



PAUL R. LEPAGE
GOVERNOR

DARRYL N. BROWN
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: James R. Beyer, Bureau of Land & Water Quality, Bangor
RE: Consent Agreement for Kevin Barbee

DATE: March 17, 2011

Statute and Rule Reference: The *Performance Standards for Excavations*, 38 M.R.S.A. § 490-C, states, in pertinent part, that a "Notice of Intent to Comply" must first be submitted to the Department of Environmental Protection prior to expanding a gravel pit by more than 5 acres.

Location: Sullivan, Maine

Description: In April 2010, a staff investigation into a gravel pit operated by Kevin Barbee revealed that he created two gravel pits on a single parcel of land on Donnell Pond Road in Sullivan. Both pits were approximately 4.5 acres in size. Mr. Barbee had not filed a Notice of Intent to Comply for these pits. The pits are in compliance with the Performance Standards

Environmental Issues: Gravel pits have the potential to create erosion and sedimentation problems from uncontrolled runoff, ground water pollution from fuel spills and equipment leaks, air pollution from uncontrolled dust sources, noise pollution, and safety concerns from steep slopes. These concerns are addressed by operating a pit in compliance with the Department's Performance Standards for Excavations.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Kevin Barbee pay a monetary penalty of \$5,000.00, which has been paid. The pit is currently in compliance with the Performance Standards. 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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IN THE MATTER OF:

KEVIN BARBEE) ADMINISTRATIVE CONSENT
SULLIVAN, HANCOCK, MAINE) AGREEMENT
MINING) (38 M.R.S.A. § 347-A)
2010-055-L)

This Agreement by and among Kevin Barbee, 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. Kevin Barbee, P.O. Box 262, Gouldsboro, Maine, leases a parcel of land on Donnell Pond Road in Sullivan, Maine as described and recorded in Book 3057 on Page 29 of the Hancock County Registry of Deeds.
2. Kevin Barbee operates a general contracting business as a sole proprietorship that operates a gravel pit on the property described in Paragraph 1 of this Agreement.
3. On April 15, 2010, Department staff determined through the use of aerial photography and a field investigation that Kevin Barbee had created two gravel pits located on the property described in Paragraph 1 of this Agreement, both of which were approximately 4.5 acres in size. A review of Department records revealed that a "Notice of Intent to Comply" had not been obtained for this activity as required by Maine's Performance Standards for Excavations, 38 M.R.S.A. § 490-C
4. By expanding a gravel pit by more than 5 acres since 1970 without first filing a "Notice of Intent to Comply" pursuant to Maine's Performance Standards for Excavations, Kevin Barbee violated the Performance Standards for Excavations, 38 M.R.S.A. § 490-C
5. On April 23, 2010, the Department issued a Notice of Violation to Kevin Barbee 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. On August 10, 2010, Kevin Barbee filed a "Notice of Intent to Comply" pursuant to the Performance Standards for Excavations, 38 M.R.S.A. §490-C, to mine the property referred to in Paragraph of the Agreement.

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- 7. The Department has regulatory authority over the activities described herein.
- 8. 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.
- 9. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
- 10. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Kevin Barbee agrees to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Five Thousand dollars (\$5,000.00) as a civil monetary penalty.
- 11. The Department and the Office of the Attorney General grant a release of their causes of action against Kevin Barbee for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 10 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 two (2) pages.

Kevin Barbee DATE: 2/15/11
 KEVIN BARBEE

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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