

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 MAY 31 P 3:35
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Michael B. Rapasadi

2106 Lake Road
Oneida, NY 13421

Thomas R. Rapasadi

2106 Lake Road
Oneida, NY 13421

Respondents.

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

**Proceeding to Assess Class I
Civil Penalty Pursuant to Section
309(g) of the Clean Water Act**

Docket No. CWA-02-2013-3601

**COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF A CIVIL PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. Statutory Authority

1. This 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 (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, Clean Water Division (CWD) 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" (CROP), 40 CFR Part 22, a copy of which is attached, Complainant hereby requests that the Regional Hearing Officer assess a civil penalty against Michael B. Rapasadi and Thomas R. Rapasadi (Respondents), for the 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

3. Paragraphs 1-26 of the Findings of Violation and Order Docket No. CWA 02-2011-3502, in the matter of Michael and Thomas Rapasadi, Proceeding Pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a), dated September 20, 2011 (Compliance Order), are hereby incorporated by reference. A copy of the Compliance Order is attached as Exhibit 1.
4. To date, the Ordered Provisions in Section III of the Compliance Order remain outstanding and, therefore, the violations set forth in the Compliance Order continue.
5. The EPA has consulted with the State of New York regarding this proposed action by mailing a copy of this Complaint and Notice to the appropriate State officials, and offering an opportunity for the State to consult further with the EPA on the proposed penalty assessment.
6. The EPA has notified the public of this proposed action by publishing a Public Notice on the EPA Region 2 website.

III. Conclusions of Law

7. Based on the above Findings, the EPA finds Respondents are in violation of Section 301 of the Act, 33 U.S.C. § 1311, for the discharge of pollutants, as described in the Compliance Order, consisting of fill into waters of the United States from a point source without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.
8. 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, and/or the Ordered Provisions in Section III of the Compliance Order remain outstanding, constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

IV. Notice of Proposed Order Assessing a Civil Penalty

9. 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 **\$25,000.00**. The EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). The EPA has taken account of the nature, circumstances, extent and gravity of the violation, 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.

V. Notice of Opportunity to Request a Hearing

10. Respondents may, within thirty (30) days of receipt of this Complaint and as part of any Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and at the

Hearing may contest the factual allegations set forth in the Findings of Violation contained in Section II above, and the appropriateness of any penalty amount. The procedures for the Hearing, if one is requested, are set out in the CROP, including Subpart I thereof.

11. Please note that should Respondents request a hearing on this proposed penalty assessment, members of the public, to whom the 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, the 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 the EPA to set aside the Final Order and to hold a hearing thereon. The EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by the EPA in the issuance of the Final Order.

VI. Filing an Answer

12. If Respondents wish to avoid being found in default, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. The EPA may make a motion pursuant to Section 22.17 of the CROP seeking a default order thirty (30) days after Respondents' receipt of the Complaint unless Respondents file an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.
13. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondents have knowledge or clearly state that Respondents have no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:
 - A. The circumstances or arguments which are alleged to constitute grounds of a defense;
 - B. The facts which Respondents dispute;
 - C. The basis for opposing the proposed relief; and
 - D. Whether a Hearing is requested.
14. Respondents' failure to admit, deny or explain any material factual allegations in this Complaint shall constitute an admission of the allegation.

VII. Filing of Documents

15. 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
290 Broadway - 16th Floor
New York, New York 10007

16. 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
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007

VIII. Instructions for Paying Penalty

17. As set forth in Section 22.18 of the CROP, Respondents may resolve these proceedings by payment of the proposed penalty in full, and by filing with the Regional Hearing Clerk, at the address provided below, a copy of the check or other instrument of payment. Pursuant to Section 22.45(c)(3) of the CROP, opportunity for such resolution of these proceedings is available to Respondents no sooner than 10 days after the close of the 30-day public comment period which commences upon publication of the Public Notice of this proposed action.

18. To pay the proposed penalty in full, Respondents shall send a cashier's check or certified check in the amount of **\$25,000.00**, payable to the "Treasurer of the United States of America." The check 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:

CHECK PAYMENTS:
U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:
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."

