



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Chris Coppi, Bureau of Land and Water Quality
RE: Consent Agreement for Karl J. Walz Jr. and Andy Picard Excavating, Inc.
DATE: August 5, 2010

Statute and Rule Reference: The *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits, in pertinent part, placing soil material adjacent to a stream without first obtaining a permit from the Department. The *Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C, requires the installation of adequate erosion control measures while performing soil disturbance activities adjacent to a protected resource.

Location: Arundel

Description: On June 30, 2009, Riverside Excavation, Inc. on behalf of Karl J. Walz Jr., submitted a Permit by Rule notification form to the Department pursuant to Permit by Rule Standards, 06-096 CMR 305(2) to upgrade the portion of a right of way to the property. The Permit by Rule was approved by the Department on July 1, 2009 and assigned # 48110. The approved permit by rule allowed for filling, grading and minor vegetation removal to the side of the access way opposite from, and no closer than 65 feet to, the stream.

On November 18, 2009, a staff inspection of the property revealed that Andy Picard Excavating, Inc. as agent for Karl J. Walz Jr., deviated from the plans approved in Permit by Rule # 48110 by removing vegetation and placing fill material within 25 feet of the stream to improve the existing access way. Approximately 1,000 square feet of the stream buffer was impacted by these activities. At the time of inspection, erosion control measures were not installed adjacent to the stream.

Environmental Issues: Alterations to stream buffers including soil disturbance can affect water quality, aquatic and terrestrial habitat, and stream morphology. Vegetative buffers act as a sink for pollutants, and provide food and cover for terrestrial wildlife. Disturbing the stream bank and the soil adjacent to it causes changes in stream morphology including channelization and sedimentation in the stream bed that inevitably affects aquatic habitat and water quality. Aquatic critters rely on these instream habitats for their vital ecological functions including feeding, foraging, and breeding.

Andy Picard was quick to remove fill material and install erosion control measures to staff's satisfaction as requested at the November 18, 2009 inspection. In January 2010, Karl J. Walz Jr. submitted an acceptable restoration plan to the Department to restore vegetation and stabilize soils in the disturbed stream buffer which was approved by staff. On June 2, 2010 a staff inspection of the property revealed that Karl J. Walz Jr. restored vegetation in the disturbed buffer and stabilized soils with conservation mix in accordance with the approved restoration plan and to staff's satisfaction.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that the disturbed stream buffer be restored with vegetation and that a monetary penalty of \$1,920.00 be paid, both of which have been completed. The penalty is based on the Department's penalty policy and reflects that the violation was foreseeable and the length of time taken to bring the project into compliance.

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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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

IN THE MATTER OF:

DAVID P. LITTELL
COMMISSIONER

KARL J. WALZ JR.
ARUNDEL, YORK, MAINE
and
ANDY PICARD EXCAVATING, INC.
ARUNDEL, YORK, MAINE
NRPA, E&S
2009-138-L
ADMINISTRATIVE CONSENT
AGREEMENT
(38 M.R.S.A. § 347-A)

This Agreement by and among Karl J. Walz Jr., Andy Picard Excavating, 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. Karl J. Walz Jr., 37 Middle Street, Sanford ME 04073, owns a right of way to a parcel of land off Lombard Road in Arundel, Maine as described and recorded in Book 8120 on Page 211 of the York County Registry of Deeds.
2. Andy Picard Excavating, Inc., a Maine corporation with a mailing address of 43 Berry Road in Saco, is authorized to conduct business in Maine and which performed road construction activities at the property described in Paragraph 1 of this Agreement. Andy Picard is the President of Andy Picard Excavating, Inc.
3. A portion of the right of way described in Paragraph 1 of this Agreement is adjacent to an unnamed stream which is a river, stream, or brook as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(9).
4. On June 30, 2009, Riverside Excavation, Inc. on behalf of Karl J. Walz Jr., submitted a Permit by Rule notification form to the Department pursuant to Permit by Rule Standards, 06-096 CMR 305(2), to upgrade the portion of the right of way described in Paragraph 3 of this Agreement. The Permit by Rule was approved by the Department on July 1, 2009 and assigned # 48110. The approved permit by rule allowed for filling, grading and minor vegetation removal to the side of the access way opposite from, and no closer than 65 feet to, the stream.
5. On November 18, 2009, a staff inspection of the property described in Paragraph 1 of this Agreement revealed that Andy Picard Excavating, Inc. as agent for Karl J. Walz Jr., deviated from the plans approved in Permit by Rule # 48110 by

