



TOWN OF HOPEDALE

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**Board of Water & Sewer
Commissioners**

Ed Burt, Chair
James Morin
Adam Anderson

**Petition for Determination that Stormwater Discharges
from Grafton Upton Railroad's development project in Hopedale, MA
contributes to water quality standards violations and requires Clean Water Act Permits**

Dear Mr. Tedder,

June 2, 2022

On behalf of the Town of Hopedale, MA's public water supply users, the Hopedale Water & Sewer Commission, hereby petition you, per 40 C.F.R §§ (f)(2), for a residual designation determination for the storm water discharges from the land development activities by the Grafton Upton Railroad, located on the 155 acres of forestry and wetlands at 364 West Street, Hopedale, MA, which may contribute to violations of water quality standards in certain Impaired waters throughout Region 1, and therefore require National Pollutant Discharge Elimination System (NPDES) permits pursuant to Section 402(p) of the Clean Water Act (See 33 U.S.C. §§ 1342(p)(2)(E), (p)(6); and 40 C.F.R. §§ 122.26(a)(1)(v); (a)(9)(I)(D).

Lack of access to detailed plans, and to the site itself, make it difficult to state if such violations are already occurring, but the potential of this development to contribute to violations of water quality standards certainly exists.

Executive Summary:

In order to address the water quality issues associated with Grafton Upton Railroad's (GURR) land clearing and site development activities within the Blackstone River Watershed at the 364 West St Hopedale location, we request that the developer be required to obtain NPDES permit coverage for storm water discharges.

Location: Hopedale MA, 155 acre Watershed, 364 West St

This property is hydraulically-up gradient of all of Hopedale's public water supply sources and provides an important buffer for protection of the Town's public water supply. Due to court proceedings, the importance of the forestry and wetlands to the public water supply is well documented, including a general impact analysis from the effects of the forestry clearing. An EPA estimate calculated that the impact of the future MS4 burden caused by a portion of the lost watershed forest land to be more than a million dollars, plus costs associated with related water supply issues. (Attachment – WS Lost Forest Impact note)

The property ownership issue between GURR and Town of Hopedale (State Chapter 61 rights) is a court matter. Even though this is an on-going court issue, GURR has done, and continues to do, significant

forestry clearing and site development work. Refer to the Superior Court ruling for the background of the ownership issue. (Attachment – SC Injunction ruling May 6 2022). Please note the Judge’s concluding statement: “In the court’s view the actions of the Railroad were wrong. In addition, there appears to be grounds to rescind the Settlement Agreement. This case, however, does not present an opportunity for this court to address those issues.”

In addition to the water quality issues related to the clearing of the watershed forestry, we believe the current site work, performed without any local or state permitting or oversight, may have already impacted wetlands and tributaries creating water quality issues.

GURR appears to have cleared far more than the 30 acres of watershed forestry stated under a General Construction Permit. Publically stated plans are for up to ~100 acres for warehouses, roads, a bridge and well water. Yet no local, state or federal level authority has approved plans or provided any oversight to the work performed that we are aware of to date (as of May 20, 2022). In fact, GURR did not allow local, State or even the EPA access to the site on May 19, 2022.

Additional Keypoints:

1. Dewatering of waters to the US?

Yes, this development eliminates the natural protections that support the Mill River, which flows into the Blackstone River onto the Narragansett Bay

Mill River rises at North Pond in Hopkinton, Massachusetts, near Interstate 495. From there, the river flows south into Worcester County where it forms the boundary between Upton and Milford. It continues south through Hopedale, Mendon, and Blackstone to Rhode Island, where the river flows through Woonsocket to its confluence with the Blackstone River and eventually the Narragansett Bay.

Within the specific property, at least one of the tributary streams would have crossed the currently cleared area and others may have also already been effected.

All three dams directly associated with this area are in inoperable or semi-operable conditions.

2. Is it greater than 1 acre?

Yes, the existing land clearing appears to have significantly exceeded the 30 acres within the General Construction Permit, with the total project clearing as much as 100 acres.

3. Is the activity taking place on a contaminated or formerly contaminated site? OR Is the dewatering discharge contaminated?

No, at least not currently. The property prior to GURR’s land clearing activities was a natural forest and wetlands, functioning as an important watershed to Hopedale’s public water supply, officially within the Blackstone Watershed area. The impact of developing this area is of significant concern, especially if the development continues without properly approved plans and oversight.