OVERNIGHT MAIL:
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Respondent shall also send copies of such payment to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007

and to:

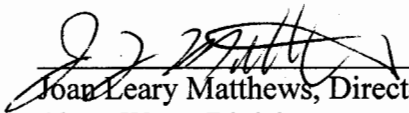
Lauren Fischer, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007
212-637-3231

19. Upon receipt of payment in full, a Final Order shall be issued. Payment by Respondents shall constitute a waiver of Respondents' rights to contest the allegations and to appeal the Final Order.

IX. General Provisions

20. Respondents have the right to be represented by an attorney at any stage of these proceedings.
21. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder, or any applicable permit.
22. 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 30th DAY OF May, 2013.



Joan Leary Matthews, Director
Clean Water Division
U.S. Environmental Protection Agency, Region 2

**Re: In the Matter of Michael B. Rapasadi and Thomas R. Rapasadi
Proceeding to Assess a Class I Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
Docket No. CWA-02-2013-3601**

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007**

In the matter of

Michael B. Rapasadi
2106 Lake Road
Oneida, NY 13421

Thomas R. Rapasadi
2106 Lake Road
Oneida, NY 13421

**Proceeding Pursuant to § 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)**

FINDINGS OF VIOLATION

AND

ORDER

CWA-02-2011-3502

I. STATUTORY AUTHORITY

The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.* ("the Act"), and in particular Section 309(a) of the Act, 33 U.S.C. § 1319(a). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of the EPA, which authority has been duly re-delegated to the undersigned Director of the Division of Environmental Planning and Protection of Region 2 of EPA.

II. STIPULATIONS AND FINDINGS

1. Michael B. Rapasadi and Thomas R. Rapasadi ("Respondents") are "persons" as defined under Section 502 of the Act, 33 U.S.C. § 1362.
2. Michael B. Rapasadi is the owner of a 13.3-acre property ("the Property") identified as tax parcel 27.-2-56 (Town of Lenox, Madison County, NY), 8151 North Main Street, Canastota, NY (See "Exhibit A").

3. Thomas R. Rapasadi is the father of Michael B. Rapasadi, and is engaged in construction activities at the Property.
4. The Property contains wetlands ("the Wetlands").
5. The Wetlands drain to Cowaselon Creek which flows to Oneida Lake.
6. The Wetlands are waters of the United States, which came under the jurisdiction of the EPA and the U.S. Army Corps of Engineers ("the Corps") effective September 1, 1976. The Act's jurisdiction encompasses "navigable waters" which are defined as "waters of the United States" (33 U.S.C. § 1362(7)).
7. From 2008 through, at least, September 2010, Thomas R. Rapasadi has conducted construction activities using mechanized earth-moving equipment in the Wetlands involving stripping and on-site stock-piling of muck soils and discharge of earthen fill material brought to the Property.
8. The construction activities were observed from the roadside by Corps and EPA staff in September 2010.
9. On September 28, 2010, the Corps issued a Warning Letter regarding the construction activities to Michael B. Rapasadi, as the owner of the Property (Department of the Army file number 2010-01319.)
10. On November 15, 2010, the Corps inspected the Property, and determined that the construction activities described in Paragraph 7, above, involved discharge of fill material creating a fill pad of approximately 1.13 acre within the Wetlands, and stripping and stock-piling of soils around this fill pad, with the total area of construction activities being approximately 4 acres. (See "Exhibit B".)
11. On December 3, 2010, a Notice of Violation and Cease and Desist Order ("the Notice") was issued by the Corps to Michael B. Rapasadi for the activities described in Paragraph 7, above. The Notice required that Michael B. Rapasadi either remove the fill material and restore the Wetlands, or apply for an after-the-fact permit application to authorize the construction activities. The Notice also required that an after-the-fact application include a description of the purpose and need for the fill, an alternatives analysis, and a compensatory mitigation plan. A restoration plan or after-the-fact application was due to the Corps by December 31, 2010.
12. In March 2011, having received neither a restoration plan nor after-the-fact application, the Corps initiated coordination with EPA regarding further disposition of this case.
13. On April 26, 2011, EPA issued a Request for Information letter, pursuant to Section 308 of the Clean Water Act, 33 U.S.C. Section 1318(a), to Michael B. Rapasadi.
14. On May 10, 2011, EPA issued a Request for Information letter, pursuant to Section 308

of the Clean Water Act, 33 U.S.C. Section 1318(a), to Thomas R. Rapasadi.

