

CATANZARO AND ALLEN

ATTORNEYS AT LAW
100 Waverly Street
Ashland, Massachusetts 01721
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Angelo P. Catanzaro
Jennifer M. D. Allen

Rosemary A. Bosselait

RECEIVED

2008 MAY 13 PM 3:35
Ronald M. Stone*
Of Counsel

*Also admitted in Maine

May 13, 2008

Via Certified Mail

Ms. Wanda Santiago
Regional Hearing Clerk
United States Environmental Protection Agency - Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

Re: In the Matter of Stephen Lowe, Docket No. CWA-01-2008-0048

Dear Ms. Santiago,

Please find enclosed original and one copy of the Answer of Respondent Stephen Lowe to Administrative Complaint of the EPA. Kindly note Mr. Lowe has requested a Hearing on this matter.

Thank you for your courtesy in this matter. If you have any questions, please do not hesitate to contact me or my associate, Rosemary Bosselait.

Very truly yours,

CATANZARO AND ALLEN

Angelo P. Catanzaro

APC/rab

cc: Michael Wagner, Esquire
Mr. Stephen Lowe

F:\L\Lowe\Stephen\3153.EarthRemoval.DEP\Hearings Clerk 05.08.08.wpd

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

IN THE MATTER OF:

2000 MAY 13 P 1:25

STEPHEN LOWE

EPA OPC
DOCKET NO: CWA-01-2008-0048

ANSWER OF RESPONDENT, STEPHEN LOWE TO ADMINISTRATIVE
COMPLAINT OF THE EPA

Now come the Respondent, Stephen Lowe, and makes answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing Thereon as follows:

I. STATUTORY AUTHORITY

Said introductory paragraph is a conclusion of law and requires no response from the Respondent.

II. FINDINGS OF VIOLATION

1. Respondent admits the allegations contained in paragraph 1.
2. Respondent denies the allegations contained in paragraph 2 and calls upon Complainant for its proof. In further answer, Respondent states that he did engage in the excavation and screening of large rocks from the site.
3. Paragraph 3 states a conclusion of law and requires no response from the Respondent.
4. Respondent acknowledges that he received a request for information and that he forwarded the same to the owners of the real property located at 226 Gardner Road, Hubbardston, MA. Respondent further acknowledges that he did not personally forward the information to the Complainant as he believed that he was not the appropriate responding party. Respondent denies that the failure was a violation of Section 308 of the Act, 33 U.S.C. sec. 1318 and calls upon Complainant for its proof.
5. Respondent admits the allegations contained in paragraph 5.
6. Respondent denies the allegations contained in paragraph 6 and in further answer states that the requested information is attached hereto and incorporated herein as **Exhibit A**.
7. Paragraph 7 states a conclusion of law and requires no response from the Respondent.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Respondent denies the allegations contained in this subsection and calls upon Complainant for its proof. In further answer, Respondent denies and contests the severity of the administrative penalty sought to be imposed, the alleged seriousness of the violation, the alleged economic benefit to Respondent, the degree of culpability of the Respondent, the history of prior violations and all other factors to be determined.

In further answer, Respondent denies that any failure to provide the information requested interfered with EPA's effort to carry out the objectives of the Act and represents a significant violation of the Act and denies any initial and/or continuing violation of the act and calls upon Complainant for its proof.

IV. REQUEST FOR A HEARING

Pursuant to the July 23, 1999 Consolidated Rules of Practice, 40 C.F.R. Part 22, the Respondent hereby Requests a Hearing on the proposed penalty assessment, the Findings of Violation as set forth in Section II above and the appropriateness of the proposed penalty amount.

V. QUICK RESOLUTION

The Respondent does not intend to avail himself of the option of a Quick Resolution at this time.

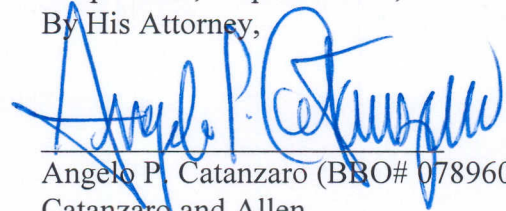
VI. INDIVIDUAL AUTHORIZED TO RECEIVE SERVICE

Pursuant to 40 C.F.R. sec. 22.5(c) (4), the person authorized to receive service relating to the proceedings is:

Angelo P. Catanzaro, Esquire
Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721
(508) 881-4566

Date: May 13, 2008

Respectfully Submitted.
Respondent, Stephen Lowe,
By His Attorney,



Angelo P. Catanzaro (BBO# 078960)
Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721
(508) 881-4566

