

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

Town of Sandisfield

**UNILATERAL
ADMINISTRATIVE ORDER**

Enforcement Document # 00017415

File # INV-WE-23-6W014

Dodd Road, Sandisfield

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, §7. MassDEP has its principal office located at 100 Cambridge Street, Boston, Massachusetts 02114, and its Western Regional Office at 436 Dwight Street, Springfield, Massachusetts 01103.
2. Town of Sandisfield (“Sandisfield”) is a Municipality with its principal offices located at 66 Sandisfield Road, Suite 1, Sandisfield, MA 01255, and with a mailing address of 66 Sandisfield Road, Suite 1, Sandisfield, MA 01255.

II. STATEMENT OF FACTS AND LAW

3. The Department is charged with administration and enforcement of M.G.L. c. 131, §40 (the Massachusetts Wetlands Protection Act), and the Department’s Wetlands Regulations at 310 CMR 10.00; and M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act) and the Department’s regulations governing 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredging Material Disposal in Waters of the United States within the Commonwealth at 314 CMR 9.00. The Department’s authority to issue this Unilateral Administrative Order (“Order”) and to set deadlines for compliance is conferred by the foregoing and by M.G.L. c. 111, § 2C.
4. The following facts have led to the issuance of this Order:
 - A. On February 16, 2024, MassDEP conducted an unannounced site inspection from the public right of way (ROW) in response to a complaint received by the Department.
 - B. During the February 16, 2024, inspection, MassDEP observed “activities” (as defined at 310 CMR 10.04 Activity) undertaken within Bordering Vegetated Wetlands [“BVW”, as defined at 310 CMR 10.55(2)], inland Bank [as defined at 310 CMR 10.54(2)], and Land under Water Bodies and Waterways [“LUWW”, as defined at 310 CMR 10.56(2)], which

- resulted in the Fill, Dredge, and Alter of said Resource Areas (all as defined at 310 CMR 10.04). The observed Activity was related to Dodd Road re-construction and the replacement of a stream crossing located at an unnamed intermittent Stream (as defined at 310 CMR 10.04) on Dodd Road in the Town of Sandisfield. The Department estimates combined impacts of at least 50 linear feet of Alter, Dredge, and Fill to Bank. The Department estimates combined impacts of at least 50 linear feet of Alter, Dredge, and Fill to LUWW.
- C. Additionally, MassDEP staff observed the alteration of BVW by way of destruction of vegetation and the discharge of Fill into the BVW consisting of corrugated pipes, soils, and woody material. The Department estimates at least 150 square feet of alteration and at least 30 square feet of discharge of Fill to the BVW.
- D. The above-referenced unnamed intermittent Stream associated with the stream crossing on Dodd Road in the Town of Sandisfield is a tributary of Sandy Brook (Streams and Rivers Information System (“SARIS”) ID 3106875). Sandy Brook is an interstate water, therefore the unnamed intermittent Stream is Waters of the United States within the Commonwealth (“WUSWC”, as defined at 314 CMR 9.02).
- E. Sandisfield did not file for, nor are there records of, a Wetlands Protection Act Negative Determination of Applicability (“DOA”) or Final Order (both as defined at 310 CMR 10.04); an emergency certification issued pursuant to 310 CMR 10.06; or 401 Water Quality Certification issued pursuant to 314 CMR 9.00 for the activities undertaken within Resource Areas and the WUSWC.
- F. Sandisfield violated the Massachusetts Wetlands Protection Act M.G.L. c. 131, § 40 and the regulations at 310 CMR 10.00; 310 CMR 10.54(4); 310 CMR 10.55(4); 310 CMR 10.56(4), for altering a Resource Area without obtaining required authorizations.
- G. Sandisfield violated the Massachusetts Clean Waters Act M.G.L. c. 21, §§ 26 through 53 and the 401 Water Quality Certification regulations at 314 CMR 9.00; 314 CMR 9.06(2); for failure to comply with 314 CMR 9.00 by illegally discharging fill materials to WUSWC
5. The foregoing facts establish violations of the following statutes and regulations:
- A. M.G.L. c. 131, § 40 (the Massachusetts Wetlands Protection Act) and the Department’s Wetlands Regulations at 310 CMR 10.00, as follows:
- i. Paragraph 32 of M.G.L. c. 131, § 40:
- “No person shall remove, fill, dredge or alter any area subject to protection under this section without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this section.”

