



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 Tracy Gordon
DATE: May 20, 2010

Statute and Rule Reference: The *Protection and Improvement of Waters Act*, 38 M.R.S.A. Section 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.

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.

The *Natural Resources Protection Act*, 38 M.R.S. § 480-C, prohibits soil disturbance in and adjacent to a river, stream, or brook without first obtaining a permit from the Department.

Location: Industry, Maine

Description: In the summer of 2009, Maine Forest Service and Department staff inspected property where Tracy Gordon was harvesting timber. Staff found that a temporary crossing had been constructed over an unnamed tributary stream. Insufficient erosion controls were in place and forestry best management practices were not being followed. Sediment from the approaches to the crossing were eroding and soil discharged to the unnamed stream.

Environmental Issues: Removing vegetation and disturbing soil adjacent to a stream exposes soil such that it is in a position to wash into the resource. Silt in the water physically damages fish gills, diminishing the ability of fish to breathe and causing fish to be susceptible to infections. The sediment caused by erosion destroys habitat necessary for fish to spawn and food species to thrive. Soil also carries nutrients, such as phosphorus, into the water adversely affecting overall water quality.

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 stream is anticipated.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Tracy Gordon pay a monetary penalty of \$5,836.00, \$1,000.00 of which was paid upon signing. The remaining penalty will be paid in two installments, the last one on July 1, 2010. 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.

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



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

GORDON LUMBERING LLC) ADMINISTRATIVE CONSENT
INDUSTRY, SOMERSET, MAINE) AGREEMENT
NRPA, E&S, §413) (38 M.R.S. § 347-A)
2009-092-L)

This Agreement by and among Gordon Lumbering LLC, 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. § 347-A(1).

The parties agree as follows:

- 1. TR Dillon Company owns a parcel of land on Jerusalem Rd. in Industry, Maine as described and recorded in Book 3061 on Page 2of the Somerset County Registry of Deeds.
2. Gordon Lumbering LLC, a Maine corporation with a mailing address of P.O. Box 483, Strong, ME 04983, is authorized to conduct business in Maine and entered into a contract with T.R. Dillon Company to conduct a timber harvest on the property described in Paragraph 1 of this agreement . Tracy Gordon is the Managing Partner of Gordon Lumbering LLC.
3. The property described in Paragraph 1 of this Agreement contains a portion of an unnamed stream which is a river, stream, or brook as defined by the Natural Resources Protection Act, 38 M.R.S. § 480-B(9). The river, stream, or brook is a protected natural resource pursuant to the Natural Resources Protection Act, 38 M.R.S. § 480-B(8), and waters of the State as defined by the Protection and Improvement of Waters law, 38 M.R.S. § 361-A(7).
4. Department staff conducted an investigation of the property described in Paragraph 1 of this Agreement as follows:
A. On August 18, 2009, an inspection of the property by Maine Forest Service Staff revealed a temporary bridge was installed on an unnamed stream. The approach to the crossing from the west side was not properly stabilized and the use of heavy equipment caused sediment to enter the stream. Sediment was observed at a permanent crossing of the same watercourse approximately 200 yards below the temporary crossing. At the time of the inspection, erosion controls were being installed.

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

IN THE MATTER OF:

GORDON LUMBERING LLC
INDUSTRY, SOMERSET, MAINE
NRPA, E&S, §413,
2009-092-L

)
)
)
)

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

- B. On August 19, 2009, an inspection of the property by Department Staff revealed that a temporary bridge was installed on the unnamed stream described in paragraph 3 of this Agreement. Equipment crossing the temporary bridge caused sediment to be pushed from the approach to the bridge deck and then into the stream. At the time of this inspection, the approaches to the crossing, the sediment on the temporary bridge, and all surrounding exposed soil had been covered with temporary mulch. During the inspection, Tracy Gordon stated the temporary bridge was to be removed and vegetation would be established on the approaches and areas adjacent to the crossing.
5. The activities described in Paragraph 4 of this Agreement constitute the following violations:
- A. 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, Gordon Lumbering LLC violated the *Erosion and Sedimentation Control Law*, 38 M.R.S. § 420-C.
- B. By discharging a pollutant, namely soil, to waters of the state without first obtaining a permit from the Department, Gordon Lumbering LLC violated the *Protection and Improvement of Waters Act*, 38 M.R.S. § 413.
- C. By disturbing soil adjacent to a river, stream or brook and placing fill in a river, stream or brook without first obtaining a permit from the Department, Gordon Lumbering LLC violated the *Natural Resources Protection Act*, 38 M.R.S. § 480-C.
6. On August 28, 2009, the Department issued a Notice of Violation to Gordon Lumbering LLC regarding the violations described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M.R.S. § 347-A(1)(B).
7. On September 25, 2009, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that the temporary bridge had been removed and the surrounding area had been permanently stabilized by vegetation. This restoration has been completed to the satisfaction of Department staff.
8. The Department has regulatory authority over the activities described herein.
9. Pursuant to 38 M.R.S. §§ 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.

IN THE MATTER OF:

GORDON LUMBERING LLC
INDUSTRY, SOMERSET, MAINE
NRPA, E&S, §413,
2009-092-L

)
)
)
)

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

- 10. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
- 11. Pay the Treasurer, State of Maine, in accordance with the following, the sum of five thousand eight hundred and thirty-six dollars (\$5,836.00) as a civil monetary penalty:
 - A. 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 Agreement.
 - B. Upon signing the Agreement pay the sum of one thousand dollars (\$1,000.00). *pd 1/27/10 ck#8804*
 - C. No later than April 15, 2010 pay the sum of one thousand dollars (\$2,418.00).
 - D. No later than July 1, 2010 pay the sum of one thousand dollars (\$2,418.00).
- 12. The Department and the Office of the Attorney General grant a release of their causes of action against Gordon Lumbering LLC for the specific violations listed in Paragraphs 4 and 5 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 three (3) pages.

GORDON LUMBERING LLC

BY: *Tracy Gordon* DATE: 2/7/10
TRACY GORDON, MANAGING PARTNER

BOARD OF ENVIRONMENTAL PROTECTION

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

MAINE OFFICE OF THE ATTORNEY GENERAL

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