



Virginia Gabert &lt;vcgabert@gmail.com&gt;

## Minutes of Rowe Con Com Meeting May 21, 2014

1 message

**Prudence Berry** <prueb144@gmail.com>

Fri, May 30, 2014 at 8:21 AM

To: Virginia Gabert &lt;vcgabert@gmail.com&gt;

Rowe Conservation Commission Meeting, May 21, 2014, 8:30 A.M. at the Rowe Town Hall.

Attending: Myra Carlow, Chair; Virginia Gabert, Vice Chair; Prue Berry, acting Secretary; Michael DelVecchio, observer and Project Planning representative for P3 (Rowe School Builders).

### Agenda:

1. RDA for Dan and Claudine Poplawski deck building project
2. Rowe School building erosion problem
3. Storm water management workshop in Greenfield Tuesday, May 27 at Olver Transit Building in Greenfield
4. Any other business

1. Request for Determination of Applicability with regard to the building of the deck at Dan and Claudine Poplawski's home on Shippee Road: Commission made a negative determination, i.e., no Notice of Intent is required in this situation. Negative determination was signed and is to be hand delivered to the Poplawski's by Myra. She will also notify the Building Inspector .

### 2. School Building Erosion:

Erosion control measures to date have been insufficient to protect resource areas close to the School. Photos taken and reports of visits discussed. On Saturday morning, May 17, Virginia had delivered by email to Susie Zavotka and John Lawlor an amendment to the enforcement order with regard to continuing violations of the Wetlands Protection Act (WPA). This amendment detailed estimated areas of impact within three nearby resource areas. It also included the requirement to hire an Erosion and Sedimentation Control Monitor or Specialist who can evaluate the problem and determine the best measures to deal effectively with it in a timely manner.

This is a time sensitive requirement because heavy rain is predicted during the next few days.

The Commission discussed the chronology of the erosion and sedimentation problem, which has continued despite the Commission's requirements that it stop.

The Commissioners formally ratified the Amendment to add the additional requirements as detailed above. (voted unanimously and signed by the three attending Commissioners.)

Myra told Michael DelVecchio that if this isn't taken care of, we will be forced to hand the matter over to the Department of Environmental Protection (DEP). Myra will also hand deliver the formally ratified requirements to Susie Zavotka after 10:00 this morning.

A second Order of Enforcement was signed and issued to D.E.W. (Corporation that is building the School)

Myra asked Michael DelVecchio about the gashes in the land behind and to the north of the school building, near the existing solar panels. He explained that they are a part of the leach field in progress. It was determined that these do not pose a danger to any sensitive resource areas.

3. Commissioners discussed their intent to attend the Stormwater Management Workshop to be held in Greenfield this coming Tuesday, May 27th, from 7:00 to 9:00 PM in the Olver Transit Building in Greenfield. All three will attend. Myra will also ask Chairman of the Board of Selectmen, Marilyn Wilson, if she will attend also, given the apropos quality of the subject matter at this time.

Next Meeting to be held on May 28th at 6:30 PM. School building representatives to be present.

The following meeting will be on June 10th to discuss possible violation of 200' buffer zone from river in back of Dan and Claudine Poplawski's house. A site visit was proposed for Saturday, May 30. Myra will call the Poplawskis to arrange this visit.

Meeting adjourned at 9:25 A.M.

Respectfully submitted,

Prue Berry  
Acting Secretary for Thom Chiofalo, Secretary in absentio

*approved by Myra Chiofalo 5/30/14  
unanimously*





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 2 – Determination of Applicability**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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**B. Determination (cont.)**

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

Positive Determination

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) or Order of Resource Area Delineation (issued following submittal of Simplified Review ANRAD) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.
- 2a. The boundary delineations of the following resource areas described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.
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- 2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.
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3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.
4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent or ANRAD Simplified Review (if work is limited to the Buffer Zone).
5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

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Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

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Name

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Ordinance or Bylaw Citation



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 2 – Determination of Applicability**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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**B. Determination (cont.)**

6. The following area and/or work, if any, is subject to a municipal ordinance or bylaw but not subject to the Massachusetts Wetlands Protection Act:
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7. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):

- Alternatives limited to the lot on which the project is located.
- Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
- Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.

**Negative Determination**

Note: No further action under the Wetlands Protection Act is required by the applicant. However, if the Department is requested to issue a Superseding Determination of Applicability, work may not proceed on this project unless the Department fails to act on such request within 35 days of the date the request is post-marked for certified mail or hand delivered to the Department. Work may then proceed at the owner's risk only upon notice to the Department and to the Conservation Commission. Requirements for requests for Superseding Determinations are listed at the end of this document.

