



JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Valeria Derosier, Bureau of Land & Water Quality, Augusta
RE: Consent Agreement for Mark Jensen and Charmaine Jensen
DATE: September 2, 2010

Statute and Rule Reference: *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits soil disturbance in and adjacent to a coastal wetland 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: Belfast, Maine

Description: On July 9, 2009, Department staff inspected the Jensen's property and found that vegetation has been removed and soil had been disturbed in an area approximately two acres in size adjacent to a coastal wetland. Sediment was observed discharging onto abutting land and into a stormwater drainage system which directly flows into the coastal wetland. Erosion and sedimentation controls had not been installed to prevent this from occurring. A compliance inspection of a permit by rule notification form filed by Mark Jensen (#48698) for an outfall pipe revealed that the permit by rule standards had not been followed. Rather than discharging 35 feet from the upland edge of the coastal wetland into a natural vegetated buffer, as approved, the stormwater outfall pipe discharged at approximately 25 feet from the edge of the coastal wetland and the native buffer vegetation had been removed and replaced with rip rap.

Environmental Issues: The placement of fill and disturbance of soil adjacent to a coastal wetland can result in the damage of intertidal marine habitat through erosion. Many marine organisms depend on the use of intertidal areas for a portion of their life cycle. Vegetation is a preferable stabilization technique in near shore areas as it can provide habitat, reduces thermal impacts, and fits better with the natural environs. The removal of vegetation along the shoreline of coastal wetlands reduces the scenic and aesthetic characteristics of the shoreline. Nitrogen is the "limiting nutrient" in salt water environments and may contribute to algal blooms in coastal areas. Vegetated buffers reduce the input of nitrogen to coastal water.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Mark Jensen and Charmaine Jensen pay a monetary penalty of \$1,800.00, which has been paid. A restoration plan was submitted to completely stabilize and restore vegetation within 75 feet of the coastal wetland, the plan was approved by Department staff. The first phase of restoration was completed before July 30, 2010 in accordance with this plan. 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, SUITE 6
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

004



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

MARK JENSEN AND CHARMAINE JENSEN)	ADMINISTRATIVE CONSENT
BELFAST, WALDO, MAINE)	AGREEMENT
NRPA, E&S)	(38 M.R.S.A. § 347-A)
2009-087-L)	

This Agreement by and among Mark Jensen, Charmaine Jensen, 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. Mark Jensen and Charmaine Jensen, 27 Jasmine Way, Belfast, Maine, own a parcel of land on Jasmine Way in Belfast, Maine as described and recorded in Book 274 on Page 165 of the Waldo County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement is adjacent to the Atlantic Ocean which is a coastal wetland as defined by the *Natural Resources Protection Act*, 38 M.R.S. § 480-B(2). A coastal wetland is a protected natural resource pursuant to 38 M.R.S.A. § 480-B(8).
3. On July 9, 2009, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that Mark Jensen and Charmaine Jensen had removed vegetation and disturbed soil in an area of approximately two acres during house construction. Approximately 95 feet from the upland edge of the coastal wetland, Department staff observed there was sediment discharging onto an abutter's property as well as entering a nearby catch basin for a storm water drainage system which discharges directly to the ocean. Furthermore, staff found an additional pipe inlet onsite with no erosion controls surrounding it that also connects to this same storm water drainage system. Staff observed visible rill and gully erosion causing sediment to move into the pipe inlet which drains to the storm water drainage system. Staff observed that some hay bale barriers, silt fence and hay mulch had been properly installed on the property. However, there were no erosion controls being used to prevent sediment from eroding onto the abutter's property and into the storm water drainage system.
4. 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 the unreasonable erosion of soil or sediment into a protected natural resource, Mark Jensen and Charmaine Jensen violated the *Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C.

