



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection  
FROM: Eric Ham, Bureau of Land & Water Quality, Augusta  
RE: Administrative Consent Agreement for George Richardson III  
DATE: May 20, 2010

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**Statute and Rule Reference:** *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits filling a coastal wetland and removing vegetation and disturbing soil adjacent to a coastal wetland without first obtaining a permit from the Department.

The *Erosion and Sedimentation Control Law*, 38 M.R.S.A. Section 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.

**Location:** Westport Island, Maine

**Description:** On September 3, 2008, George Richardson III was granted approval for shoreline stabilization and activities adjacent to a coastal wetland in permit by rule # 46424. A site visit on April 17, 2009 revealed that the completed rip rap project did not meet permit by rule standards. Staff observed that additional work included installation of a boat landing and filling and grading within 25 feet of a coastal wetland without the proper permits. A subsequent site visit in response to a complaint revealed there was another area of the shoreline stabilization that had extended beyond the base of the existing slope resulting in more unauthorized fill in the coastal wetland. The property owner has submitted a restoration plan for all of the documented violations.

**Environmental Issues:** Placing of fill adjacent to a coastal wetland can result in the damage of intertidal marine habitat through erosion. Many marine organisms depend on the use of intertidal areas for a portion of their life cycle. Vegetation is a preferable stabilization technique in near shore areas as it can provide habitat and fits better with the natural surrounding environs. The removal of vegetation along the shoreline of coastal wetlands reduces the scenic and aesthetic characteristics of the shoreline.

Follow up staff inspections revealed that the site has been stabilized with vegetation in accordance with Department Best Management Practices. No long term impact to the coastal wetland is expected.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that George Richardson III pay a monetary penalty of \$2,931.00, which has been paid. Restoration including fill removal, rip rap reconstruction, and plantings, will be performed in phases with final completion no later than July 15, 2011. The restoration includes a five year monitoring plan for the vegetation survival. 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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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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DAVID P. LITTELL
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IN THE MATTER OF:

GEORGE RICHARDSON III ) ADMINISTRATIVE CONSENT
WESTPORT ISLAND, LINCOLN, MAINE ) AGREEMENT
NRPA, E&S ) (38 M.R.S.A. § 347-A)
2009-043-L )

This Agreement, by and among George Richardson III, 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. George Richardson III, 598 Main Rd., Westport Island, ME 04578, owns a parcel of land on Dewey Lane in Westport Island, Maine as described and recorded in Book 4038 on Page 238, Book 1665 on Page 180, and Book 1665 on Pages 177 and 178 of the Lincoln County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement contains a portion of a coastal wetland as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(2). A coastal wetland is a protected natural resource pursuant to 38 M.R.S.A. § 480-B(8).
3. On August 26, 2008, George Richardson III submitted a permit by rule notification form to the Department pursuant to Permit By Rule standards, 06-096 CMR 305(2) for activities adjacent to a protected natural resource, and 06-096 CMR 305(8) for a shoreland stabilization project. Specifically, George Richardson III proposed to remove rock within 75 feet of the coastal wetland for the placement of a foundation for a conforming structure and install riprap as part of a shoreline stabilization project. By signing the permit by rule notification form, George Richardson III agreed to comply with all applicable standards as set forth in 06-096 CMR 305.
4. Department staff conducted an investigation of the property described in Paragraph 1 of this Agreement as follows:
A. On April 17, 2009, an inspection by Department staff revealed that George Richardson III had constructed a boat launch on the property that included fill within 25 feet of the coastal wetland and fill in the coastal wetland. Additional fill had been placed within 75 feet of the coastal wetland and vegetation was removed during the placement of fill that was not associated with the placement of the building foundation. In addition, George Richardson III had built a nearly vertical wall at the shoreline which extended out into the coastal wetland. George Richardson III did not

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2009-043-L	)	

first obtain a permit from the Department for these activities. At the time of staff's inspection, no erosion controls were in place.

- B. On November 30, 2009 another staff inspection revealed that at another section of the shoreline stabilization project, rock had been placed beyond the base of the existing bank and into the coastal wetland.
- C. Reviews of Department records conducted on April 17, 2009, and September 22, 2009, revealed that George Richardson III failed to follow permit by rule standards in accordance with 06-096 CMR 305 as follows:
  - i. George Richardson III placed fill on the site that is not required to maintain the integrity of the structure which is prohibited by 06-096 CMR 305 (2)(C)(1)(c).
  - ii. George Richardson III installed rip rap on an area where erosion did not exist, an activity which is not applicable to a permit by rule pursuant to 06-096 CMR 305(8)(A)(2).
  - iii. George Richardson III installed rip rap at a slope that is steeper than 1 horizontal to 1 vertical which is prohibited by 06-096 CMR 305(8)(C)(6).
  - iv. George Richardson III installed rip rap that was not anchored at the base of the existing slope which is required by 06-096 CMR 305(8)(C)(7).
  - v. George Richardson III did not re-establish vegetation following the completion of the stabilization project which is required by 06-096 CMR 305 (8)(C)(19).
- 5. The activities described in Paragraph 4 of this Agreement constitute the following violations:
  - A. By placing fill in a coastal wetland without first obtaining a permit from the Department, George Richardson III violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
  - B. By placing fill and removing vegetation adjacent to a coastal wetland without first obtaining a permit, George Richardson III violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
  - C. By filing a permit by rule notification form and then not following permit by rule standards, George Richardson III violated *Permit By Rule* standards, 06-096 CMR 305, and the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

IN THE MATTER OF:

GEORGE RICHARDSON III	)	ADMINISTRATIVE CONSENT
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2009-043-L	)	

- D. 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 of soil or sediment beyond the project site or into a protected natural resource, George Richardson III violated *the Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C.
6. On April 23, 2009, the Department issued a Notice of Violation to George Richardson III regarding the violations described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
  7. On September 22, 2009, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that the area had been stabilized with vegetation.
  8. On January 29, 2010, a restoration plan titled 'Restoration and Monitoring Plan for George "Chuck" Richardson, III on Dewey Lane in Westport Island, Maine' dated December 16, 2009, revised January 27, 2010, and prepared by Eco-Analysts, Inc. was submitted to the Department. This plan was reviewed and approved by staff.
  9. The parties agree this Agreement constitutes a Notice of Violation pursuant to 38 M.R.S.A. § 347-A(1)(B) for any violations specifically cited in this Agreement but not previously noticed.
  10. The Department has regulatory authority over the activities described herein.
  11. 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.
  12. This Agreement shall become effective only if it is approved by the Board and Office of the Attorney General.
  13. To resolve the violations referred to in Paragraphs 4 and 5 of this Agreement, George Richardson III agrees to:
    - A. Implement the restoration and monitoring plan referred to in Paragraph 8 of this Agreement in accordance with the schedule contained therein.
    - 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 twenty nine hundred and thirty one dollars (\$2,931.00) as a civil monetary penalty.

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2009-043-L	)	

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages.

GEORGE RICHARDSON III

*George Richardson III* DATE: 3/11/10  
GEORGE RICHARDSON III, OWNER

MAINE BOARD OF ENVIRONMENTAL PROTECTION

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

MAINE OFFICE OF THE ATTORNEY GENERAL

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