CATANZARO AND ALLEN

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Angelo P. Catanzaro
Jennifer M. D. Allen

Rosemary A. Bosselait

Ronald M. Stone*
Of Counsel

*Also admitted in Maine

May 8, 2008

Via Certified Mail 7004 0750 0002 6411 5604

United States Environmental Protection Agency
New England Region
Office of Environmental Stewardship
One Congress Street, Suite 1100 (SEW)
Boston, MA 02114-2023

Attn: Andrew Spejewski

Re: EPA 's Request for Information Pursuant to Section 308 of the Clean Water Act; Docket No. 07-308-101

Dear Mr. Spejewski,

Please find enclosed Response of Stephen Lowe to Request for Information Pursuant to Section 308 of the Clean Water Act (33 U.S.C. sec. 1318). Kindly note a copy of the full size plan requested in Question 15 (Attachment A) is available at our office for review.

Thank you for your courtesy in this matter.

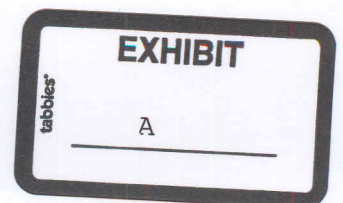
Very truly yours,

CATANZARO AND ALLEN

Angelo P. Catanzaro
Angelo P. Catanzaro

APC/rab

cc: Mr. Stephen Lowe (reg. mail)
Michael Wagner, Esquire (reg. mail)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF:

STEPHEN LOWE

Docket No. CWA-01-2008-0048

**RESPONSE OF STEPHEN LOWE TO REQUEST FOR INFORMATION PURSUANT
TO SECTION 308 OF THE CLEAN WATER ACT (33 U.S.C. sec. 1318)**

Now comes Respondent, Stephen Lowe, and answers as follows:

1. Specify, with the exact spelling, the full legal name of the owner(s) of the site. Provide the mailing address and phone numbers of the owner(s) of the site. If any owner(s) are incorporated, specify the state of incorporation and the principal place of business. If portions of the site have different owners, describe the portions and provide a map showing ownership.
 - A1. The owner of the site are Mark Andrews, 367 Brattleboro Road, Bernardston, MA, Jane Andrews, 367 Brattleboro Road, Bernardston and Leon Andrews, whose address I do not know. The only telephone number I have is for Mark Andrews. that number is 413 648 0189.
2. Provide the following information for the site (as defined in the instructions, above):
 - a. Identify the site, specifying the address and the name(s) given to any project(s) taking place on the site
 - A.a. The parcel is a large parcel of land consisting of a house and approximately sixty-six acres of undeveloped land. I have seen it referred to as both 226 and 229 Gardner Road, Hubbardston, MA. The parcel in question is shown on plan by Ross Associates dated September 2006, Plan No. 10225 and is referred to in deed recorded at Worcester Registry of Deeds in Book 19564, Page 37. Recently, the house and approximately five acres was subdivided from the larger parcel and is no longer part of the site and is owned by a different party.
 - b. Specify who owns/owned the site and portions thereof during all times that construction activities are/were occurring. If any transfer of ownership occurred after the start of the construction planning process, specify the owner(s) prior to and following the transfer, the date of the transfer, and the phase of the construction process on the date of the transfer. Provide the name and address of each owner specified.

A.b. I have not engaged in construction activity on the site. I did engage in the excavation and screening of large rocks and the stripping of loam for purposes of making agricultural fields. This was done pursuant to an agreement with the owners of the land. I no longer have any business activity on the site. I have no knowledge as to whether any other individuals have engaged in construction activity on the site. The owner(s) are the same as in Answer 1 set forth above.

c. Specify the operators of the site during all times that construction activities are/were occurring. Provide the name and address of each operator specified, the area of the site under its control, and the period of time during which each was an operator at the site.

A.c.. I have not been an operator of the site. I no longer have any business activity on the site. To the best of my knowledge, Mark Andrews, one of the owners of the site, may have been an operator and this question is more properly addressed to him.

d. Specify the developers of the site during all times that construction activities are/were occurring. Provide the name and address of each developer specified, the area of the site under its control, and the period of time during which each was a developer at the site.

A.d. I have not been a developer of the site. I no longer have any business activity on the site. I have no knowledge as to whether any other individuals developed the site.

e. Specify the General Contractors at the site during all times that construction activities are/were occurring. Provide the name and address of each General Contractor specified, the area of the site under its control, and the period of time during which each was a General Contractor at the site.

