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U.S. EPA REGION 1
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

IN THE MATTER OF

Mark Illian
29 Pequawket Trail
Standish, ME 04084

and

Mark Floor
45 Milt Brown Road
Standish, ME 04084

Respondents

Site:

Maine Route 25/Ossipee Trail
Limington, ME 04049

DOCKET NO: CWA-01-2025-0023

CONSENT AGREEMENT AND
FINAL ORDER FOR CIVIL
PENALTY UNDER THE
CLEAN WATER ACT

INTRODUCTION

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

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

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

4. Respondents agree to the effect of this CAFO and agree to carry out the terms and conditions described herein.

STATUTORY AND REGULATORY AUTHORITY

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

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

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

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

¹ See CWA-AO-R01-FY25-06.

§ 1311(a).

9. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers of the U.S. Army Corps of Engineers (the “Corps”), to issue permits for the discharge of dredged or fill material to waters of the United States at specified disposal sites, after notice and opportunity for public comment.

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

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

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

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

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

FINDINGS OF FACT

15. Respondent Mark Illian is an individual residing at 29 Pequawket Trail in Standish, Maine.

16. Respondent Mark Floor is an individual residing at 25 Milt Brown Road in Standish, Maine.

17. Since July 30, 2021, and at all times relevant to this case, Mark Illian has owned and continuously operated the property located on Maine Route 25 (Ossipee Trail) in Limington,

Maine and depicted on Exhibit 1 (the “Site”).

18. During the same time period, Mark Floor, as the real estate agent, business partner, and general advisor to Mark Illian, had responsibility and control over the activities giving rise to the CWA violations alleged herein, including, but not limited to, the hiring, directing, and overseeing of contractors.

19. Prior to 2021, and as generally depicted on Exhibit 2, the Site contained approximately 3.5 acres of undisturbed vegetated forested wetlands.

20. These wetlands physically abutted and had a continuous surface connection to an unnamed tributary to Hamlin Brook (hereinafter the “Unnamed Tributary”). *See* Exhibit 2.

21. The Unnamed Tributary is a relatively permanent water with, among other things, visible flow as well as physical indicators of a bed and bank and ordinary highwater mark.

22. Hamlin Brook is a perennial relatively permanent tributary to the Little Ossipee River.

23. The Little Ossipee River is a traditional navigable water flowing to the Saco River. *See* Exhibit 3.

24. The Saco River is a traditional navigable water that connects to the Atlantic Ocean.

25. Between approximately August 2021 and Spring 2022, Respondents operated, directed, supervised and/or controlled the operation of a D8 bulldozer and/or other earthmoving equipment to clear, stump, grub, and fill approximately 3.5 acres of vegetated wetlands on the Site and approximately 100 linear feet of the Unnamed Tributary in preparation for commercial development of the Site and/or sale for that purpose. *See* Exhibit 4.

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

25 above.

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

CONCLUSIONS OF LAW

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

29. Respondents are each a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(5).

30. The materials Respondents, and/or persons acting on their behalf, caused to be discharged during performance of the activities referenced in Paragraph 25, above, including, but not limited to, stumps, soil, sediments, stone, and other materials, constitute “dredged and/or fill” material as defined by 40 C.F.R. § 232.2 and are, therefore, “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

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

32. The D8 bulldozer and/or other earthmoving and/or mechanical equipment referenced in Paragraph 25, above, are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

33. The impacted adjacent wetlands, the Unnamed Tributary to Hamlin Brook, Hamlin Brook, the Little Ossipee River, and the Saco River are all “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

34. Both the Little Ossipee River and the Saco River are navigable-in-fact and are,

therefore, “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

35. Hamlin Brook is a relatively permanent water with perennial flow that connects to the Little Ossipee River and is, therefore, a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

36. The Unnamed Tributary to Hamlin Brook is a relatively permanent water that flows to Hamlin Brook and is, therefore, a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and the regulations promulgated thereunder.

37. Prior to disturbance, the impacted wetlands generally depicted on Exhibit 4 physically abutted and had a continuous surface connection to the relatively permanent Unnamed Tributary to Hamlin Brook, which, as stated above, is a relatively permanent tributary with perennial flow that connects to the Little Ossipee River. Accordingly, the impacted wetlands on the Site are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

38. Respondents’ discharges of dredged and/or fill materials were not authorized by any permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, nor were they authorized under any other permit or provision of the CWA.