1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.
3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).  
Contractor may dig required pier hole within the buffer zone, taking care to prevent any soil or debris from entering resource area. All heavy equipment must remain at least 50' from the stream.
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4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.



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Bureau of Resource Protection - Wetlands

**WPA Form 2 – Determination of Applicability**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

**B. Determination (cont.)**

- 5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

Exempt Activity (site applicable statutory/regulatory provisions)

- 6. The area and/or work described in the Request is not subject to review and approval by:

Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

Name

Ordinance or Bylaw Citation

**C. Authorization**

This Determination is issued to the applicant and delivered as follows:

by hand delivery on

by certified mail, return receipt requested on

May 21, 2014

Date

Date

This Determination is valid for **three years** from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

This Determination must be signed by a majority of the Conservation Commission. A copy must be sent to the appropriate DEP Regional Office (see

<http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) and the property owner (if different from the applicant).

Signatures:

Virginia Cabot  
Maura Bennett Carlow  
Rebecca Bovey

Date



**Massachusetts Department of Environmental Protection**  
Bureau of Resource Protection - Wetlands

**WPA Form 2 – Determination of Applicability**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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**D. Appeals**

The applicant, owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate Department of Environmental Protection Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/find-the-massdep-regional-office-for-your-city-or-town.html>) to issue a Superseding Determination of Applicability. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form (see Request for Departmental Action Fee Transmittal Form) as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant if he/she is not the appellant. The request shall state clearly and concisely the objections to the Determination which is being appealed. To the extent that the Determination is based on a municipal ordinance or bylaw and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

**A. Violation Information**

**Important:**  
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



This Enforcement Order is issued by:

Rowe Conservation Commission  
 Conservation Commission (Issuing Authority)

May 21, 2014  
 Date

To:

The MacMillan Company (A DEW Company)  
 Name of Violator  
17 Elm Street, Keene, NH 03431  
 Address

1. Location of Violation:

Rowe School, Town of Rowe  
 Property Owner (if different)  
86 Pond Rd.  
 Street Address

Rowe  
 City/Town

01367  
 Zip Code

Assessors Map/Plat Number

Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

The activity of rebuilding the Rowe School has resulted in large amounts of water, bearing silt and sedimentation, leaving the site of the construction and entering resource areas, e.g. the marsh and pond on the north side of Pond Road, vegetated areas immediately south of the school across Pond Road and Pelham Lake on the south of the road. Erosion control devices installed to prevent disturbance of the Resource Areas have been insufficient to prevent this disturbance of the Resource Areas. The slopes surrounding the school building have been "opened" and erosion of the soil into the water is significant.

Estimated areas of resource area impact: 45,000 square feet of Land Under Waterbodies and Waterways; 18,5000 sf Bordering Vegetated Wetlands; 400 linear feet of Bank.

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**B. Findings**

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

CMR 10.00), because:

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).

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**B. Findings (cont.)**

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

\_\_\_\_\_  
 Name Dated

\_\_\_\_\_  
 File Number Condition number(s)

- The Order of Conditions expired on (date): \_\_\_\_\_  
Date

- The activity violates provisions of the Certificate of Compliance.

- The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.

- Other (specify):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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**C. Order**

The issuing authority hereby orders the following (check all that apply):

- The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.
- Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition.
- A restoration plan shall be filed with the issuing authority on or before May 28, 2014  
Date

for the following:

Restoration to resource areas affected must be prepared and overseen by a Wetlands Restoration Specialist. Prior to any resource area cleanup, the Commission shall review and approve said clean



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

up plan under a revised enforcement order. The clean up plan shall be submitted to the Commission prior to May 28, 2014 for review and discussion at the Commission's May 28 meeting.

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.

**C. Order (cont.)**

Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

\_\_\_\_\_ Date

\_\_\_\_\_ for the following:

\_\_\_\_\_ No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

Comply with Enforcement Order issued to the Town of Rowe, School Building Committee, <sup>sent to</sup> ~~received by~~ Bill Greenwood on Saturday, May 17. (copy attached)

\_\_\_\_\_ John Lawler

\_\_\_\_\_ Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

**D. Appeals/Signatures**

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Virginia Gabert, Vice Chair, Rowe Conservation Commission

\_\_\_\_\_ Name

413-339-4468 (home) or 413-834-1283 (cell)

\_\_\_\_\_ Phone Number

\_\_\_\_\_ evenings or leave message

\_\_\_\_\_ Hours/Days Available

Issued by:



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

Rowe Conservation Commission, Virginia Gabert, Vice Chair  
Conservation Commission

Conservation Commission signatures required on following page.