A.e. I have not engaged in construction activity on the site. I no longer have any business activity on the site. I have no knowledge as to whether any other individuals have engaged in construction activity on the site.

f. Specify the number of acres of total land area disturbed until now and the number of acres anticipated to be disturbed at the site.

A.f. 10 acres

g. Provide the primary Standard Industrial Classification (SIC) code for activities on the site.

A.g. I have no knowledge of this code.

3. Provide the information requested below regarding the timetable of construction activities:

In answering this question Respondent reserves the right to dispute the classification of his activities on the site as "construction activities". Without waiving said objection, Respondent answers as follows:

a. When the earth disturbing activities commence at each portion of the site (provide a specific date).

A.a. To the best of my recollection, approximately June 2002 I began the excavation and screening of large rocks on the site.

b. Describe the condition of the surface of the site (e.g., natural soil, forested, stripped, paved, etc.) before the commencement of earth disturbing activities.

A.b. Natural soil.

c. Describe all earth-disturbing activities that have taken place at the site since September 1, 2002.

A.c. Loam was stripped and rock removed.

d. What is the current stage of activity at the site (e.g., clearing/grubbing, active mining, grading infrastructure, paving, building construction, final stabilization)? If different portions of the site are at different stages of construction, describe each portion and its current stage of construction.

A.d. Activity at the site is at the clearing/grubbing stage.

e. During the period of construction activity, describe any and all means by which storm water did or does run across the site and any diversion or control structures in place to reduce the pollutant load carried on or off the site.

A.e. As stated above I do not believe that there was any construction activity. Activity involved only the excavation of rocks and the stripping of loam. Sediment is collected in two silt ponds before entering the wetlands.

f. After commencement of earth disturbing activities at the site, were activities temporarily or permanently ceased on any portion of the site? If so, describe the time period as well as any temporary or permanent stabilization measures that were employed.

A.f. No.

g. For each portion of the site that has achieved final stabilization (either paved or have achieved 70% or more, perennial vegetative cover), provide the specific date of final stabilization. Provide an estimated date of final stabilization of all other portions of the site.

A.g. Final stabilization has not been achieved on any portion of the site.

h. When were (or will) the construction activities (be) completed at the site? Provide a specific date for completion or an estimated future date of completion.

A.h. I have no specific date nor estimate of when construction activities will be completed at the site. I am no longer active on this site.

4. Describe and provide the date of the most recent agricultural use of the site.

A.4 Farm animals were removed from the site on or about June 2007 by the Andrews family.

5. Provide information regarding mining of sand, gravel or stone at the site:

a. Provide the earliest date that sand, gravel or stone were mined at the site.

A.a. Stone has been removed from the site by me since on or about June 2002. Prior to that time I have no information but there is a stockpile of material on the site which predated my presence.

b. Provide the earliest date that sand, gravel or stone was removed from the site (for sale, for storage off-site or for any other reason) and the reason.

A.b. Stone has been removed from the site since on or about June 2002 for sale to pay for the equipment used in the excavation and screening of large rocks and the stripping of soil.

c. Provide the total amount (by weight or volume) of sand, gravel and stone mined at the site and subsequently taken off site for sale or storage,

A.c. Approximately 20,000 tons.

6. For each storm water discharge from the site to a surface water or wetland, state the name and location of the surface water or wetland, or identify unnamed surface waters or wetlands on a map and indicate the nearest named surface water or wetland to which the unnamed water flows.

A.6 I do not understand the question and thus am unable to respond to the same.

7. Did you or any other person or entity submit an application to the EPA for permit coverage for storm water discharges from the site or submit a notice of intent ("NOI") for coverage under the EPA Storm Water General Permit for Construction or the Multi-Sector General Permit for Stormwater? If so, provide the permit number and a copy of the application or NOI.

A.7 I did not. To the best of my knowledge no other individual or entity did so.

8. Specify if the activities at the site were covered under any state or local permit or agreement relating to the control and management of storm water runoff.
 - A.8 The scope of the work to be performed on the site was presented to the local Planning Board by the Owner.
9. Was a Storm Water Pollution Prevention Plan ("SWPPP") created for the site
 - A.9 Not to my knowledge.
 - a. When was it created (specific date)?
 - A.a No plan was created
 - b. If it was not created prior to commencement of construction, provide a detailed explanation of your reason(s) for not developing a SWPPP for the site prior to commencing earth disturbing activities.
 - A.b. It was my understanding that the Owner had obtained any and all permits required to engage in the activity that we engaged in.
 - c. Provide a copy of the original SWPPP and any revised SWPPPs for the site. Include site plans.
 - A.c. No plan was created
10. Provide a map of the site that includes approximate elevations sufficient to show direction of stormwater flow and indicates locations of erosion control measures. If a SWPPP is provided, the maps contained within the SWPPP may satisfy this requirement. Show locations where each of the activities on site are conducted.
 - A. 10 No such map is available.
11. Please fully describe how pollution prevention measures, including best management practices, are and were implemented at the site to control erosion and limit sedimentation deposition to receiving water(s) during construction activities at the site.
 - A.11 I was never made aware by the Owner or the Town of Hubbardston as to the requirement of such measures.
12. Describe what inspections were conducted at the site to evaluate the efficacy of any applicable storm water pollution prevention measures. If inspections were completed for only part of the time that the site was under construction, please specify when they were performed and when they were not. Provide copies of all reports documenting such inspections.

