



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

July 15, 2024

Maureen Haley
Town Manager
Town of Phillips
124 Main Street
Phillips, ME 04966

Dear Town Manager Haley:

Please find the enclosed Notice of Violation (NOV) describing ongoing violations of the Natural Resources Protection Act (NRPA) observed by the Department of Environmental Protection (Department) on several dates in and adjacent to the South Branch of the Sandy River in the Town of Phillips.

Many towns throughout Maine experienced severe flooding between December 17 and 21, 2023. During or immediately following these dates, the Town of Phillips contacted the Department via its representative to the Legislature, stating that flood waters had caused debris accumulation in the South Branch that was actively diverting the flow of water onto the Number Six Road, carving a new channel in the roadway and threatening many nearby residential properties. The Town, via its representative, specifically described three debris deposits comprised of trees, rocks and boulders that had been deposited by the flood waters and that the Town said would need to be removed to return the flow of water to its normal course outside of the roadway.

The Department stated that the Town could commence removal of the three debris deposits. In providing this guidance, the Department considered that woody debris deposited by flooding may be removed from a river under permit by rule pursuant to Ch. 305 §12 of the Department’s rules, and that removal of other debris deposited by the flood event would likely be permissible under the NRPA (after-the-fact) if the debris was causing active flooding of an adjacent roadway and residences. Due to the emergency conditions caused by the flooding, the Department exercised its enforcement discretion in conveying that allowable work could begin prior to obtaining any necessary approvals. The Department noted for the Town that the NRPA also provides an exemption for emergency public works repair, with certain constraints (38 M.R.S. §480-Q(9)).

After investigation of the work that was done and the current river conditions,¹ the Department has determined that activities conducted by the Town and its contractors went well beyond the scope of the activities initially described by the Town and authorized to be completed before permitting by the Department. Specifically:

¹ On April 15, 2024, the Department received a complaint alerting staff to alterations made in and adjacent to the river. Department staff investigated this complaint on May 6 and made subsequent visits to the site on June 10, June 25, and July 9.

- The Town stated that it would remove three discrete areas of debris deposited by flood waters to alleviate the active flooding of the roadway and residential properties. The Town and its contractors proceeded to dredge a roughly continuous linear channel approximately nine-tenths of one mile long. Much of the work appears to have taken place after flood waters were receding, with the intent of creating added protection against future flood events rather than alleviating active flooding of the roadway and residences.
- Relatedly, the Town and its contractors used the dredged material to construct several berms in and immediately adjacent to the river channel. The Town never stated its intent to build berms in or adjacent to the river. The Department would not have authorized this activity to be conducted without prior permitting, and it is unlikely the work would have been approved under the NRPA permitting criteria. The Town first mentioned the berms in a letter to the Department dated January 12, 2024, after the activities had been completed.

These activities cannot be interpreted to fall within the scope of the NRPA exemption for emergency public works repair, nor are these activities likely to be permissible after-the-fact under the NRPA, as the scope of the activities—dredging nearly one mile of the river and constructing several berms in the river channel—has caused a substantial impact on the South Branch of the Sandy River and its critical habitat for the federally endangered Atlantic salmon.

The attached NOV outlines the violations observed by Department staff and prescribes corrective actions required of the Town, including restoration of the river. The Department appreciates that the Town has stewarded these waters for many decades; we stand ready to support the Town in restoring the river and developing long-term, permissible flood resilience solutions for the people of Phillips.

Sincerely,



Rob Wood
Director, Bureau of Land Resources

cc: Phillips Select Board