



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 James and Cheryl Gross  
DATE: December 2, 2010

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**Statute and Rule Reference:** *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits soil disturbance in and adjacent to a great pond and a freshwater wetland without first obtaining a permit from the Department.

*The Protection and Improvement of Waters Act*, 38 M.R.S.A. § 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. § 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:** Penobscot, Maine

**Description:** On April 22, 2010, Department staff inspected the Grosses property on Toddy Pond in Penobscot and found that they had cleared vegetation, removed the stumps and filled an area measuring approximately 41,000 square feet adjacent to the pond. Approximately 1,000 square feet of that was freshwater wetland that is within 250 feet of the pond. In addition the inspection found that the Grosses had filled approximately 190 square feet of lake bottom with sand to make a beach and placed rocks below the normal high water line. The Grosses had not installed any erosion control measures with the exception of planting a few shrubs and placing some bark mulch near the shoreline. No permits had been issued by the Department for these activities.

**Environmental Issues:** Great ponds are among the State's most sensitive protected natural resources. Preventing nutrient rich soil materials from entering this type of water body is a priority. The cumulative impact of shoreline disturbances and pollutants such as soil entering this type of water body can diminish and destroy the physical characteristics and water quality of the resource.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that the Grosses pay a monetary penalty of \$10,000.00, which has been paid. The Agreement also requires the submission of a restoration plan, which has been submitted and approved by staff. 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
GOVERNOR

BETH NAGUSKY
ACTING COMMISSIONER

IN THE MATTER OF:

JAMES GROSS, JR. & CHERYL GROSS ) ADMINISTRATIVE CONSENT
PENOBSCOT, HANCOCK, MAINE ) AGREEMENT
NRPA, E&S, § 413 ) (38 M.R.S.A. § 347-A)
2010-056-L )

This Agreement by and among James Gross, Jr. and Shari Gross ("the Grosses"), 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. The Grosses, 268 Bay View Road, Penobscot, Maine 04476, own a parcel of land on Lakeview Road in Penobscot, Maine as described and recorded in Book 5305 on Page 228 of the Hancock County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement is adjacent to Toddy Pond which is a great pond as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(5).
3. On April 22, 2010, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that the Grosses disturbed soil, placed earthen material and removed vegetation immediately adjacent to Toddy Pond in an area approximately 41,000 square feet in size.
4. The activities described in Paragraph 3 of this Agreement constitute the following violations:

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IN THE MATTER OF:

JAMES GROSS, JR. & SHARI GROSS	)	ADMINISTRATIVE CONSENT
PENOBSCOT, HANCOCK, MAINE	)	AGREEMENT
NRPA, E&S, §413	)	(38 M.R.S.A. § 347-A)
2010-056-L	)	

- A. By filling, bulldozing or otherwise disturbing soil in and adjacent to a great pond and a freshwater wetland without first obtaining a permit from the Department, the Grosses violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
  - B. By discharging pollutants, namely sand and soil, to waters of the state without first obtaining a permit from the Department, the Grosses violated the *Protection and Improvement of Waters* law, 38 M.R.S.A. § 413.
  - 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, the Grosses violated the *Erosion and Sedimentation Control* law, 38 M.R.S.A. § 420-C.
5. On April 27, 2010, the Department issued a Notice of Violation to the Grosses regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
  6. The Department has regulatory authority over the activities described herein.
  7. 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.
  8. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
  9. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, the Grosses agree to:
    - A. No later than October 1, 2010, submit a restoration plan to the Department to remove all of the fill that was placed in Toddy Pond, within 75 feet of Toddy Pond, and in the freshwater wetland. The plan must also provide for replacement of all the vegetation that was removed with native trees and shrubs: the trees must be at least 20 feet tall and the shrubs must be at least 2 feet tall. The plan must also include restoring uneven topography, provide for temporary erosion control, and the replacement of any vegetation that dies within the first five years of planting. 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. 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.

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IN THE MATTER OF:

JAMES GROSS, JR. & SHARI GROSS )  
PENOBSCOT, HANCOCK, MAINE )  
NRPA, E&S, §413 )  
2010-056-L )

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

C. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Ten Thousand dollars (\$10,000.00) as a civil monetary penalty.

10. The Department and the Office of the Attorney General grant a release of their causes of action against the Grosses for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 9 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.

JAMES GROSS, JR.

*James Gross Jr.*

DATE: 9-25-10

CHERYL GROSS

*Cheryl Gross*

DATE: 09/24/10

BOARD OF ENVIRONMENTAL PROTECTION

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

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
AMY B. MILLS, ASSISTANT ATTORNEY GENERAL