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**D. Appeals/Signatures (cont.)**

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

Virginia Gabert \_\_\_\_\_  
Mr. Bennett Calais \_\_\_\_\_  
Studence Beery \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of delivery person or certified mail number



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

**A. Violation Information**

**Important:**  
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



This Enforcement Order is issued by:

Rowe Conservation Commission  
 Conservation Commission (Issuing Authority)

May 1, 2014 amended May 17, 2014  
 Date

To:

Town of Rowe, School Building Committee, Susan Zavotka, Chair

Name of Violator

321 Zoar Rd./., Rowe MA 01367

Address

1. Location of Violation:

Rowe School, Town of Rowe

Property Owner (if different)

86 Pond Rd.

Street Address

Rowe

City/Town

01367

Zip Code

Assessors Map/Plat Number

Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

The activity of rebuilding the Rowe School has resulted in large amounts of water, bearing silt and sedimentation, leaving the site of the construction and entering resource areas, e.g. the marsh and pond on the north side of Pond Road, vegetated areas immediately south of the school across Pond Rd. and Pelham Lake on the south of the road. Erosion control devices installed to prevent disturbance of the Resource Areas appear to have been insufficient to prevent this disturbance of the Resource Areas. The slopes surrounding the school building have been "opened" and erosion of the soil into the water is significant.

Amendment to include the following estimated areas of resource area impact: 45,000 square feet of Land Under Waterbodies and Waterways; 18,500 sf Bordering Vegetated Wetlands; 400 linear feet of Bank.

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**B. Findings**

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

CMR 10.00), because:

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).

**B. Findings (cont.)**

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

Name	Dated
File Number	Condition number(s)

- The Order of Conditions expired on (date): \_\_\_\_\_ Date
- The activity violates provisions of the Certificate of Compliance.
- The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.
- Other (specify):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**C. Order**

The issuing authority hereby orders the following (check all that apply):

- The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.
- Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition.
- A restoration plan shall be filed with the issuing authority on or before

May 13, 2014  
 (amended to 5/28)

for the following:

Restoration to resource areas affected. Prior to any resource area cleanup, the Commission shall review and approve said clean up plan under a revised enforcement order. The clean up plan shall be



**Massachusetts Department of Environmental Protection**

Bureau of Resource Protection - Wetlands

**WPA Form 9 – Enforcement Order**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

submitted to the Commission prior to May 13, 2014 for review and discussion at the Commission's May 13 meeting. (Amended to May 28, 2014)

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.

**C. Order (cont.)**

Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

\_\_\_\_\_ Date

for the following:  
\_\_\_\_\_  
\_\_\_\_\_

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

Immediately stabilize the site so that no sediment enters any resource area. The work must be accomplished by the end of the day today, May 1.

The Commission may require the employment of an Erosion Control Monitor, at the Owner's expense, if the Commission determines that the Town of Rowe/School Building Committee's efforts have not succeeded in preventing unpermitted resource area impacts.

Amendment: (see attached)

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

**D. Appeals/Signatures**

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Virginia Gabert, Vice Chair, Rowe Conservation Commission

\_\_\_\_\_  
Name

413-339-4468 (home) or 413-834-1283 (cell)

\_\_\_\_\_  
Phone Number

Issued by:



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

Rowe Conservation Commission, Myra Bennett Carlow, Chair  
Conservation Commission

Conservation Commission signatures required on following page.

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**D. Appeals/Signatures (cont.)**

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

*Virginia Cabana* \_\_\_\_\_  
*Therese Berry* \_\_\_\_\_  
*Myra Bennett Carlow* \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of delivery person or certified mail number



Town of Rowe  
FRANKLIN COUNTY  
MASSACHUSETTS  
01367

*Settled as Myrifiold 1763 • Incorporated as Rowe 1785*

321 Zoar Rd

Rowe, Massachusetts 01367  
www.rowe-ma.gov  
Ph: 413-339-5555  
Fax: 413-339-5555  
CONSERVATION  
COMMISSION

## Amendment to WPA9 – Enforcement Order

Issued to: Town of Rowe, School Building Committee, Susan Zavotka, Chair  
Location: Rowe School, 86 Pond Road, Rowe, MA 01367  
Order issue date: May 1, 2014  
Amendment date: May 17, 2014

(Note: 1 prior amendment was made on May 13 to change the dates listed in item C from May 13 to May 28)

### Section C - Order

As is stated as a possibility, the Commission is now requiring that a qualified Erosion and Sedimentation Control monitor/specialist be hired, and on the site by Monday morning (May 19) and that the Commission be furnished with a copy of his/her credentials and a preliminary report including recommendations by the end of the day on Monday (May 19).