15. The Request for Information letters described in Paragraphs 13 and 14, above, requested specific information from the Respondents for EPA's use in investigating this matter. Responses were due within thirty days.
16. Instead of responding to the Request for Information letters, Respondents mailed to EPA an incomplete, undated after-the-fact permit application seeking authorization for the construction activities. This application was received by EPA in August 2011. The application describes no specific purpose to the fill.
17. On September 1, 2011, after further consultation with EPA, the Corps transferred lead agency status for further enforcement of this case to EPA on the grounds that it is unable to obtain voluntary resolution of the violation.
18. The earthen fill material constitutes a "pollutant" within the meaning of Section 502 (6) of the Act, U.S.C. § 1362(6).
19. Mechanized earth-moving equipment is a "point source" within the meaning of Section 502(14) of the Act, U.S.C. § 1362(14).
20. 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).
21. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Act.
22. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to authorize discharges of dredged and fill into navigable waters of the United States.
23. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).
24. The Secretary of the Army has not issued authorization pursuant to Section 404 of the Act, 33 U.S.C. § 1344, for the discharge of fill material described in Paragraph 7, above.
25. Based on the above Findings, EPA finds Respondents to be in violation of Section 301 of the Act, 33 U.S.C. § 1311, for the discharge of pollutants consisting of fill into waters of the United States from a point source without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.
26. 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. ORDERED PROVISIONS

Based upon the foregoing Stipulations and Findings, and pursuant to the provisions of Section 309(a) of the Act, 33 U.S.C. § 1319(a), taking into account the seriousness of the violations involved and any good faith efforts to comply with the applicable requirements, EPA has determined that compliance with the following Order is reasonable. It is hereby ORDERED that:

1. Respondents shall cause no further discharges of dredged or fill material into waters of the United States except as authorized by a valid permit issued by the Corps pursuant to Section 404 of the Act, 33 U.S.C. § 1344.
2. Respondents shall undertake measures to promptly come into compliance with Section 404 of the Act, 33 U.S.C. § 1344, with respect to the unauthorized discharge of fill material described in the Findings, above, by removal of unauthorized fill material and restoration of the affected portion of the Wetlands. Specifically, all of the unauthorized fill shall be removed within ninety (90) days of the date of execution of this Order, and the fill removal area shall be restored to its pre-existing, wetland condition.
3. For the purpose of meeting the requirements of Paragraph 2, above, within thirty (30) calendar days of receipt of this Order, Respondents shall submit a restoration plan to EPA for review and written approval. The restoration plan shall include an engineering diagram of the fill removal area with overhead and cross-sectional diagrams of the required fill removal, a description of the proposed disposal location of the fill material in a non-wetland area, and a description of the best management practices to be used to control erosion and run-off during the work.
4. Respondents are responsible for ensuring removal of fill and restoration of the impacted Wetlands in compliance with this Order. Respondents are also responsible for proper disposal of removed fill.
5. Within ten (10) days after completion of the removal of all fill, Respondents shall submit a report of the completed work to EPA, including color photographs depicting the entire fill removal area, and a description of the disposal location(s) of the removed fill.
6. Monitoring of the restoration shall occur every six (6) months after completion of the fill removal for a period of two years. Respondents shall make overall observations of the percent coverage of the fill removal area with vegetation, the dominant species of vegetation present, and the average depth of water or the depth to soil saturation. Respondents shall submit this information in report form, with photographs of the entire fill removal area, to EPA within ten (10) days after making the observations.
7. After submittal of each report, Respondents shall undertake any re-excavation, planting, erosion-control measures, or similar alterations to the fill removal area, which EPA may

instruct him to undertake for the purpose of ensuring redevelopment of wetlands within the area, within the time-period instructed by EPA.