12. Describe what inspections were conducted at the site to evaluate the efficacy of any applicable storm water pollution prevention measures. If inspections were completed for only part of the time that the site was under construction, please specify when they were performed and when they were not. Provide copies of all reports documenting such inspections.
- A.12 I have not been informed of any such inspections conducted at the site.
13. Provide the results of all visual or analytic monitoring of stormwater runoff conducted at the site.
- A. 13 I have no such results.
14. Have any plans or notifications been filed with federal, state or local governments regarding construction or mining work at the site? If so, describe each notification and provide the date.
- A. 14 No.
15. On May 30, 2007, inspectors from EPA were shown a preliminary plan for housing development at the site. Please provide a copy of that plan or any updated versions.
- A.15 Please see **Attachment A**. I believe that this was the Plan that was shown. This plan was withdrawn from consideration and no work was ever undertaken in connection therewith.
16. Provide copies of Notices of Violation or equivalent issued from any federal, state or local agency relating to activities on the site. Provide specific dates of incident (s) and the cause(s) of the violation. If the violation was corrected, provide documentation on how and when the compliance was achieved.
- A.16 At the end of September 2007 I received a Cease and Desist Order from the Town of Hubbardston. (**Attachment B**) At no time did I remove gravel from the site. I no longer engage in business activities on the site.

DECLARATION

I certify that the foregoing responses and information submitted were prepared by me, or under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

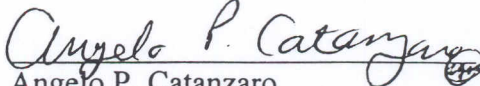
By



Stephen Lowe

Dated: May 1, 2008

Respectfully Submitted,
Respondent, Stephen Lowe,
By His Attorney,

Handwritten signature of Angelo P. Catanzaro in cursive script, with a small circular stamp or mark at the end of the signature.

Angelo P. Catanzaro
Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721
(508) 881-4566
(BBO# 078960)

