



**STATE OF MAINE**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Bureau of Land Resources**  
**17 State House Station**  
**Augusta, Maine 04333**  
**Telephone: (207) 287-7688**

**Notice of Violation**

**PART I: GENERAL INFORMATION**

<u>ALLEGED VIOLATOR'S NAME:</u> Town of Phillips	<u>DOCKET NUMBER:</u> 389
<u>ALLEGED VIOLATOR'S MAILING ADDRESS:</u> 124 Maine Street, Phillips, ME 04966	<u>DATE ISSUED:</u> July 15, 2024
<u>PHYSICAL LOCATION OF VIOLATIONS:</u> South Branch of Sandy River	<u>CERTIFIED MAIL NUMBER:</u> <b>Email only: <a href="mailto:phillipstownoffice@tds.net">phillipstownoffice@tds.net</a></b>
<u>POINT OF CONTACT (IF DIFFERENT FROM ALLEGED VIOLATOR):</u> Maureen Haley, Town Manager	<u>TELEPHONE NUMBER:</u> 207-639-3561

**PART II: INFORMATION CONCERNING THE ALLEGED VIOLATION**

YOU OR YOUR COMPANY IS BELIEVED TO BE RESPONSIBLE FOR THE FOLLOWING VIOLATION(S) OF MAINE'S ENVIRONMENTAL LAWS, RULES, OR DEPARTMENT ORDERS.

SUMMARY OF FACTS ALLEGED AS BASIS FOR VIOLATION(S):

On May 6, 2024, Department staff met with representatives from Town of Phillips at a portion of the South Branch of the Sandy River (SB Sandy River) that flows adjacent to Number Six Road. The reason for the visit was to investigate a complaint in connection to the Town's December 2023 storm response.

While driving southwest on Number Six Road staff observed that approximately one mile of Number Six Road had been recently repaired. Staff observed flood remnants consisting of gravel, rocks, and storm debris in fields and properties adjacent to the SB Sandy River.

Staff next observed the SB Sandy River, starting at an approximate area identified as 44°50'11.36"N and 70°26'45.46"W, where there were large berms on the east side of the SB Sandy River. The berms were approximately fifteen feet in height and approximately thirty feet in width at the base. The berms were apparently constructed from materials dredged from the riverbed of the SB Sandy River. Staff observed this section of the river to be straightened, deepened and pushed to the west side of the previously existing riverbed. Staff observed the new channel to be void of large rocks, wood debris, pools, or complexity. The berm was also observed to be smothering trees and vegetation and caused instability and the sluffing of sediment into the river.

Staff continued to walk downstream with Town officials and observed additional berms. In some locations the riverbed was observed to be deepened by approximately 6 feet. The deepening of the channel and the

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placement of berms has disconnected the SB Sandy River from its flood plain. Staff also observed that berms disconnected hundreds of linear feet of braided stream channels. The lowering of the SB Sandy River, and placement of berms across the braided streams has dewatered several hundred linear feet of Atlantic salmon and brook trout habitat.

The Town advised staff that the braided streams posed a danger to Number Six Road and State Route 4 during flood events. By placing these significant berms adjacent to SB Sandy River, the Town cut the flow to the braided stream channels to reduce additional flooding risk. The Town also advised that during the alteration of the SB Sandy River, construction equipment was operated within the river channel and removed all large boulders, pools, and natural complexity. The Town's stated that the alteration of SB Sandy River was so that the water would flow better. The Town advised that all work completed was in response to the storm and under the Town's direction.

Staff observed approximately 0.9 miles of the SB Sandy River had been altered by dredging, the creation of berms, and removal of vegetation.

The SB Sandy River, braided stream channels, and the unnamed stream impacted are all classified as a river, stream, or brook pursuant to the *Natural Resources Protection Act* (NRPA), 38 M.R.S § 480-B(9) and a "protected natural resource" pursuant to the NRPA, 38 M.R.S. § 480-B(8).

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LIST SPECIFIC VIOLATIONS BY APPLYING FACTS TO SPECIFIC STATUTE(S), RULE(S), OR ORDER(S) VIOLATED:

**38 M.R.S § 480-C, states in relevant part:**

1. *Prohibition. A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the Department if the activity is in, on or over any protected natural resource or is located adjacent to any of the following:*
  - A. *A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or*
  - B. *Freshwater wetlands consisting of or containing:*
    - (1) *Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or*
    - (2) *Peatlands dominated by shrubs, sedges and sphagnum moss.*

*A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.*
2. *Activities requiring a permit. The following activities require a permit:*
  - A. *Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;*
  - B. *Draining or otherwise dewatering;*
  - C. *Filling, including adding sand or other material to a sand dune; or*

*D. Any construction, repair or alteration of any permanent structure ...*

**By dredging and redirecting the SB Sandy River without first obtaining a permit from the Department, the Town of Phillips violated the NRPA, 38 M.R.S. § 480-C.**

**By creating a berm adjacent to and in the SB Sandy River without first obtaining a permit from the Department, the Town of Phillips violated the NRPA, 38 M.R.S. § 480-C.**

**By draining or dewatering multiple braided stream channels without first obtaining a permit from the Department, the Town of Phillips violated the NRPA, 38 M.R.S. § 480-C.**

**38 M.R.S § 420-C states in relevant part:**

*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 as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken, and the site must be maintained to prevent unreasonable erosion and sedimentation.*

**By conducting or causing to be conducted an activity that involves filling, displacing or exposing soil or other earthen materials without preventing unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource, the Town of Phillips violated *the Erosion and Sedimentation Control Law*, 38 M.R.S. § 420-C.**

REQUESTED CORRECTIVE ACTION(S):

**Within 15 days of receipt of this NOV:** Provide a complete list of contractors who performed work for the Town of Phillips during and after the flood event and the type of work performed (road work/instream work) by each contractor.

**Within 60 days of receipt of this NOV:** Submit an acceptable restoration plan drafted by a qualified professional(s) with experience in fluvial geomorphology and engineering to Department staff for review and approval that includes at a minimum:

- 1) A plan for the re-grading or removal of the dredge spoils/berms in and adjacent to the SB Sandy River and the restoration of Atlantic salmon and brook trout habitat in this area. The plan must include a narrative that details how the restoration will be accomplished, the type and location of erosion controls to be used and a reference to the NOV.
- 2) A timeline of when each part of the restoration plan will take place and when restoration will be completed; and

**Following Department approval of the restoration plan:** Execute the approved restoration plan within the timeline provided in the plan.

**TIMELY COOPERATION ON THE CORRECTIVE ACTIONS REQUESTED IN THIS NOV AND CONTACTING THE CASE MANAGER BY PHONE OR IN WRITING WITHIN 7 DAYS OF RECEIVING THIS NOV, ARE TWO**

FACTORS THAT MAY AFFECT THE AMOUNT OF MONETARY PENALTIES DEP EXPECTS TO PURSUE IN THIS MATTER. THE DEPARTMENT OFFERS TECHNICAL ASSISTANCE WHICH MAY ASSIST YOU IN CORRECTING VIOLATIONS AND PREVENTING FUTURE VIOLATIONS. IF YOU REQUIRE TECHNICAL ASSISTANCE CONCERNING THIS NOTICE OF VIOLATION, PLEASE CONTACT THE CASE MANAGER IDENTIFIED BELOW.

**PART III: DEPARTMENT ENFORCEMENT CONTACT**

ENFORCEMENT CASE MANAGER:

**Cameron Dufour**

TELEPHONE NUMBER:

**207-592-6463**

State of Maine, Department of Environmental Protection

By: \_\_\_\_\_  \_\_\_\_\_