Factual Background

The Mill River Watershed, in scale for this petition, and providing a geographic layout of below referenced waterbodies, begins at the outlet of the North Pond/ Lake Maspenock in Hopkinton and Upton, MA., through the North Pond Dam, southwesterly through forested area and a shrub land utility easement into the Peppercorn Conservation Area, south through wetlands into Fiske Mill Pond in Upton and Milford, MA through the Fiske Mill Dam operated by the Nipmuc Rod and Gun Club, then continuing south through undeveloped forest and wetlands into Mill Pond in Milford, MA before emptying through the Mill Pond Dam, crossing under Route 140/ West Street, and entering the property of 364 West Street. From the West Street property, this River flows southeasterly to the Hopedale Pond in Hopedale, MA, passing through the Freedom Street Dam, where the river then passes underground of the former Draper Factory, daylighting at Fitzgerald Drive in Hopedale, MA. Passing adjacent to the GURR railyard at the same street, before passing under Route 16 and entering the Hopedale Waste Water Treatment Plant. From here the River passes some residential communities before becoming Spindleville Pond, emptying through the Spindleville Pond Dam operated by the Town of Hopedale, passing through the Hopedale Country Club and exiting through wetlands adjacent to residential development, and travelling south into Mendon, MA. Continuing through Blackstone, entering Harris Pond then entering Rhode Island, where it joins the Blackstone River continuing until it becomes the Seekonk River in Pawtucket, RI, then becoming the Providence River continuing to the Narragansett Bay, and emptying into the ocean. (See Figure 1A and Figure 1B, attached). From the above described path, the entirety of the waterways and waterbodies listed above, and the tributaries and bordering wetlands thereof, are considered Waters of the United States.

Throughout that extent, the development is largely residential until it joins the Blackstone River, with the exception of the following industrial or former industrial sites: the former Draper Factory, existing GURR Railyard, and former Rosenfeld Concrete Company in Hopedale, MA; and the Kimball Sand Company property in Blackstone, MA. The rest of the entirety of the River passes through undeveloped wetlands, residential property, or water supply/waste water treatment properties. The extent of the Mill River as it exists within the described scale, is largely protected by natural wetlands and forests which are essential for filtering stormwater pollutants and providing essential habitat to wildlife.

Although not the focus of this petition, please note, some of the wildlife is with special concern and threatened wildlife under both the state and federal Endangered Species Acts, some of which has priority habitat encompassing the Mill River just south of the Mendon Line and following its length until it enters Harris Pond in Blackstone, MA (shown on the NHESP Priority Habitats of Rare Species, August 2021, ID PH858, published August 2021; available at <https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html>). While specific species are not named for protection of the species (please contact Massachusetts Natural Heritage Endangered Species Program (NHESP) for more information), the provided rare species viewer by town lists several species which are present in Mendon, which may be included in that area. The listed species with State Conservation Status include, but are not limited to:

- American Brook Lamprey, *Lethenteron appendix*, Threatened
- Blanding's Turtle, *Emydoibedea blandingii*, Threatened
- Marbled Salamander, *Ambystoma opacum*, Threatened
- Eastern Box Turtle, *Terrapene carolina*, Special Concern
- Wood Turtle, *Glyptemys insulpta*, Special Concern

From a stormwater perspective, the existing forest was a high production forest that had been left to develop for decades. The USGS Stream Stats shows two tributaries to the Mill River on the property, one of which is perennial with multiple feeding branches extending into Upton, MA, and one which is shorter, unknown intermittent/ perennial status, and begins on the 364 West Street property from unmapped headwaters flowing from wetland resource areas. Not shown on the USGS Stream Stats, but visible on various satellite imagery available on MassMapper, are multiple other intermittent streams which flow into the Mill River, particularly visible in 2019 aerial photos which were taken in fall/winter and clearly show the streams on MassMapper, and 2017/2018 aerial photos on Google Earth Pro. At least one of the streams, would have crossed the currently cleared area, the fact of which adds to the Conservation Commission's concerns that this work was begun and is still ongoing without a verified and approved wetland delineation, and which, when originally started, was done without erosion controls protecting said wetland resource areas, most of which border tributaries to the Mill River or the Mill River itself, and as outline above, would be considered Waters of the United States. The Conservation Commission acknowledges that silt fence and a rock construction entrance have now been placed, but clarifies that these actions were not taken until after a site visit by the Conservation Commission and MassDEP on September 16, 2021, during which a representative of MassDEP requested erosion control be installed. Work at the time of that site visit, had been ongoing for over a year (work had begun on October 27, 2020 to the knowledge of Town Officials), with erosion control only observed once during the first replacement of the "three plank bridge" across the perennial tributary of the Mill River. The Conservation Commission is unaware of any erosion control used when the second replacement, which included more substantial vegetative clearing and work within Bank of the Mill River (pictures of the three stages of the "three plank bridge" attached, with the original showing clear wetland indicator plants along in the area which was ultimately cleared. No other BMPs such as water bars or water ditches were used to mitigate stormwater flow during the initial logging operations in late 2020/ early 2021, despite the logging being done in a straight line up a steep slope, and through or adjacent to multiple wetlands and tributaries.

