

Martin O'Malley  
Governor

Anthony G. Brown  
Lt. Governor



Margaret G. McHale  
Chair

Ren Serey  
Executive Director

STATE OF MARYLAND  
CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401  
(410) 260-3460 Fax: (410) 974-5338  
[www.dnr.state.md.us/criticalarea/](http://www.dnr.state.md.us/criticalarea/)

June 1, 2009

Mr. Brian Lindley  
Baltimore County DEPRM  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

Re: Variance – Aquilano Jr. Property

Dear Mr. Lindley:

Thank you for providing information on the above referenced variance. This lot is 10,350 square feet and is designated as a Limited Development Area (LDA). The applicant is requesting an after the fact variance to legalize the construction of a concrete wall approximately 18 – 23 feet channelward of the shoreline, and to legalize the unpermitted fill behind the wall. The applicant intends that the wall will function as a bulkhead. In the view of this office, the Board of Appeals may not approve this variance because the applicant has failed to comply with conditions precedent required by the State Critical Area law, The 2008 changes to the Critical Area law, which took effect July 1, 2008 require that before a local jurisdiction approves a variance for after-the-fact activities, the person seeking that variance has (1) fully paid all administrative, civil, and criminal penalties regarding the violation, (2) prepared a restoration or mitigation plan approved by the local jurisdiction, and (3) performed the abatement measure in the approved plan. It is my understanding the applicant has paid the administrative fine for this violation but that mitigation for the violation is still pending. I also understand that the existing structure and backfill have not been removed at this time. We oppose this after-the-fact variance request.

In 2002 and 2004, the General Assembly strengthened the Critical Area Law and reiterated its commitment to the Chesapeake Bay Critical Area's water quality and wildlife habitat values, particularly emphasizing the importance of the Critical Area Buffer. Specifically, the General Assembly reaffirmed the stringent standards of the law, which an applicant must meet in order for a local jurisdiction to grant a variance to the Critical Area law. The State law provides that variances to a local jurisdiction's Critical Area program may be granted **only** if a Board of Appeals finds that an applicant has satisfied its burden to prove that the applicant meets each one of the county's variance standards, including the standard of "unwarranted hardship." The General Assembly defined that term as follows: "without the variance, the applicant would be denied reasonable and significant use of the entire parcel or lot." Furthermore, the State law establishes a presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The Board must make an affirmative finding that the applicant has overcome this presumption, based on the evidence presented.

TTY for the Deaf

Annapolis: (410) 974-2609 D.C. Metro: (301) 586-0450



In this case, the applicant has requested to keep a non-permitted concrete wall (bulkhead) which is approximately 18-23 feet from the original shoreline, including grading and backfilling in the 100-foot Buffer. Notwithstanding the need for a permit from the Maryland Department of the Environment for impacts to tidal waters, the applicant has not met each one and every one of Baltimore County's variance standards for impacts to the Critical Area Buffer and should therefore be denied a variance. I have discussed each one of the variance standards below as it pertains to this site:

1. *That special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program that would result in an unwarranted hardship to the applicant.*

The State law standards, applicable to this variance request, define "unwarranted hardship" to mean that the applicant must prove that, without the requested variance, the applicant would be denied reasonable and significant use of **the entire parcel or lot**. This applicant already enjoys use of their property by virtue of their existing dwelling and associated amenities. The addition of approximately 800 square feet of fill in the Buffer is not necessary to maintain this use. Therefore, this standard has not been met.

2. *That a literal interpretation of this subtitle or the local Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction.*

No property owner has the right to construct an unpermitted structure in State waters, nor grade and fill, or in any other way, disturb the 100-foot Buffer and back. Therefore, the rejection of a variance impacting State waters and the Buffer would not deny the applicants a right commonly enjoyed.

3. *The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area.*

If the variance is granted, it would confer upon the applicant a special privilege, in this case constructing a bulkhead in State waters and backfilling a yard, creating disturbance in the Buffer, which would be denied to others in this area as well as in similar areas found within the County's Critical Area. The applicant has the burden of proof and the burden of persuasion to overcome the presumption that the proposed variance does not conform to the Critical Area Law. We do not believe the applicant has overcome this burden.

4. *The variance request is not based upon conditions or circumstances, which are the result of the actions, by the applicant, nor does the request arise from any condition conforming, on any neighboring property.*

This is an after-the-fact variance and is based on actions planned and completed by the applicant. Therefore, the applicant has not met this standard.

Mr. Brian Lindley

6/1/2009

Page 3 of 3

*5. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations.*

Granting of this variance is not in harmony with the general spirit and intent of Critical Area law and regulations. The applicant constructed a non-permitted structure in State waters, without the benefits of a licensed contractor and most likely without the use of professional protective measures, such as a turbidity curtain and silt fence. In addition, the applicant has disturbed the Buffer by grading and filling it. Unpermitted actions such as these can cause additional sediments to enter the Bay as runoff, further reduce essential infiltration opportunities, and increase human impacts to the Buffer and State waters.

In summary, the County must find that the applicant has overcome the burden to meet each and every one of the variance standards in order to grant a variance. Because we believe that the applicant has failed to meet each and every variance standard, we oppose the applicant's variance request. Equally, the applicant has not completed the remediation of the site. Therefore, the variance may not be granted at this time. In addition, the applicant is still responsible for mitigating at a ratio of 3:1 for the current violation.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please call me at (410) 260-3476.

