § 1344.

CONSENT AGREEMENT

35. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is an appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

Terms of Settlement

36. This CAFO shall be binding on Respondent and its successors, and assigns, or other entities or persons otherwise bound by law.

37. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained in this CAFO and waive any defenses they might have as to jurisdiction and venue. Respondent neither admits nor denies the specific factual or other non-jurisdictional allegations contained herein and consents to the issuance of this CAFO and the conditions specified herein.

38. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law or any terms and conditions set forth in this CAFO, including any right of judicial review of this CAFO under the Administrative Procedure Act, 5 U.S.C. §§ 701-708, providing for judicial review of final agency action.

39. By signing this Consent Agreement, Respondent waives any rights or defenses that

Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

40. Respondent further waives the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii).

Civil Penalty

41. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$27,000 for all violations alleged in this CAFO through the Effective Date of the CAFO.

42. In agreeing to the penalty set forth in the previous Paragraph, EPA has taken into account the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

43. Respondent shall pay a combined total penalty of \$27,000 for the violations of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344 (hereinafter “Assessed Penalty”), alleged herein, within 10 days of the date this Consent Agreement becomes final.

44. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website at <https://www.epa.gov/financial/makepayment> and in accordance with the instructions provided at <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

45. When making a payment, Respondent shall:

- a. Identify every payment with the case name and docket number (*In the Matter of: Grafton & Upton Railroad Company, Inc.*; Docket No. CWA-01-2026-0034).
- b. Concurrently with any payment or within 24 hours of any payment, Respondent

shall serve proof of such payment to the following person(s):

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
R1_Hearing_Clerk_Filings@epa.gov

and

Laura Beveridge, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Boston, Massachusetts 02109-3912
[beveridge.laura@epa.gov.](mailto:beveridge.laura@epa.gov)

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

c. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

46. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C.

§§ 1319(g)(9) and 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

a. Interest. Interest begins to accrue from the Effective Date. If the Assessed

Penalty is paid in full within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H). The rate of interest is the Internal Revenue Service (“IRS”) standard underpayment rate.

- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.

47. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service (“IRS”) for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent’s licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

48. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

49. Treatment of Penalties. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

50. IRS Form W-9/Tax Identification Number. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement

(including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and are waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9s to EPA's Cincinnati Finance Center at chalifoux.jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide

EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

General Provisions

51. Issuance of this CAFO constitutes a final settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the CWA specifically alleged herein.

52. Issuance of this CAFO does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially pursuant to Sections 309(a), (b) and (c) of the CWA, 33 U.S.C. §§ 1319(a), (b) and (c), or Section 504 of the Act, 33 U.S.C. § 1364.

53. This CAFO is not a permit, and Respondent's liability under the CWA or any other federal, state, or local law or regulation is not excused by compliance with the terms of this CAFO.

54. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein through the Effective Date of this CAFO.

55. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

56. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of

Respondent's violation of this CAFO, or by virtue of any other violations by Respondent of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

57. This CAFO in no way affects the rights of EPA and/or the United States as against any person as defined in the CWA other than Respondent Grafton & Upton Railroad Company. All rights and claims against any person other than the afore-mentioned Respondent are specifically reserved.

58. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Administrator or his or her properly authorized delegatee.

59. Except as described in Paragraph 46, above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

60. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest or nonpayment penalties, and submitted the documentation required by this CAFO.

61. The CAFO may be signed in counterparts.

62. Each undersigned representative of the parties to this CAFO certifies that they are fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

63. Respondent agrees to acceptance of both (a) EPA's digital or an original signature on this CAFO and (b) service of the fully executed CAFO on the Respondent by mail or

electronically by email at the following email addresses: jondelli@firstcolonydev.com and rob@knapiklaw.com. EPA agrees to acceptance of the Respondent's digital or an original signature on this CAFO.

64. Respondent understands that the mailing or email address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

PUBLIC NOTICE

65. Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA will satisfy this requirement for notice by providing public notice of, and reasonable opportunity to comment on, this Consent Agreement prior to the issuance of the Final Order.

EFFECTIVE DATE

66. This CAFO shall become effective upon the date of the Final Order.

LIST OF EXHIBITS

Exhibit 1: Parcel/Site Boundary with EPA Pre-Disturbance Wetland Determination

Exhibit 2: Aerial Imagery of Site Clearing

Exhibit 3: EPA Determination of CWA Impacts

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FOR RESPONDENT, GRAFTON & UPTON RAILROAD COMPANY, INC.

Date: Dec 19, 2025

Name: President. Jon Delli Prisco,

Title: President

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

James Chow, Director
Environmental Compliance and Assurance Division
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

FINAL ORDER

In accordance with 40 C.F.R. § 22.18(b) of the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties ("CROP") found at 40 C.F.R. Part 22, the parties to the above-captioned matter have forwarded an executed Consent Agreement to the undersigned for final approval. In accordance with 40 C.F.R. § 22.13(b) of the CROP, the parties have simultaneously commenced and settled the above-captioned action. Pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, the Consent Agreement and this Final Order resolve the Clean Water Act violations described in the Consent Agreement.

As required by Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA has provided the public a thirty-day opportunity for public notice and comment before issuance of this Final Order. In addition, as required by the CROP at 40 C.F.R. § 22.45(b)(1), this Final Order is being issued more than forty days after issuance of the public notice.

The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order. **Respondent Grafton & Upton Railroad Company** is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the undersigned unless a petition to set aside the Final Order is filed by a commenter pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and the CROP at 40 C.F.R. § 22.45(c)(4).

Date: _____

Michael J. Knapp, Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1