



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

December 5, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7018 2290 0000 4961 3400

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

Orange Builders, LLC
2 Dikeman Drive
Goshen, New York 10924

Re: Notice of Proposed Assessment of a Civil Penalty
In the Matter of: Giuseppe Battaglia and Orange Builders, LLC
Docket No. CWA-02-2024-3601

Dear Mr. Battaglia:

Enclosed is an Administrative Complaint ("Complaint") which the U.S. Environmental Protection Agency ("EPA") is issuing to you as a result of our determination that you and Orange Builders, LLC, (collectively referred to as "you") have failed to comply with Section 301(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1311(a). This Complaint is filed pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of \$25,000 be assessed against you for this violation.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. Enclosed is a copy of 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, which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. § 22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

December 6, 2023 @ 4:04 pm
USEPA – Region II
Regional Hearing Clerk

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor (Room 1631)
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings. Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty.

EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the Consolidated Rules of Practice, including Subpart I thereof.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Lauren Fischer, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Fischer.Lauren@epa.gov

Offer of Settlement

In an effort to promptly settle this matter, we are enclosing, for your consideration, a proposed Consent Agreement and Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order"). If, at the close of the public comment period on the Complaint, no adverse public comments are received and no information contrary to the information set forth in the Complaint comes to our attention in any other fashion, we would be prepared to enter into a Consent Agreement and Final Order on the terms enclosed. Under the terms of the Consent Agreement and Final Order you would be obligated to pay a penalty of **\$20,000** in accordance with the terms of the Consent Agreement and Final Order. **If you wish to resolve this matter without further proceedings, please sign the enclosed Consent Agreement and Final Order and return it to EPA within twenty-five (25) calendar days of your receipt of this letter. Do not submit payment to EPA until after you receive an executed Consent Agreement and Final Order.** If we do not receive the Consent Agreement and Final Order, signed by you or your authorized representative, within this twenty-five (25) day period, our offer of settlement is withdrawn and we will thereafter seek the full amount of the penalty proposed in the Complaint.

If you have any questions on the enclosed Consent Agreement and Final Order, please contact Lauren Fischer at fischer.lauren@epa.gov. We urge your prompt attention to this matter.

Sincerely,

Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division

Enclosures:

- Administrative Complaint
- Proposed Consent Agreement and Final Order
- Consolidated Rules of Practice
- Small Business Information Sheet and SEC Notice

cc: S. Andreescu – EPA, WD-WMB-WPS
M. Finocchiaro – EPA, WD-WMB-WPS
B. Orzel – U.S. Army Corps of Engineers, New York District
(by e-mail: brian.a.orzel@usace.army.mil)
S. Wohl – Mayor, Village of Goshen
(by e-mail: scottwohl@yahoo.com)
J. Russo – Principal, Lanc & Tully Engineering and Surveying, P.C.
(by e-mail: jdr@lanctully.com)
A. Turi, Jr. – Board of Commissioners Chairman, Goshen Fire District
J. Matta – President, Eastgate Corporate Park, LLC
(by e-mail: jmatta@masterworkhome.com)



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

December 5, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Article Number: 7017 1450 0000 0133 5689

December 6, 2023 @ 4:04 pm
USEPA – Region II
Regional Hearing Clerk

Ashley Johnson
Regional Attorney
New York State Department of Environmental Conservation
21 South Putt Corners Road
New Paltz, New York 12561

Re: Notice of Proposed Assessment of a Civil Penalty
In the Matter of: Giuseppe Battaglia and Orange Builders, LLC
Docket No. CWA-02-2024-3601

Dear Ms. Johnson:

Enclosed is a copy of the Administrative Complaint and Notice of Proposed Assessment of a Civil Penalty, and an offer of settlement, which the United States Environmental Protection Agency (“EPA”) has issued to Giuseppe Battaglia and his company Orange Builders, LLC (“Respondents”), pursuant to Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The EPA is issuing this Complaint to administratively assess a Class I Civil Penalty of \$25,000 against the Respondents for violations of the Act. The EPA is offering an opportunity for you to confer with us regarding the proposed assessment because the violations have occurred on properties in New York State Department of Environmental Conservation, Region 3.

Given the nature of the violations, the number of violators and the need for prompt resolution of this matter, an offer of settlement for reduced penalty was offered to Respondents. This offer is contingent upon receipt of no adverse public comments in this matter.

Sincerely,

Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division

Enclosures:

- Administrative Complaint
- Proposed Consent Agreement and Final Order

cc: Karen Maples, Regional Hearing Clerk (by e-mail: Maples.Karen@epa.gov)
Brian Drumm, NYSDEC Region 3 (by e-mail: brian.drumm@dec.ny.gov)

December 6, 2023 @ 4:04 pm
USEPA – Region II
Regional Hearing Clerk

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, New York 10924

Respondents.