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

IN THE MATTER OF:

KARL J. WALZ JR., <i>ET AL.</i>)	ADMINISTRATIVE CONSENT
ARUNDEL, YORK, MAINE)	AGREEMENT
NRPA, E&S)	(38 M.R.S.A. § 347-A)
2009-138-L)	
)	

removing vegetation and placing fill material within 25 feet of the stream to improve the existing access way. Approximately 1,000 square feet of the stream buffer was impacted by these activities. At the time of inspection, erosion control measures were not installed adjacent to the stream.

6. The activities described in Paragraph 5 of this Agreement constitute the following violations:
 - A. By filling, or causing to be filled, and by removing or causing vegetation to be removed adjacent to a river, stream, or brook without first obtaining a permit from the Department, Karl J. Walz Jr. and Andy Picard Excavating, Inc. violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
 - 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 of soil or sediment beyond the project site or into a protected natural resource, Karl J. Walz Jr. and Andy Picard Excavating, Inc. violated the *Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C.
7. On November 24, 2009, the Department issued a Notice of Violation to Karl J. Walz Jr. and Andy Picard Excavating, Inc. regarding the violations described in Paragraphs 5 and 6 of this Agreement.
8. On December 17, 2009, a staff inspection of the right of way described in Paragraph 3 of this Agreement revealed that fill material was removed and temporary erosion control measures were installed in the disturbed buffer to staff's satisfaction.
9. On January 21, 2010, Karl J. Walz Jr. submitted a restoration plan to the Department to completely restore the disturbed stream buffer on the property described in Paragraph 1 of this Agreement. All restoration will be completed in accordance with this plan, which has been approved by the Department.
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 the Attorney General.

IN THE MATTER OF:

KARL J. WALZ JR., <i>ET AL.</i>)	ADMINISTRATIVE CONSENT
ARUNDEL, YORK, MAINE)	AGREEMENT
NRPA, E&S)	(38 M.R.S.A. § 347-A)
2009-138-L)	
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13. To resolve the violations referred to in Paragraphs 5 and 6 of this Agreement, Karl J. Walz Jr. agrees to:
 - a. No later than May 31, 2010, complete the approved restoration plan as described in Paragraph 9 of this Agreement and to staff's satisfaction.
 - 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 to the Treasurer, State of Maine, upon signing this Agreement, the sum of one thousand dollars (\$1,000.00) as a civil monetary penalty.

14. To resolve the violations referred to in Paragraphs 5 and 6 of this Agreement, Andy Picard Excavating, Inc. agrees to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of nine hundred twenty three dollars (\$920.00) as a civil monetary penalty.

15. The Department and Office of the Attorney General grant a release of their causes of action against Karl J. Walz Jr. and Andy Picard Excavating, Inc. for the specific violations listed in Paragraphs 5 and 6 of this Agreement on the express condition that all actions listed in Paragraphs 13 and 14 of this Agreement, as applicable, 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 THE MATTER OF:

KARL J. WALZ JR., *ET AL.*
ARUNDEL, YORK, MAINE
NRPA, E&S
2009-138-L

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

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

KARL J. WALZ JR.

Karl Walz DATE: MAY 1, 2010
KARL J. WALZ JR.

ANDY PICARD EXCAVATING, INC.

BY: Andy Picard DATE: 5-1
ANDY PICARD, PRESIDENT

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

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