39. Respondents are, therefore, liable under the CWA for the unauthorized discharge of dredged and/or fill material to wetlands and other waters of the United States. 33 U.S.C. §§ 1311(a) and § 1344.

CONSENT AGREEMENT

40. EPA and Respondents agree that settlement of this cause of action is in the public

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

Terms of Settlement

41. This CAFO shall be binding on Respondents and their successors, and assigns, or other entities or persons otherwise bound by law.

42. For purposes of this proceeding, Respondents admit the jurisdictional allegations contained in this CAFO and waive any defenses they might have as to jurisdiction and venue. Respondents neither admit nor deny the specific factual or other non-jurisdictional allegations contained herein and consent to the issuance of this CAFO and the conditions specified herein.

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

44. By signing this Consent Agreement, Respondents waive any rights or defenses that Respondents have or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waive any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

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

CWA, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii).

Civil Penalty

46. EPA proposes, and Respondents consent to, the assessment of a civil penalty of \$ 14,500 for all violations alleged in this CAFO through the Effective Date of the CAFO.

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

48. Respondents shall pay a combined total penalty of \$14,500 for the violations of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344 (hereinafter, “Assessed Penalty”), alleged herein, within 10 days of the date this Consent Agreement becomes final.

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

50. When making a payment, Respondents shall:

- a. Identify every payment with the case name and docket number (*In the Matter of: Mark Illian and Mark Floor*; Docket No. CWA-01-2025-2023).
- b. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve proof of such payment to the following person(s):

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

and

Laura Beveridge, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

5 Post Office Square
Boston, Massachusetts 02109-3912
beveridge.laura@epa.gov

and

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

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

51. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

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

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

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

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the IRS for

offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondents' licenses or other privileges, or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

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

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

55. IRS Form W-9/Tax Identification Number. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA

is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondents herein agree, that:

- a. Respondents shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes that Respondent’s correct TIN or that Respondents have applied and are waiting for issuance of a TIN;
- c. Each Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at chalifoux.jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed. EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that a Respondent has certified in its completed IRS Form W-9 that the Respondent does not yet have a TIN but has applied for a TIN, that Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

General Provisions

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

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

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

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

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

61. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this CAFO, or by virtue of any other violations by Respondents of the statutes and regulations upon which this CAFO is based, or for Respondents' violation of any applicable provision of law.

62. This CAFO in no way affects the rights of EPA and/or the United States as against any person as defined in the CWA other than Respondents Mark Illian and Mark Floor. All rights and claims against any person other than the aforementioned Respondents are specifically reserved.

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

64. Except as described in Paragraph 51 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

65. Respondents' obligations under the CAFO shall end when they have paid in full the scheduled civil penalty, and any interest or nonpayment penalties, and submitted the documentation required by this CAFO.

66. The CAFO may be signed in counterparts.

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

68. Respondents agree to acceptance of both (a) EPA's digital or an original signature on this CAFO and (b) service of the fully executed CAFO on the Respondents by mail or electronically by email at the following email addresses: markillian1960@gmail.com, marksellsmaine@gmail.com, and alan@shepardandreadlaw.com. EPA agrees to acceptance of the Respondents' digital or an original signature on this CAFO.

69. Respondents understand that their mailing or email address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

PUBLIC NOTICE

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

EFFECTIVE DATE

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

LIST OF EXHIBITS

Exhibit 1: Limington, Maine Parcel Map for Site (Tax Map R14 Lot 43.2)

Exhibit 2: EPA Pre-Disturbance Wetland Determination

Exhibit 3: USGS National Hydrology Map

Exhibit 4: EPA Determination of CWA Impacts

RESPONDENT MARK ILLIAN

Date: 7/29/25

Name: Ad Jen

Title: LAND OWNER

RESPONDENT MARK FLOOR

Date: 7/29/25

Name: MA Floor

Title: AGENT

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

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

FINAL ORDER

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

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

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

Date: _____

LeAnn Jensen, Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1