Further, the Commission is requiring that a wetlands specialist be hired, and that the Commission be furnished with his/her credentials and a written plan for evaluating and monitoring the impact on the resource areas by the end of day on Monday (May 19). This specialist will also be required to furnish a report detailing any necessary restoration action and an appropriate restoration schedule.

Weekly written reports are to be submitted from each professional, unless an alternate plan is accepted by the Commission.

### Reason for amendment:

Due to predicted heavy rainfall on May 16, the Rowe School site was viewed by at least one Commissioner that night and again in the morning shortly after 8am. On the morning visit, there was evidence of several failures of the erosion and sedimentation controls. Both the area across from the school and the marsh/pond were distinctly murky due to silt and sediment laden runoff from the school site and the failure locations. There was also a visible plume heading into Pelham Lake. These are activities that caused the issuance of the original order, and are serious violations of the Wetlands Protection Act and considered as unpermitted fill placed in Bordering Vegetated Wetlands, Bank and Land Under Waterbodies and Waterways, resource areas protected by state law (MGL Chapter 131 section 40). The erosion and sedimentation efforts employed, and the monitoring of them, are insufficient. As resource areas have been significantly affected by sediment laden runoff a second time, a specialist must be hired to evaluate and employ adequate controls; and a specialist must be hired to evaluate the impacts, their repercussions and any restoration necessary.

Amendment issued via email on May 17, 2014 by Virginia Gabert.

Ratified by majority of the members of the Conservation Commission on May 21, 2014.

