



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Valerie Derosier, Bureau of Land & Water Quality, Augusta
RE: Consent Agreement for N.S. Giles Foundations Inc.
DATE: January 7, 2010

Statute and Rule Reference: *The Protection and Improvement of Waters Act*, 38 M.R.S. § 413, states, in pertinent part, that no person shall directly or indirectly cause soil material to be discharged into waters of the State without a permit therefore from the Department.

Location: Dedham, Maine

Description: In June 2008, a staff inspection revealed that N.S. Giles Foundations, Inc. employees, during excavation for a building foundation, pumped silt-laden water from the excavation area into Phillips Lake. Staff observed a thin layer of silt deposited on the bottom of the lake. Neither N.S. Giles Foundations, Inc. or the landowner first obtained a permit for this activity.

Environmental Issues: Discharging soil material and sediment into a great pond adds nutrients, such as phosphorus, to these systems which may off set the delicate chemical balance which could lead to algae blooms. These blooms rob the lake systems of oxygen and can eliminate the cold water habitat necessary or the survival of cold water fish species. The discharge of soil materials and sediment into a lake system also results in the loss of habitat for fish and aquatic insects and plants in the near shore environment.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that N.S. Giles Foundations, Inc. pay a monetary penalty of \$1,000.00, which has been paid. The Agreement also stipulates that three foremen for the company attend a Department Nonpoint Source Training Center workshop on Erosion Control and Best Management Practices. They have registered for attendance at the classes scheduled in December 2009.

The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.



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IN THE MATTER OF:

N.S. GILES FOUNDATIONS, INC.) ADMINISTRATIVE CONSENT
DEDHAM, MAINE) AGREEMENT
§ 413) (38 M.R.S.A. § 347-A)
2008-004-L)

This Agreement, by and among N.S. Giles Foundations, Inc., the State of Maine, Department of Environmental Protection ("Department"), and the State of Maine, Department of the Attorney General ("AG"), as approved by the Maine Board of Environmental Protection ("Board"), is entered into pursuant to the laws concerning the Department's Organization and Powers, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

- 1. J&R LLC owns a parcel of land on Lakeview Avenue in Dedham, Maine as described and recorded in Book 4372 on Page 329 of the Hancock County Registry of Deeds.
2. N.S. Giles Foundations, Inc. is a Maine corporation authorized to conduct business in Maine and which was hired to construct a foundation on site. Janette Giles is the Treasurer of N.S. Giles Foundations, Inc.
3. The property described in Paragraph 1 of this Agreement is adjacent to Phillips Lake which is a great pond as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(5), and waters of the State as defined by the Protection and Improvement of Waters Act, 38 M.R.S.A. § 361-A(7).
4. On June 21, 2007, an inspection of the property referred to in Paragraph 1 of this Agreement revealed that employees of N.S. Giles Foundations, Inc. were pumping water containing silt from a foundation excavation into Phillips Lake. A thin layer of sediment was observed on the lake bottom in the area where the discharge was observed. N.S. Giles Foundations, Inc. did not obtain a permit from the Department for this activity. At the time of inspection, a silt fence was installed between the earthwork on site and the lake.
5. By discharging pollutants, namely soil material, to waters of the State without first obtaining a permit from the Department, N.S. Giles Foundations, Inc. violated the Protection and Improvement of Waters Act, 38 M.R.S.A. § 413.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143

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6. On December 18, 2007, the Department issued a Notice of Violation to N.S. Giles Foundations, Inc. regarding the violation described in Paragraphs 4 and 5 of this Agreement.
7. The Board has regulatory authority over the activities described herein.
8. This Agreement shall become effective only if accepted by the Board and approved by the Attorney General.
9. To resolve the violations referred to in Paragraphs 4 and 5 of this Agreement, N.S. Giles Foundations, Inc agrees to:
 - A. No later than December 31, 2009, have no less than three foremen attend a Department Nonpoint Source Training Center workshop that focuses on erosion and sedimentation control devices and Best Management Practices (BMP's). Documentation of successful completion of the workshop must be sent to Department staff by no later than January 31, 2010.
 - B. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this consent agreement.
 - C. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of One Thousand dollars (\$1,000.00) as a civil monetary penalty.

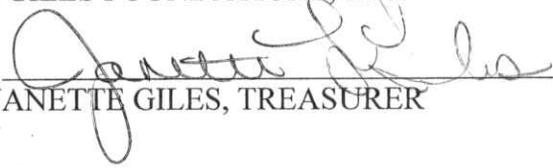
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10. The Board and the State of Maine Attorney General grant N.S. Giles Foundations, Inc. a release of their causes of action against N.S. Giles Foundations, Inc. for the specific violations listed in Paragraphs 4 and 5 of this Agreement on the express condition that all actions listed in Paragraph 9 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

N.S. GILES FOUNDATIONS, INC.

BY:  DATE: 11/3/09
JANETTE GILES, TREASURER

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN M. LESSARD, CHAIR

SEEN AND AGREED TO:
STATE OF MAINE

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL