



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection  
FROM: Eric Hitchcock, Bureau of Land & Water Quality, Augusta  
RE: Consent Agreement for Portage Construction  
DATE: March 18, 2010

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**Statute and Rule Reference:** *The Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C, states, in pertinent part, that a person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource.

*The Storm Water Management Law*, 38 M.R.S.A. § 420-D, states, in pertinent part, that a person may not construct, or cause to be constructed, a project that includes greater than one acre or more of impervious area without prior approval from the Department.

**Location:** Portage, Maine

**Description:** On September 27, 2007, staff of the Department of Environmental Protection inspected a property owned by Peter St. Peter off Route 11 in Portage Lake. The inspection revealed a clear cut of approximately 5 acres that had been grubbed and bulldozed. It was later determined that the owners had been planning to use the area for gravel mining. The entire area had exposed soils with inadequate erosion control. The site also had an impervious gravel access road approximately 4,200 feet in length and 30 feet in width running up the incline. Impervious road area accounted for 3.2 acres. Upon notification by the Department the owners immediately installed erosion control devices and readied the site for the winter and spring months. The owners applied for a storm water permit in October of 2008 in order to keep the existing road that had been constructed. Since the storm water permit applied for was inadequate, the owners withdrew the permit and agreed to remove portions of the improved road. The owners have cooperated fully with the Department since the violation.

**Environmental Issues:** Water quality in a watershed can be affected by large disturbed, non-vegetated areas without properly engineered storm water controls in place. These sites may discharge soil materials into a protected natural resource having a potentially detrimental effect on the aquatic life of that system. Areas that are impervious contribute to storm water runoff from a site. Storm water may carry pollutants such as hydrocarbons and nutrients such as phosphorus. These pollutants can negatively impact water quality. The area in question was adjacent to an unnamed tributary to Portage Lake, a great pond.

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

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Portage Construction pay a monetary penalty of \$ 3,000.00, which has been paid. The Department also required a replanting and restoration plan which was completed in August of 2009 with final approval in June 2010. This plan was developed by a Licensed Maine Forester and it was determined that areas in the clear cut had regenerated significantly in the two seasons since the violation. This cleared area need not be replanted. The road area has since been replanted based on the forester's plan. This removed the impervious area noted in the violation. The road area was restored back to the original footprint of the forest access road, prior to construction, removing the need for a storm water permit. The employees completed erosion and sediment control training in December 2009 per the consent agreement.



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

JUL 29 2007

Maine DEP, NMRO

DAVID P. LITTELL  
COMMISSIONER

IN THE MATTER OF:

<b>PORTAGE CONSTRUCTION CO., INC.</b>	)	<b>ADMINISTRATIVE CONSENT</b>
<b>PORTAGE LAKE, AROOSTOOK, MAINE</b>	)	<b>AGREEMENT</b>
<b>STORMWATER, E&amp;S</b>	)	<b>(38 M.R.S.A. § 347-A)</b>
<b>2007-168-L</b>	)	

This Agreement, by and among Portage Construction Co., Inc., the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General 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. Brad St. Peter owns a parcel of land on Route 11 in Portage, Maine as described and recorded in Book 3050 on Page 127 of the Aroostook County Registry of Deeds.
2. Portage Construction Co., Inc., a Maine corporation with a mailing address of PO Box 79, Portage, ME 04768 is in good standing to do business in Maine and which operates a construction business. Peter St. Peter is the President of Portage Construction Co., Inc.
3. On September 27, 2007, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that Portage Construction Co., Inc. had removed vegetation and grubbed and bulldozed an area of approximately 5 acres in size in preparation to mine gravel pursuant to a municipal permit. This road had been used in the past as an existing gravel access road. Staff observed that this gravel access road had been widened and improved to access the site; the road is approximately 4,200 feet in length and 30 feet in width. The impervious area associated with the road construction is approximately 3.2 acres. Portage Construction Co., Inc. did not first obtain a permit from the Department for these activities. On the date of the site inspection, the entire area had exposed soils with no erosion controls in place.
4. The activities described in Paragraph 3 of this Agreement constitute the following violations:
  - A. By constructing a project that includes one acre or more of disturbed area without first obtaining a permit from the Department, Portage Construction Co., Inc. violated the *Stormwater Management Law*, 38 M.R.S.A. § 420-D.
  - B. By conducting or causing to be conducted an activity that involves filling, displacing or exposing soil or other earthen materials without taking measures to prevent unreasonable erosion or sediment beyond the project site or into a protected natural resource without

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IN THE MATTER OF:

PORTAGE CONSTRUCTION CO., INC.	)	ADMINISTRATIVE CONSENT
PORTAGE LAKE, AROOSTOOK, MAINE	)	AGREEMENT
STORMWATER, E & S	)	(38 M.R.S.A. § 347-A)
2007-168-L	)	

first obtaining a permit from the Department, Portage Construction Co., Inc. violated the *Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C.

5. On October 5, 2007, the Department issued a Notice of Violation to Portage Construction Co., Inc. regarding the violations described in Paragraphs 3 and 4 of this Agreement.
6. On October 16, 2007, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that seeding and mulching had occurred on site to stabilize the exposed soil. All erosion control has been completed to the satisfaction of Department staff.
7. On October 31, 2007, Portage Construction Co., Inc. submitted an after-the-fact Stormwater permit application for the activities described in Paragraph 3 of this Agreement. The after-the-fact application was assigned #L-23795-NI-A-N, was found to be deficient by the Department, and returned on January 8, 2008.
8. The Department has regulatory authority over the activities described herein.
9. Pursuant to 38 M.R.S.A. § 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
10. This Agreement shall become effective only if approved by the Board and the Office of the Attorney General.
11. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Portage Construction Co., Inc. agrees to:
  - A. No later than July 1, 2009, submit a restoration plan to reduce the size of the gravel road and revegetate all disturbed areas on the property referred to in Paragraph 1 of this Agreement. The restoration plan is subject to review and approval by Department staff and must include a specific time schedule for the completion of all phases of the restoration. Implement the approved plan in accordance with the schedule contained therein.

B. The restoration plan shall include the following conditions:

The area adjacent to the gravel road shall be re-vegetated with trees and shall include a tree planting schedule from a licensed Maine Forester.

The gravel road shall be narrowed to a single travel lane of no more than 10 feet in width, which is consistent with the previous access road prior to construction.

IN THE MATTER OF:

PORTAGE CONSTRUCTION CO., INC. )  
PORTAGE LAKE, AROOSTOOK, MAINE )  
STORMWATER, E & S )  
2007-168-L )

ADMINISTRATIVE CONSENT  
AGREEMENT  
(38 M.R.S.A. § 347-A)

- C. No later than December 1, 2009, Peter St. Peter and at least 1 other employee of Portage Construction Co., Inc. shall attend a Department Nonpoint Source Training Center workshop that focuses on erosion and sedimentation control devices and Best Management Practices Documentation of successful completion of the workshop must be sent to Department staff by no later than January 1, 2010.
- D. 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.
- E. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Three Thousand dollars (\$3,000.00) as a civil monetary penalty:

12. The Department and Office of the Attorney General grant a release of their causes of action against Portage Construction Co., Inc. for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 11 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 four (4) pages.

PORTAGE CONSTRUCTION CO., INC.

BY: *Peter St. Peter*  
PETER ST. PETER, PRESIDENT

DATE: 7-29-09

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
SUSAN M. LESSARD, CHAIR

DATE: \_\_\_\_\_

SEEN AND AGREED TO:

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_  
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL

DATE: \_\_\_\_\_

MAINE DEP, NMRO  
JUL 29 2009