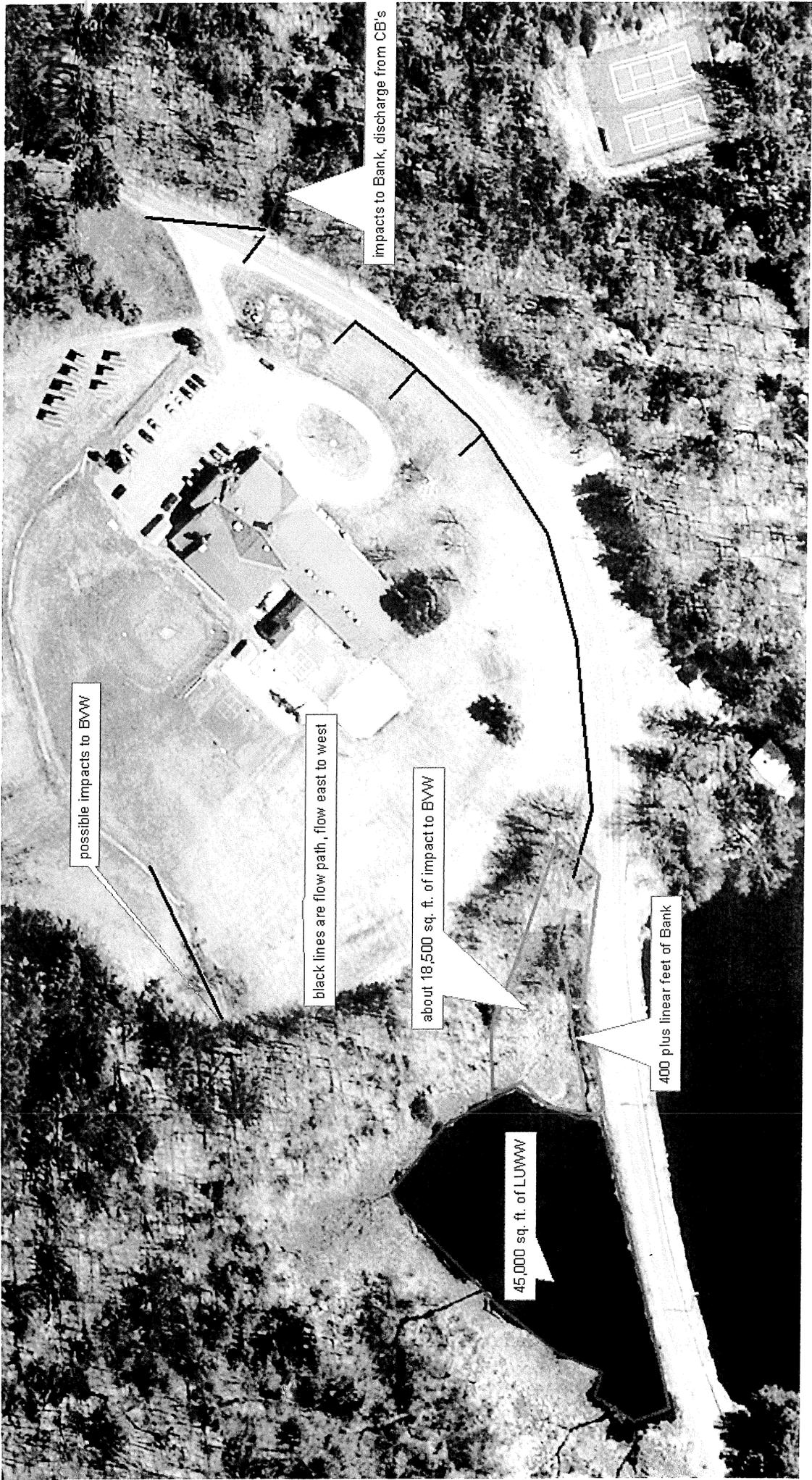
Virginia Gabert \_\_\_\_\_

Mr. Bennett Carlow \_\_\_\_\_

Suzanne Berry \_\_\_\_\_

Mr. Bennett Carlow

Signature of delivery person or  
certified mail number (if needed)



45,000 sq. ft. of LUWW

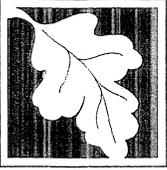
400 plus linear feet of Bank

about 18,500 sq. ft. of impact to BVW

black lines are flow path, flow east to west

possible impacts to BVW

impacts to Bank, discharge from CB's



Massachusetts Department of Environmental Protection  
 Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

**A. Violation Information**

**Important:**  
 When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



This Enforcement Order is issued by:

Rowe Conservation Commission  
 Conservation Commission (Issuing Authority)

May 1, 2014 amended May 17, 2014  
 Date

To:

Town of Rowe, School Building Committee, Susan Zavotka, Chair

Name of Violator

321 Zoar Rd., Rowe MA 01367

Address

1. Location of Violation:

Rowe School, Town of Rowe

Property Owner (if different)

86 Pond Rd.

Street Address

Rowe

City/Town

01367

Zip Code

Assessors Map/Plat Number

Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

The activity of rebuilding the Rowe School has resulted in large amounts of water, bearing silt and sedimentation, leaving the site of the construction and entering resource areas, e.g. the marsh and pond on the north side of Pond Road, vegetated areas immediately south of the school across Pond Rd. and Pelham Lake on the south of the road. Erosion control devices installed to prevent disturbance of the Resource Areas appear to have been insufficient to prevent this disturbance of the Resource Areas. The slopes surrounding the school building have been "opened" and erosion of the soil into the water is significant.

Amendment to include the following estimated areas of resource area impact: 45,000 square feet of Land Under Waterbodies and Waterways; 18,500 sf Bordering Vegetated Wetlands; 400 linear feet of Bank.

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**B. Findings**

The Issuing Authority has determined that the activity described above is in a resource area and/or buffer zone and is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310



**Massachusetts Department of Environmental Protection**  
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CMR 10.00), because:

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone without approval from the issuing authority (i.e., a valid Order of Conditions or Negative Determination).

**B. Findings (cont.)**

- the activity has been/is being conducted in an area subject to protection under c. 131, § 40 or the buffer zone in violation of an issuing authority approval (i.e., valid Order of Conditions or Negative Determination of Applicability) issued to:

Name	Dated
File Number	Condition number(s)

- The Order of Conditions expired on (date): \_\_\_\_\_ Date
- The activity violates provisions of the Certificate of Compliance.
- The activity is outside the areas subject to protection under MGL c.131 s.40 and the buffer zone, but has altered an area subject to MGL c.131 s.40.
- Other (specify):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

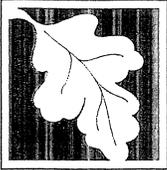
**C. Order**

The issuing authority hereby orders the following (check all that apply):