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

**Administrative Complaint
Findings of Violation, Notice of Proposed
Assessment of a Civil Penalty, and Notice of
Opportunity to Request a Hearing**

**Proceeding to Assess Class I
Civil Penalty**

Docket No. CWA-02-2024-3601

I. STAUTORY AUTHORITY

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Enforcement and Compliance Assurance Division (“ECAD”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Giuseppe Battaglia and Orange Builders, LLC. (“Respondents”) for discharge of pollutants into navigable waters, without authorization by the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. FINDINGS OF VIOLATION AND CONCLUSIONS OF LAW

1. 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.
2. Orange Builders and Giuseppe Battaglia are “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Orange Builders, LLC owns 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.
4. 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).
5. Beginning in or around May 2021, 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.
6. 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.”
7. 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.

8. 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.”
9. 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).
10. The fill material referenced in Paragraph 6, above, constitutes a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).
11. For purposes of the Act, the conveyance of dredged or fill material by mechanized earthmoving equipment, as described above, is a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
12. The discharge of the earthen fill material into waters of the United States constitutes a “discharge of pollutants” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).
13. 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.
14. 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.
15. Based on these Findings, the EPA finds Respondents to be in violation of Section 301 of the Act, 33 U.S.C. § 1311, for discharges of pollutants consisting of dredged and fill material into waters of the United States from point sources without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.
16. Each day that the subject discharge remains unauthorized by the Secretary of the Army pursuant to Section 404 of the Act, 33 U.S.C. § 1344, constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondents assessing a penalty of **\$25,000**. EPA determined the proposed penalty after taking into account the applicable factors identified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and Respondents’ prior compliance history, degree of culpability, economic benefit or savings accruing to

Respondents by virtue of the violations, and Respondents' ability to pay the proposed penalty. Based on the Findings set forth above, Respondents have been found to have violated the Act. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice unless Respondents file an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

IV. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering the Complaint

Where Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondents' Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondents request a Hearing. 40 C.F.R. § 22.15(b).

Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity to Request a Hearing

If requested by Respondents in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondents do not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of

the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of the Consolidated Rules of Practice, at 40 C.F.R. §§ 22.21-22.26.

Should Respondents request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondents not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure to Answer

If Respondents fail in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondents fail to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount, in federal court.

V. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondents request a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this Complaint and Respondents may also provide whatever additional information it believes to be relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this

Complaint should be directed to:

Lauren Fischer, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Fischer.Lauren@epa.gov

The parties may engage in settlement discussions regardless of whether Respondents have requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal Hearing does not prevent Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondents waive any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondents (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VI. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty, **\$25,000**, within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted in Section V above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2023-3305

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondents elect to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA’s receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondents’ right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents’ obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

VII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

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

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Lauren Fischer, Esq., Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Fischer.Lauren@epa.gov

VIII. GENERAL PROVISIONS

1. Respondents have a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), will affect Respondents' continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 5th DAY OF December, 2023.

Kate Anderson, Acting Director
Division of Enforcement and Compliance Assistance

**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 “Consent Agreement and Final Order”) 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 concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. §§ 22.18(b)(2) and (3) of the Consolidated Rules of Practice, which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.
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.

GENERAL PROVISIONS

5. Respondents admit the jurisdictional and factual allegations set forth in this Consent Agreement and Final Order, agree not to contest the enforcement of this Consent Agreement and Final Order, and waive their right to appeal the accompanying Final Order.
6. Respondents consent to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
7. Respondents shall bear their own costs and attorney’s fees in connection with this proceeding.
8. Public notice of this Consent Agreement is required by 40 C.F.R. § 22.45(b)(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. 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.
10. 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.
11. Orange Builders and Giuseppe Battaglia are “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
12. 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.
13. 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).

14. Beginning in or around May 2021, 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.
15. 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.”
16. 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.
17. 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.”
18. 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).
19. 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.
20. 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.

21. 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).

CIVIL PENALTY

22. 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 **Twenty Thousand Dollars (\$20,000)**, which Respondents shall be liable to pay in accordance with the terms set forth below.

23. 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.

24. 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)	Federal Reserve Bank of New York	

Details on format and content of wire transfer – www.epa.gov/ocfo/finservices/required_info.htm	ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 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

25. 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.
26. Payment of the civil penalty is due and payable immediately upon receipt by Respondents of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by

Respondents or Respondents' legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, 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).

27. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondents or Respondents' legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order 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 Consent Agreement and Final Order by Respondents in accordance with 40 C.F.R. § 13.9(a).
28. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. 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 Consent Agreement and Final Order. 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).]
29. 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.
30. 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).
31. Respondents agree not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

32. By signing this Consent Agreement, Respondents acknowledge that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondents' knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondents.
33. 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 Consent Agreement and Final

Order, **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

34. Nothing in this Consent Agreement and Final Order 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 Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

35. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondents in this Consent Agreement and Final Order. 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 Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

36. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

EFFECTIVE DATE

37. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order 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

38. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

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: _____

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: _____

**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)

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

**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, NY 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)

**Administrative Complaint
Findings of Violation, Notice of Proposed
Assessment of a Civil Penalty, and Notice
of Opportunity to Request a Hearing**