8. The restoration of the fill removal area shall be deemed fully successful by EPA when at least 85% of the fill removal area is densely vegetated with wetlands vegetation in a healthy state for a period of two consecutive years.
9. EPA may instruct Respondents to continue monitoring of the fill removal area, and excavation or replanting of such, for a period beyond two years if fully successful restoration is not achieved within two years.
10. EPA or its designated representative(s) may inspect the fill removal area periodically to assess compliance with this Order and to evaluate the degree of success of the restoration until such time as EPA deems the restoration fully successful.
11. If Respondents cannot comply with any of the deadlines or requirements in this Order, Respondents shall, upon learning of the delay or cause for a delay, immediately notify EPA via faxed message or overnight mail. Such notification shall include the anticipated length of the delay, the cause of the delay, the measures taken by Respondents to prevent or minimize the delay, and a timetable by which Respondents intend to implement these measures. If EPA and Respondents agree that the delay is caused by circumstances beyond the reasonable control of Respondents, such as an Act of God or third parties not under the direction of Respondents, or the obtaining of necessary permits or approvals where Respondents made all reasonable efforts to timely obtain said permits or approvals, the time for performance hereunder may be extended in the sole discretion of EPA for a reasonable period.
12. Any failure on the part of Respondents to carry out the requirements of this Order may result in further enforcement action pursuant to Section 309 of the Act, 33 U.S.C. §1319(a). EPA may also seek additional and other relief against Respondents for failure to achieve the requirements of this Order.
13. If Michael B. Rapasadi transfers ownership of all or any portion of the Property, he shall ensure the legal means for its compliance with this Order, including the restoration and monitoring requirements.
14. All written information required to be submitted to EPA pursuant to this Order shall be sent via certified mail (return-receipt requested), overnight mail and/or fax to:

Mr. David Pohle
Wetlands Protection Team
Water Programs Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway - 24th Floor
New York, New York 10007-1866
Fax: (212) 637-3889; Telephone: (212) 637-3824

15. Any questions concerning this Order should be directed to Mr. Pohle at the above address, fax number, and/or telephone number.

GENERAL PROVISIONS

1. The provisions of this Order shall be binding upon Respondents, and their agents, servants, employees and successors or assigns.
2. This Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §1252 *et seq.*, or any regulations promulgated thereunder, or any New York State or local law or regulation. This action is an enforcement action taken by EPA to ensure swift compliance with the Act. Issuance of this Order is not an election by EPA to forego any civil or any criminal action otherwise authorized by the Act, including issuance of penalties pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g).
3. The wetlands restoration provided pursuant to this Order shall not be offered by Respondents or any other person for consideration as compensatory mitigation for any other authorized or unauthorized discharge in waters of the United States, or as an environmentally-beneficial project for which Respondents or any other person may obtain tangible or intangible credit in any way.

EFFECTIVE DATE

This Order shall become effective upon the date of execution by the Director, Division of Environmental Planning and Protection, of EPA, Region 2.

In the matter of

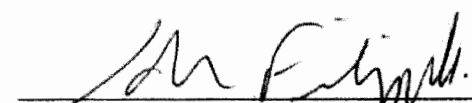
Michael B. Rapasadi
Thomas R. Rapasadi

Proceeding Pursuant to §309(a) of the
Clean Water Act, 33 U.S.C. §1319(a)
Docket CWA-02-2011-3502

For U.S. Environmental Protection Agency, Region 2

Date: _____

9/20/11



John Filippelli, Acting Director
Division of Environmental Planning and Protection



Rapasadi, Michael
D/A Processing No. 2010-01319
Madison County, New York
Quad: Canastota Sheet 1 of 2