It is for those reasons that there is concern over the pollutants that would come off the hillside, without having done a full wetland resource delineation and site analysis, and with no stormwater controls being installed at that time or communicated to the State or Town Officials on site visits of any planned. The Conservation Commission understands at least one stormwater basin is currently being built, now over a year and a half after initial work began. Of particular concern is that the soils on site, provided by soil surveys completed by the USDA Natural Resources Conservation Service and available on MassMapper GIS, are shown as being very poorly drained on the majority of the site, and poorly drained to somewhat poorly drained on the rest with the exception of a few smaller sections, which are mostly outside the area of work. With the significant removal of vegetation on poorly draining soils, the surface water flow off these sites will be substantially greater. And with the increase surface flow, the addition of pollutants, which to the Conservation Commission's knowledge, includes at minimum, possible lead contamination from a historic skeet range, which the remaining spent lead shotgun shells from which, were observed on the surface of part of the cleared area during the referenced September 2021 site visit with DEP. The skeet range had laid out of commission for multiple decades and had overgrown, with any lead contamination from the bullets being stable, and released slowly. The new disturbance brings concerns of surface water now picking up the contaminant, as the shells were brought to the surface. This of course does not account for concerns of other possible pollutants regulated by EPA.

The Conservation Commission does note some correlated events that have undetermined causation, but which were presumed to be due to increased pollutants and changes in stormwater flows from the watershed which have already occurred between 2020 and present. Chief among which include, a large

fish kill in Hopedale Pond in the early summer of 2021, and a reported fish kill in Hopedale Pond on May 30, 2022. Also in late May of 2021, following a rain event, a significant sediment flow with unknown origins was noticed between the north most extent of Hopedale Pond and exiting the outflow point of Spindleville Pond (a distance amounting to approximately 2.8 miles along the Mill River extent), during which water was observed to be opaque and “coffee” colored by the Conservation Commission. It is noted that other significant rain events, to the knowledge of the Conservation Commission had not resulted in such coloration, and that coloration was not observed in Mill Pond.

In the above situation, the only functional stop point was Spindleville Pond dam, which was not able to be closed to stop the flow, which presumably continue south to Mendon, MA, due to significantly higher than normal water levels in the pond that persisted the entire summer. The water levels in part were due to the degraded status of the three dams between North Pond and Spindleville Pond, which are in inoperable or semi-operable conditions, with the Freedom Street dam being left open year round, due to an inability to install and remove the flash boards, and for which the earthen dam below is additionally leaking; and due to increased stormwater flow through the system.

Also important to note, is the current condition of the dams, which is paramount to understanding the resulting concerns for increased surface water flow from the development. It is not just pollutants that are a concern, but the overall increase in surface water flow.

A key example of the damage potential from increase surface flow is known as the Flood of 1955. The 1955 flood, during which Hurricane Connie and Hurricane Diane resulted in \$800 Million in damages at the time (an equivalent of \$8.6 Billion today) with flood damage all the way south to Pawtucket, RI., as a result of the Hopedale Pond dam being released and the Spindleville Pond dam breaching. (reference Hopedale History - <https://www.hope1842.com/hope1842/hhist08-07-15.html>). The flood was at the time when the Draper Factory was still fully functional, the dams were relatively new, and significantly less residential development downstream. The potential impact from floodwaters today has the potential to be greater, and the addition of further development on a steep sloped upland containing tributaries to the Mill River and adjacent to the Mill River, threatens to make this risk even greater.

Regulatory Framework

In order to ensure that such water quality standards will be achieved, no person may discharge any pollutant into waters of the United States from a point source without a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits must impose water quality-based effluent limitations, in addition to any applicable technology-based effluent limitations, when necessary to meet water quality standards.

This petition respectfully requests the EPA to exercise its mandatory RDA to designate non-NPDES permitted stormwater discharges from sites in these categories for regulation under the NPDES program.

If there are any questions, please do not hesitate to contact us. Thank you, sincerely;

Hopedale Water & Sewer Commission

Ed Burt Hopedale Water & Sewer Commission, Chair