**Proceeding to Assess Class I
Civil Penalty**

Docket No. CWA-02-2024-3601

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, and/or by email, a copy of the foregoing “ADMINISTRATIVE COMPLAINT” and a copy of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (July 1, 2011) to the following persons at the addresses listed below:

Original by E-Mail	Office of Regional Hearing Clerk U.S. Environmental Protection Agency - Region 2 290 Broadway, 16th floor New York, New York 10007-1866 Maples.Karen@epa.gov
By Certified Mail and E-Mail	Giuseppe Battaglia President, Orange Builders, LLC 302 Sarah Wells Trail Campbell Hall, New York 10916 Gbattaglia01@gmail.com

By E-mail	Ashley Johnson Regional Attorney New York State Department of Environmental Conservation 21 South Putt Corners Road New Paltz, New York 12561 Ashley.Johnson@dec.ny.gov
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Date: _____
New York, New York

Stephanie Andreescu, Wetlands Inspector

Exhibit A Location of Sites

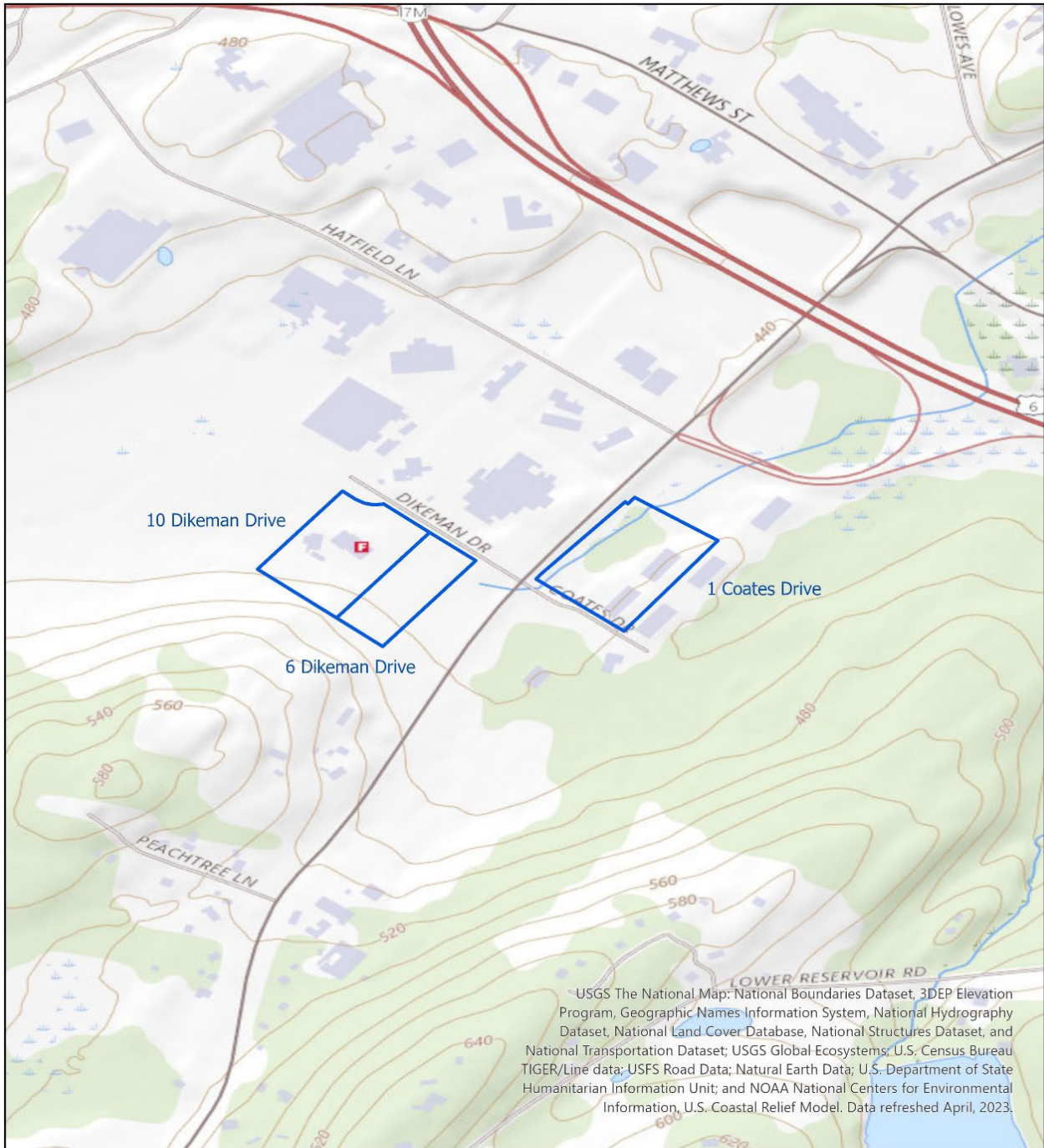



Exhibit A
Site Location Map
Dikeman Drive and
Coates Drive Properties

Exhibit B Wetland Impact Areas



Exhibit B
Wetland Impacts Map
Dikeman Drive and
Coates Drive Properties

-  Site Parcels
-  Filled Wetlands