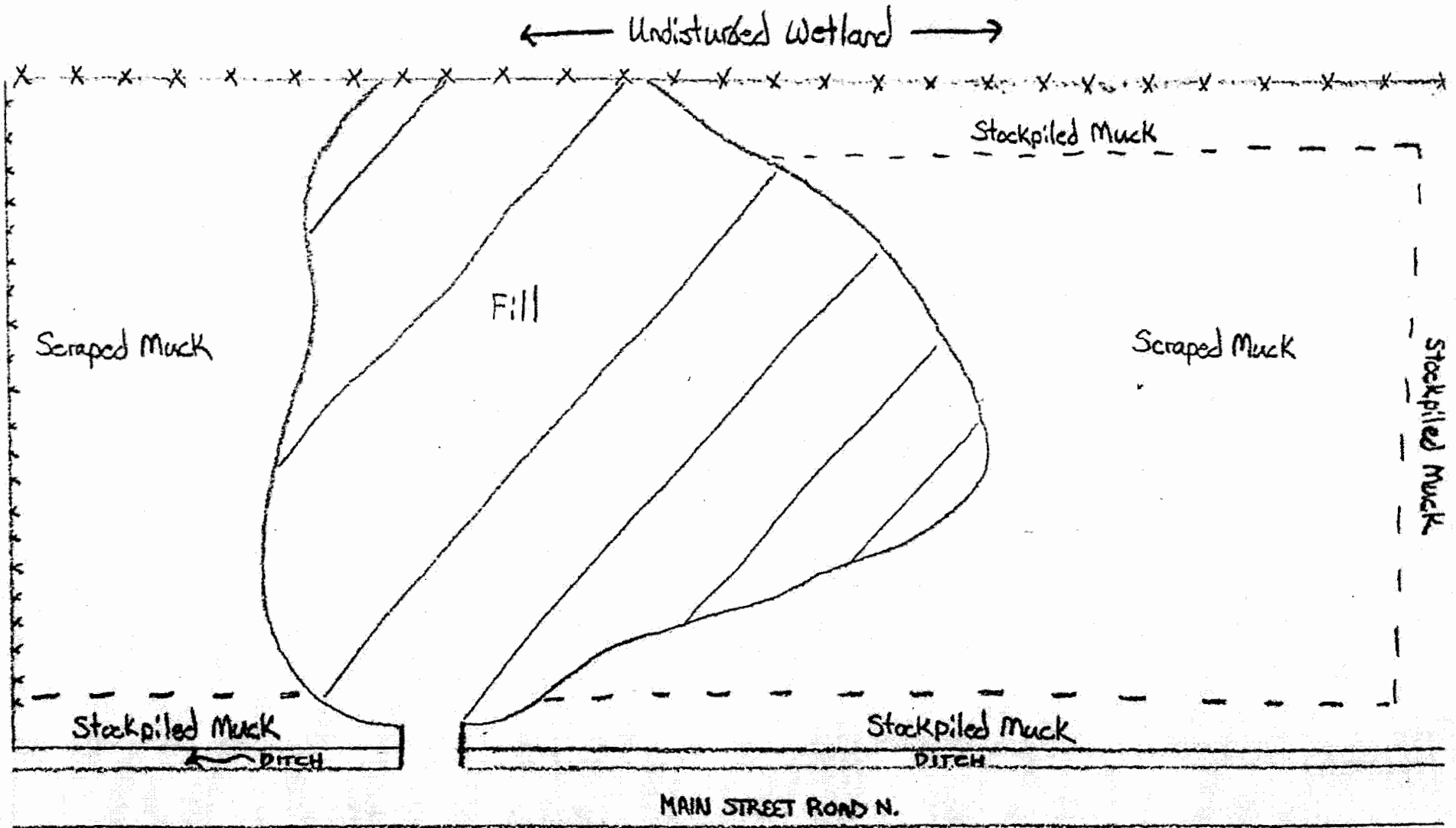


EXHIBIT A

14:15:11

Entire Area of Disturbance \approx 4-acres

Rapasadi, Michael
D/A Processing No. 2010-01319
Madison County, New York
Quad: Canastota Sheet 2 of 2



* NOT TO SCALE *

EXHIBIT B



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2013 MAY 31 P 3: 35
REGIONAL HEARING
CLERK

IN THE MATTER OF

Michael B. Rapasadi
2106 Lake Road
Oneida, NY 13421

Thomas R. Rapasadi
2106 Lake Road
Oneida, NY 13421

Respondents.

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

Docket No. CWA 02-2013-3601

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing, bearing the above-referenced docket number, in the following manner.

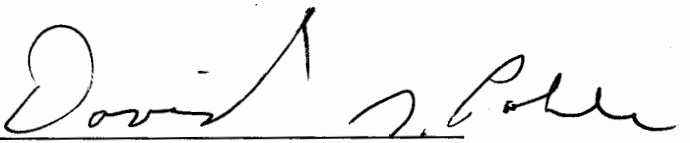
Copy by Certified Mail

<u>Return Receipt Requested:</u>	Michael B. Rapasadi 2106 Lake Road Oneida, NY 13421	Thomas R. Rapasadi 2106 Lake Road Oneida, NY 13421
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Original and One Copy <u>By Internal Mail (pouch):</u>	Regional Hearing Clerk U.S. Environmental Protection Agency 290 Broadway, 16 th floor New York, New York 10007-1866
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Copy By Facsimile and <u>Internal Mail (pouch) :</u>	Helen S. Ferrara, Regional Judicial Officer U.S. Environmental Protection Agency 290 Broadway, 16 th floor New York, New York 10007-1866
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Date: 5/31/13


David G. Ahle
Environmental Scientist
U.S. EPA - Region 2