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:

MARK JENSEN AND CHARMAINE JENSEN)	ADMINISTRATIVE CONSENT
BELFAST, WALDO, MAINE)	AGREEMENT
NRPA, E&S)	(38 M.R.S.A. § 347-A)
2009-087-L)	

5. On July 14, 2009, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that the site was stabilized. Hay mulch was placed on all the exposed soils onsite. All temporary erosion controls were installed to the satisfaction of Department staff.
6. On July 17, 2009, the Department issued a Notice of Violation to Mark Jensen and Charmaine Jensen regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
7. On August 11, 2009, Mark Jensen submitted a Permit by Rule notification form (#48698) to the Department pursuant to *Permit by Rule Standards*, 06-096 CMR 305(7). Mark Jensen proposed to install a storm water outfall pipe approximately 35 feet from the upland edge of the coastal wetland. He further proposed that the outfall would discharge to a 25 foot long vegetated buffer strip directly below the outfall. By signing the Permit by Rule notification form, Mark Jensen agreed to comply with all applicable standards as set forth in 06-096 CMR 305(2) and (7).
8. On September 14, 2009, Department staff inspected the property described in Paragraph 1 of this Agreement and found that Mark Jensen had constructed a storm water outfall pipe which discharged at approximately 25 feet from the coastal wetland. Vegetation was removed and replaced with rip rap and stone directly below the pipe outfall and to the edge of the coastal wetland. Mark Jensen failed to provide a 25 foot vegetated buffer strip below the stormwater outfall as required by 06-096 CMR 305(7)(C)(2).
9. By filing a permit by rule notification form and then not following permit by rule standards, Mark Jensen violated the *Permit By Rule Standards*, 06-096 CMR 305 and the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
10. On October 1, 2009, the Department issued a Notice of Violation to Mark Jensen regarding the violations described in Paragraphs 8 and 9 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
11. On April 6, 2010, Mark and Charmaine Jensen submitted a restoration plan to the Department to completely stabilize and restore the vegetation within 75 feet of the coastal wetland on the property described in Paragraph 1 of this Agreement. The restoration plan, prepared by Winter Design is entitled "The Jensen House, 27 Jasmine Way, Belfast, Maine" and is dated February 17, 2010. All restoration will be completed in accordance with this plan, which has been approved by the Department.
12. The Department has regulatory authority over the activities described herein.

006

IN THE MATTER OF:

MARK JENSEN AND CHARMAINE JENSEN)
BELFAST, WALDO, MAINE)
NRPA, E&S)
2009-087-L)

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

13. 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.

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

15. To resolve the violations referred to in Paragraphs 3, 4, 8 and 9 of this Agreement, Mark Jensen and Charmaine Jensen agree to:

A. No later than July 30, 2010, implement the restoration plan referred to in Paragraph 11 of this Agreement.

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.

C. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of One Thousand Eight Hundred dollars (\$1,800.00) as a civil monetary penalty.

IN THE MATTER OF:

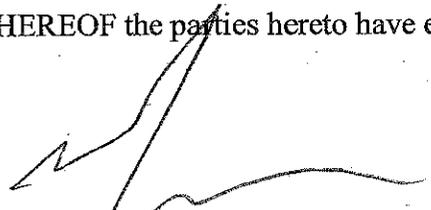
MARK JENSEN AND CHARMAINE JENSEN)
BELFAST, WALDO, MAINE)
NRPA, E&S)
2009-087-L)

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

16. The Department and the Office of the Attorney General grant a release of their causes of action against Mark Jensen and Charmaine Jensen for the specific violations listed in Paragraphs 3, 4, 8 and 9 of this Agreement on the express condition that all actions listed in Paragraph 15 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 four (4) pages.

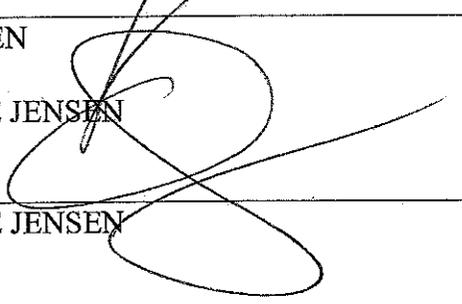
MARK JENSEN



DATE: 06/28/2010

MARK JENSEN

CHARMAINE JENSEN



DATE: 06/28/2010

CHARMAINE JENSEN

BOARD OF ENVIRONMENTAL PROTECTION

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

MAINE OFFICE OF THE ATTORNEY GENERAL

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

008