- The property owner, his agents, permittees, and all others shall immediately cease and desist from any activity affecting the Buffer Zone and/or resource areas.
- Resource area alterations resulting from said activity shall be corrected and the resource areas returned to their original condition.
- A restoration plan shall be filed with the issuing authority on or before May 13, 2014 (amended to 5/28)

for the following:

Restoration to resource areas affected. Prior to any resource area cleanup, the Commission shall review and approve said clean up plan under a revised enforcement order. The clean up plan shall be



**Massachusetts Department of Environmental Protection**  
 Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

submitted to the Commission prior to May 13, 2014 for review and discussion at the Commission's May 13 meeting. (Amended to May 28, 2014)

The restoration shall be completed in accordance with the conditions and timetable established by the issuing authority.

**C. Order (cont.)**

Complete the attached Notice of Intent (NOI). The NOI shall be filed with the Issuing Authority on or before:

Date

for the following:

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

The property owner shall take the following action (e.g., erosion/sedimentation controls) to prevent further violations of the Act:

Immediately stabilize the site so that no sediment enters any resource area. The work must be accomplished by the end of the day today, May 1.

The Commission may require the employment of an Erosion Control Monitor, at the Owner's expense, if the Commission determines that the Town of Rowe/School Building Committee's efforts have not succeeded in preventing unpermitted resource area impacts.

Amendment: (see attached)

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

**D. Appeals/Signatures**

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Virginia Gabert, Vice Chair, Rowe Conservation Commission

Name

413-339-4468 (home) or 413-834-1283 (cell)

Phone Number

Issued by:



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 9 – Enforcement Order**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: \_\_\_\_\_

Rowe Conservation Commission, Myra Bennett Carlow, Chair  
Conservation Commission

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Conservation Commission signatures required on following page.

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**D. Appeals/Signatures (cont.)**

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Signature of delivery person or certified mail number



Town of Rowe  
FRANKLIN COUNTY  
MASSACHUSETTS  
01367

*Settled as Myrifiold 1763 ▪ Incorporated as Rowe 1785*

321 Zoar Rd

Rowe, Massachusetts 01367

www.rowe-ma.gov

Ph: 413-339-5500

Fax: 413-339-5500

CONSERVATION  
COMMISSION

## Amendment to WPA9 – Enforcement Order

Issued to: Town of Rowe, School Building Committee, Susan Zavotka, Chair

Location: Rowe School, 86 Pond Road, Rowe, MA 01367

Order issue date: May 1, 2014

Amendment date: May 17, 2014

(Note: 1 prior amendment was made on May 13 to change the dates listed in item C from May 13 to May 28)

### Section C - Order

As is stated as a possibility, the Commission is now requiring that a qualified Erosion and Sedimentation Control monitor/specialist be hired, and on the site by Monday morning (May 19) and that the Commission be furnished with a copy of his/her credentials and a preliminary report including recommendations by the end of the day on Monday (May 19).

Further, the Commission is requiring that a wetlands specialist be hired, and that the Commission be furnished with his/her credentials and a written plan for evaluating and monitoring the impact on the resource areas by the end of day on Monday (May 19). This specialist will also be required to furnish a report detailing any necessary restoration action and an appropriate restoration schedule.

Weekly written reports are to be submitted from each professional, unless an alternate plan is accepted by the Commission.

### Reason for amendment:

Due to predicted heavy rainfall on May 16, the Rowe School site was viewed by at least one Commissioner that night and again in the morning shortly after 8am. On the morning visit, there was evidence of several failures of the erosion and sedimentation controls. Both the area across from the school and the marsh/pond were distinctly murky due to silt and sediment laden runoff from the school site and the failure locations. There was also a visible plume heading into Pelham Lake. These are activities that caused the issuance of the original order, and are serious violations of the Wetlands Protection Act and considered as unpermitted fill placed in Bordering Vegetated Wetlands, Bank and Land Under Waterbodies and Waterways, resource areas protected by state law (MGL Chapter 131 section 40). The erosion and sedimentation efforts employed, and the monitoring of them, are insufficient. As resource areas have been significantly affected by sediment laden runoff a second time, a specialist must be hired to evaluate and employ adequate controls; and a specialist must be hired to evaluate the impacts, their repercussions and any restoration necessary.

Amendment issued via email on May 17, 2014 by Virginia Gabert.

Ratified by majority of the members of the Conservation Commission on May 21, 2014.

_____	_____
_____	_____
_____	_____

\_\_\_\_\_  
Signature of delivery person or  
certified mail number (if needed)