- ii. 310 CMR 10.54(4): “(a) Where the presumption set forth in 310 CMR 10.54(3) is not overcome, any proposed work on a Bank shall not impair the following:
 - 1. the physical stability of the Bank;
 - 2. the water carrying capacity of the existing channel within the Bank;
 - 3. ground water and surface water quality;
 - 4. the capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
 - 5. the capacity of the Bank to provide important wildlife habitat functions...”
- iii. 310 CMR 10.55(4): “(a) Where the presumption set forth in 310 CMR 10.55(3) is not overcome, any proposed work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of said area.”
- iv. 310 CMR 10.56(4): “(a) Where the presumption set forth in 310 CMR 10.56(3) is not overcome, any proposed work within Land under Water Bodies and Waterways shall not impair the following:
 - 1. The water carrying capacity within the defined channel, which is provided by said land in conjunction with the banks;
 - 2. Ground and surface water quality;
 - 3. The capacity of said land to provide breeding habitat, escape cover and food for fisheries; and
- B. The capacity of said land to provide important wildlife habitat functions...”M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act) and the Department’s regulations governing 401 Water Quality Certifications for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States within the Commonwealth at 314 CMR 9.00, as follows:
 - i. 314 CMR 9.06(2): “No discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will avoid and minimize potential adverse impacts to bordering or isolated vegetated wetlands, land under water or ocean...”;

III. ORDER

- 6. For the reasons and pursuant to the authority stated above, the Department hereby orders that:
 - A. Sandisfield shall immediately cease and desist all direct and indirect discharges of any sort or type to Buffer Zones and Resource Areas and to WUSWC at the Site.
 - B. By no later than five (5) business days from the issuance date of this Order, Sandisfield shall install a sign at least two square feet in size, in a publicly visible location at the Site, and with the following text: “MassDEP UAO-WE-24-00017415”. The text size on the sign shall be a minimum of two (2) inches in height. The sign shall remain in place until such time as the Department authorizes its removal in writing.

- C. By no later than five (5) business days from the date of issuance of this Order, Sandisfield shall undertake all practicable measures to provide short-term stabilization of surficial soils, slopes, and stormwater at the Site. Said measures shall include at minimum erosion prevention and sedimentation barriers. Said measures shall not include woody vegetation removal or earth-moving within Resource Areas or Buffer Zones. The erosion and sedimentation controls shall remain in place until such time as the Department authorizes their removal in writing.
- D. Sandisfield shall inspect and maintain all erosion prevention and sediment barriers weekly, and after any rainfall which equals or exceeds 0.5 inches within 24 hours, as measured from the nearest applicable station on the National Oceanic and Atmospheric Administration (“NOAA”) “Daily Summaries Map” <https://www.ncei.noaa.gov/maps/daily-summaries/>.
- E. By no later than thirty (30) calendar days from the date of issuance of this Order, Sandisfield shall prepare and submit to the Department a draft “Resource Area Restoration Plan” (the “Restoration Plan”). The Restoration Plan must conform with the requirements a 310 CMR 10.55(4)(b)1 through 7, inclusive; and include the protocols and practices per “Massachusetts Inland Wetland Replacement Guidance” (MassDEP 2022); 310 CMR 10.54(4)(a) 1 through 6, inclusive; 310 CMR 10.56(4)(a)1 through 5, inclusive; 310 CMR 10.60(2)(e) and (3); and Massachusetts Wildlife Habitat Protection Guidance for Inland Wetlands (MassDEP 2006).” The Restoration Plan is subject to the review and approval of the Department.
- F. By no later than thirty (30) calendar days from the date of issuance of this Order, Sandisfield shall prepare and submit an analysis to the Department demonstrating how the impacts of the replacement of the above referenced stream crossing have been avoided where possible, and when not possible have been minimized and that mitigation measures have been provided to contribute to the protection of the interests identified in M.G.L. c. 131, § 40, in accordance with 310 CMR 10.54(8). If Sandisfield does not demonstrate compliance with 310 CMR 10.53(8) to the satisfaction of MassDEP, the Department reserves the right to require additional measures to meet said requirements.
- G. Activities below the top of Bank associated with the unnamed intermittent Stream, shall take place between July 1st and September 30th of any given year unless otherwise approved by the Department in writing.
- H. Sandisfield shall fully implement the Restoration Plan, as approved by MassDEP, including planting and stabilizing the Site, by no later than close of business on October 15, 2024, unless a documented unforeseen occurrence legitimately renders this deadline impossible to achieve, in which case the Restoration Plan shall be fully implemented by a date that is mutually acceptable to Sandisfield and the Department, but which in any event is no later than November 15, 2025.
- I. All submittals shall be submitted to the Department electronically, to Thomas Gruszkos

