



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: James R. Beyer, Bureau of Land & Water Quality, Augusta
RE: Consent Agreement for Woods of Maine, Inc.
DATE: August 5, 2010

Statute and Rule Reference: *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 one acre or more of disturbed area without prior approval from the Department.

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

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.

Location: Bangor, Maine

Description: On November 18, 2009, I inspected the Whispering Pines subdivision in Bangor and found that Woods of Maine, Inc had started construction on the project, disturbing more than one acre of land, and had filled and bulldozed adjacent to Arctic Brook prior to obtaining permits from the Department. Arctic Brook is an urban impaired stream and because this project disturbed more than one acre and created more than 20,000 square feet of new impervious area, an individual Stormwater Management permit was required. On February 10, 2010, the Department issued a Storm Water permit and accepted an Natural Resources Protection Act Permit By Rule for this project. During the inspection, I found that the contractor had installed a row of silt fence between the work area and the brook, but due to the nature of the soils and a recent storm event it failed to keep sediment within the project boundary.

Environmental Issues: Water quality in an aquatic system can be affected by large disturbed, non-vegetated areas without properly engineered stormwater controls in place. These sites may discharge soil material into a protected natural resource having a potentially detrimental effect on the aquatic life of that system. When present in the water, suspended soil materials may physically damage the gills of fish and other aquatic species interfering with breathing, feeding, and other life-supporting functions. The sedimentation caused by introduced soil destroys bottom habitat critical for some fish species and the invertebrates on which they feed. Riparian buffers protect water courses from the impacts of thermal pollution, provide wildlife corridors and nesting habitat for songbirds, and provide nutrient sinks for phosphorus and other pollutants which can degrade the water quality of these aquatic systems. The site is currently stable and all activities have received the necessary permits.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Woods of Maine, Inc. pay a monetary penalty of \$5,500.00, which has been paid. 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

JOHN ELIAS BALDACCI
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DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

WOODS OF MAINE, INC) ADMINISTRATIVE
BANGOR, PENOBSCOT, MAINE) CONSENT
NRPA, STORMWATER) AGREEMENT
2009-140-L) (38 M.R.S.A. § 347-A)

This Agreement by and among Woods of Maine, 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. Woods of Maine, Inc., P.O. Box 8388, Bangor, Maine 04402, owns a parcel of land on Grandview Ave. in Bangor, Maine as described and recorded in Book 11394 on Page 32 of the Penobscot County Registry of Deeds.
2. Woods of Maine, Inc. is a Maine corporation with a mailing address of P.O. Box 8388, Bangor, Maine 04402 which develops residential subdivisions. Rebecca J. Wood is the President of Woods of Maine, Inc..
3. The property described in Paragraph 1 of this Agreement contains a portion of Arctic Brook which is a river, stream or brook as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(9). A river, stream or brook is a protected natural resource pursuant to 38 M.R.S.A. § 480-B(8).
4. On November 18, 2009, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that during the construction of Whispering Pines, a residential subdivision, Woods of Maine, Inc. had disturbed more than one acre of land area. In addition, soil material had been disturbed immediately adjacent to Arctic Brook for the installation of a sewer manhole. Woods of Maine, Inc. did not first obtain a permit from the Department for these activities. At the time of inspection, erosion control measures were in place but were not sufficient to prevent soil material from eroding beyond the project boundary. Staff advised Woods of Maine, Inc. that no further work should take place unless and until a permit was obtained from the Department.
5. A follow up inspection on December 23, 2009 revealed that additional work had been done at the site. The additional work included the installation of eight utility poles in an area that had previously been disturbed and then temporarily stabilized.

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6. The activities described in Paragraph 4 and 5 of this Agreement constitute the following violations:
 - A. By constructing, or causing to be constructed, a project that includes one acre or more of disturbed area without first obtaining a permit from the Department, Woods of Maine, Inc. violated the *Storm Water Management law*, 38 M.R.S.A. § 420-D.
 - B. By filling or causing to be filled, bulldozing or causing to be bulldozed, or displacing or causing to be displaced soil adjacent to a river, stream or brook without first obtaining a permit from the Department, Woods of Maine, Inc. the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
 - C. 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 resources, Woods of Maine, Inc. violated the *Erosion and Sedimentation Control law*, 38 M.R.S. § 420-C.
7. On December 2, 2009, the Department issued a Notice of Violation to Woods Of Maine, Inc. regarding the violations described in Paragraphs 5 and 6 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
8. On December 4, 2009, Woods of Maine, Inc. submitted an after-the-fact permit application pursuant to the Stormwater Management law and a Permit by Rule notification pursuant to the Natural Resources Protection Act for the construction of the subdivision road and associated sewer line crossing of Arctic Brook. The after-the-fact application has been assigned #L-24799-NJ-A-N and the Permit by Rule notification has been assigned # 49363.
9. On February 10, 2010, the Department approved Woods of Maine, Inc's application, L-24799-NJ-A-N for the construction of the subdivision road.
10. On December 2, 2009, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that all areas had been temporarily stabilized. All erosion control measures have been completed to the satisfaction of Department staff.
11. The Department has regulatory authority over the activities described herein.
12. 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.

IN THE MATTER OF:

WOODS OF MAINE, INC.
BANGOR, PENOBSCOT, MAINE
NRPA, STORMWATER
2009-140-L

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

13. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.

14. To resolve the violations referred to in Paragraphs 5 and 6 of this Agreement, Woods of Maine, Inc. pay the Treasurer, State of Maine, in accordance with the following, the sum of Five Thousand Five Hundred dollars (\$5,500.00) as a civil monetary penalty:

A. Upon signing the Agreement pay the sum of Two Thousand Five Hundred dollars (\$2,500.00).

B. No later than September 1, 2010 pay the sum of Three Thousand dollars (\$3,000.00).

C. 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.

15. The Department and the Office of the Attorney General grant a release of their causes of action against Woods Of Maine, Inc. for the specific violations listed in Paragraphs 5 and 6 of this Agreement on the express condition that all actions listed in Paragraph 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 WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

WOODS OF MAINE, INC.

BY:  DATE: 6-7-18

kw ~~REBECCA WOOD~~, PRESIDENT
Michael Wood

BOARD OF ENVIRONMENTAL PROTECTION

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

MAINE OFFICE OF THE ATTORNEY GENERAL

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