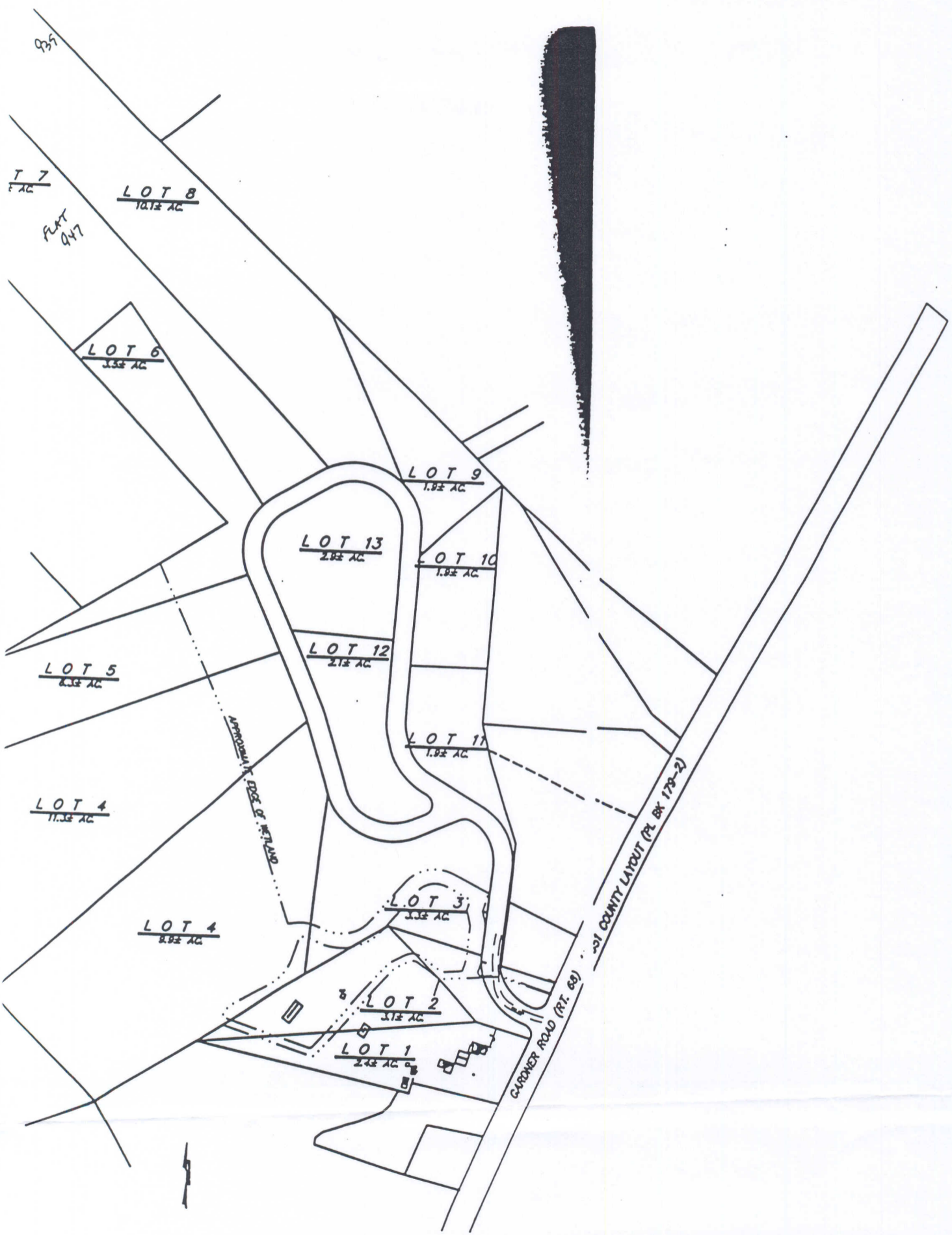


Exhibit A

REVISIONS

CONCEPTUAL SUBDIVISION PLAN IN
Hubbardston, Mass.
 PREPARED FOR
Stephen Lowe
 SCALE: 1" = 200' DECEMBER
David E. Ross Associates, Inc
 CIVIL ENGINEERS - LAND SURVEYORS



TOWN OF HUBBARDSTON
BUILDING COMMISSIONER
7A MAIN STREET
HUBBARDSTON, MASSACHUSETTS 01452
TEL: 978-928-1407
FAX: 978-928-3392

September 18, 2007

Mr. Stephen Lowe
5 Warren Street
Westboro, MA. 01581

Re: Gravel and Stone Removal, Map 3, Parcel 19

Mr. Lowe:

You are hereby ordered to immediately Cease and Desist the removal of all materials from this parcel. You are in violation of the Hubbardston Zoning Bylaws, Section 4:2.i. Uses Permitted by Special Permit in Residential Districts: Earth Removal as a Commercial Operation, and Town General Bylaw 19 - Earth Removal.

Failure to heed this order will result in penalties, Section 4.14, of Fifty dollars (\$50.00) for each violation; each day on which a violation exists shall be deemed to be a separate offence.

Please contact this office within 48 hours of receipt of this notice with your intentions to resolve these issues.

Yours truly,

Lawrence M. Brandt
Hubbardston Building Commissioner

cc: Planning Board

Exhibit B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF:

STEPHEN LOWE

DOCKET NO: CWA-01-2008-0048

CERTIFICATE OF SERVICE

I, Angelo P. Catanzaro, hereby certify that I served Answer of Respondent, Stephen Lowe to Administrative Complaint of the EPA upon:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress St., Suite 1100 (RAA)
Boston, MA 02114-2023

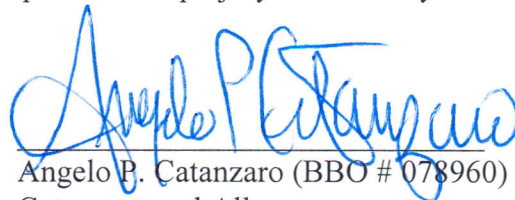
Original and one copy by Certified Mail, Return Receipt Requested

and

Michael Wagner, Esquire
Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress St., Suite 1100 (SEL)
Boston, MA 02114-2023

One copy by regular mail

Subscribed and sworn to under the pains and penalties of perjury this 13th day of May,
2008



Angelo P. Catanzaro (BBO # 078960)
Catanzaro and Allen
100 Waverly Street
Ashland, MA 01721
(508) 881-4566