at Thomas.Gruszkos@mass.gov. If you are unable to submit any documents electronically, contact Thomas Gruszkos at 617-352-2064 to determine a mutually acceptable alternative method to submit the documents to the Department.

7. Failure to comply with this Order may constitute grounds for further legal action. Sandisfield is hereby advised that, if Sandisfield fails to comply with this Order, Massachusetts General Law, Chapter 131, Section 40 provides for civil penalties of up to \$25,000 per violation per day, for violations of the statute, its implementing regulations and this Order. The Department reserves the right to exercise the full extent of its legal authority, including without limitation, pursuit of criminal prosecution or civil action, court-imposed civil penalties, and/or administrative penalties assessed by the Department.

IV. HEARING RIGHTS

8. Sandisfield is hereby notified of the right to an adjudicatory hearing under the Massachusetts Administrative Procedures Act, G.L. Chapter 30A, Section 10, regarding this Order.
 - A. Notice of Claim: In accordance with the Department's Rules for Conduct of Adjudicatory Proceedings, 310 CMR 1.00, should Sandisfield choose to appeal this Order, a Notice of Claim for Adjudicatory Hearing ("Notice of Claim") must be filed in writing, as follows:

Pursuant to 310 CMR 1.01(6), Sandisfield must file any Notice of Claim **within twenty-one (21) days** of the date of issuance of this Order.

The Notice of Claim must state clearly and concisely the facts which are grounds for the proceedings and the relief sought; and must include the appropriate filing fee.

The Notice of Claim for Adjudicatory Hearing and a copy of the filing fee (if not excepted as set forth below) must be addressed to:

Docket Clerk
Office of Appeals and Dispute Resolution
Department of Environmental Protection
100 Cambridge Street
Boston, Massachusetts 02114

A copy of said Notice of Claim must be sent concurrently to Michael McHugh at Michael.McHugh@mass.gov.

A COPY OF THE DOCUMENT BEING APPEALED MUST BE INCLUDED WITH THE NOTICE OF CLAIM FILED WITH THE DOCKET CLERK.

- B. Filing Fee: The Notice of Claim for Adjudicatory Hearing must be made concurrently with the payment of a filing fee payable to the Commonwealth of Massachusetts in the amount of \$100.00. The check for the filing fee and the Fee Transmittal Form (found at <https://www.mass.gov/doc/adjudicatory-hearing-fee-transmittal-form/download>) must be mailed separately to:

Commonwealth of Massachusetts
Department of Environmental Protection
Lock Box 4062
Boston, Massachusetts 02211

- (1) The hearing request **will be dismissed** if the filing fee is not paid, unless the appellant is exempt or granted a waiver as described below.
- (2) FILING-FEE EXCEPTIONS: The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority.
- (3) FILING-FEE WAIVER: The Department may waive the adjudicatory hearing filing fee for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file, together with the hearing request as provided above, an affidavit setting forth the facts believed to support the claim of undue financial hardship.

SO ORDERED:

Department of Environmental Protection,



April 26, 2024

By: _____ Date: _____
Michael J. Gorski, Regional Director
MassDEP, Western Regional Office
436 Dwight Street
Springfield, Massachusetts 01103