Sincerely,

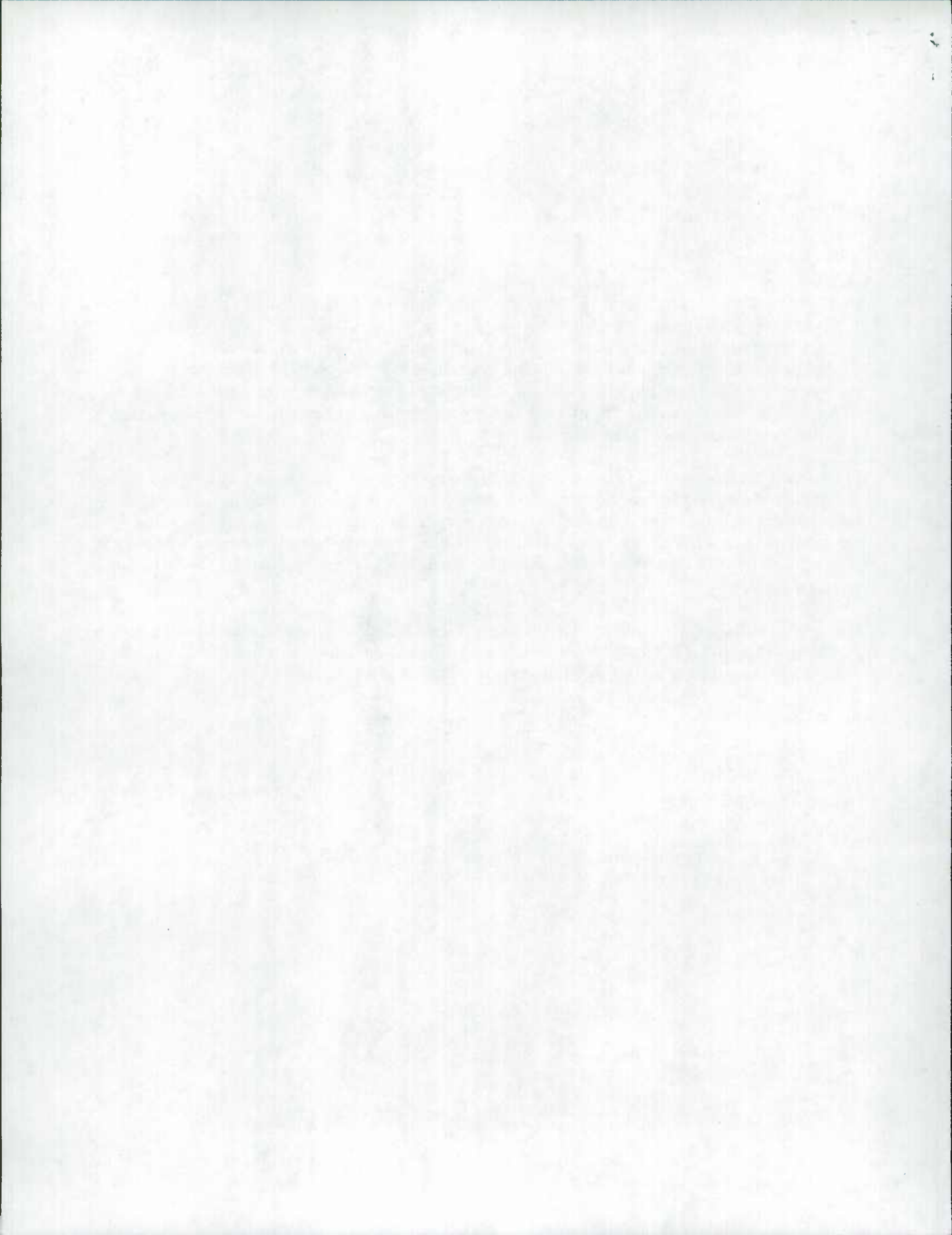


Julie Roberts

Natural Resource Planner

cc: Marianne Dise, OAG  
Adam Rosenblatt, Baltimore County Office of Law

BC 569-08



Martin O'Malley  
Governor

Anthony G. Brown  
Lt. Governor



Margaret G. McHale  
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October 3, 2008

Mr. Brian Lindley  
Baltimore County DEPRM  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204

Re: Variance – Aquilano Jr. Property

Dear Mr. Lindley:

Thank you for providing information on the above referenced variance. This lot is 10,350 square feet and is designated as a Limited Development Area (LDA). The applicant is requesting an after the fact variance to construct a bulkhead approximately 18 feet channelward and fill behind the bulkhead. The 2008 changes to the Critical Area law, which took effect July 1, 2008 require that before a local jurisdiction approves a variance for after-the-fact activities, the person seeking that variance has (1) fully paid all administrative, civil, and criminal penalties regarding the violation, (2) prepared a restoration or mitigation plan approved by the local jurisdiction, and (3) performed the abatement measure in the approved plan. It is my understanding the applicant has paid the administrative fine for this violation and that mitigation for the violation is still pending. I also understand that the existing structure and backfill have not been removed at this time.

We oppose this after the fact variance request. The applicant is unable to meet any of the strict variance standards. Equally, the applicant has not completed the remediation of the site. Therefore, the variance may not be granted at this time. The applicant must mitigate at a ratio of 3:1 for the current violation by either planting on site or paying a fee in lieu.

Thank you for the opportunity to provide comments. Please notify us if there are any further actions regarding this case and include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

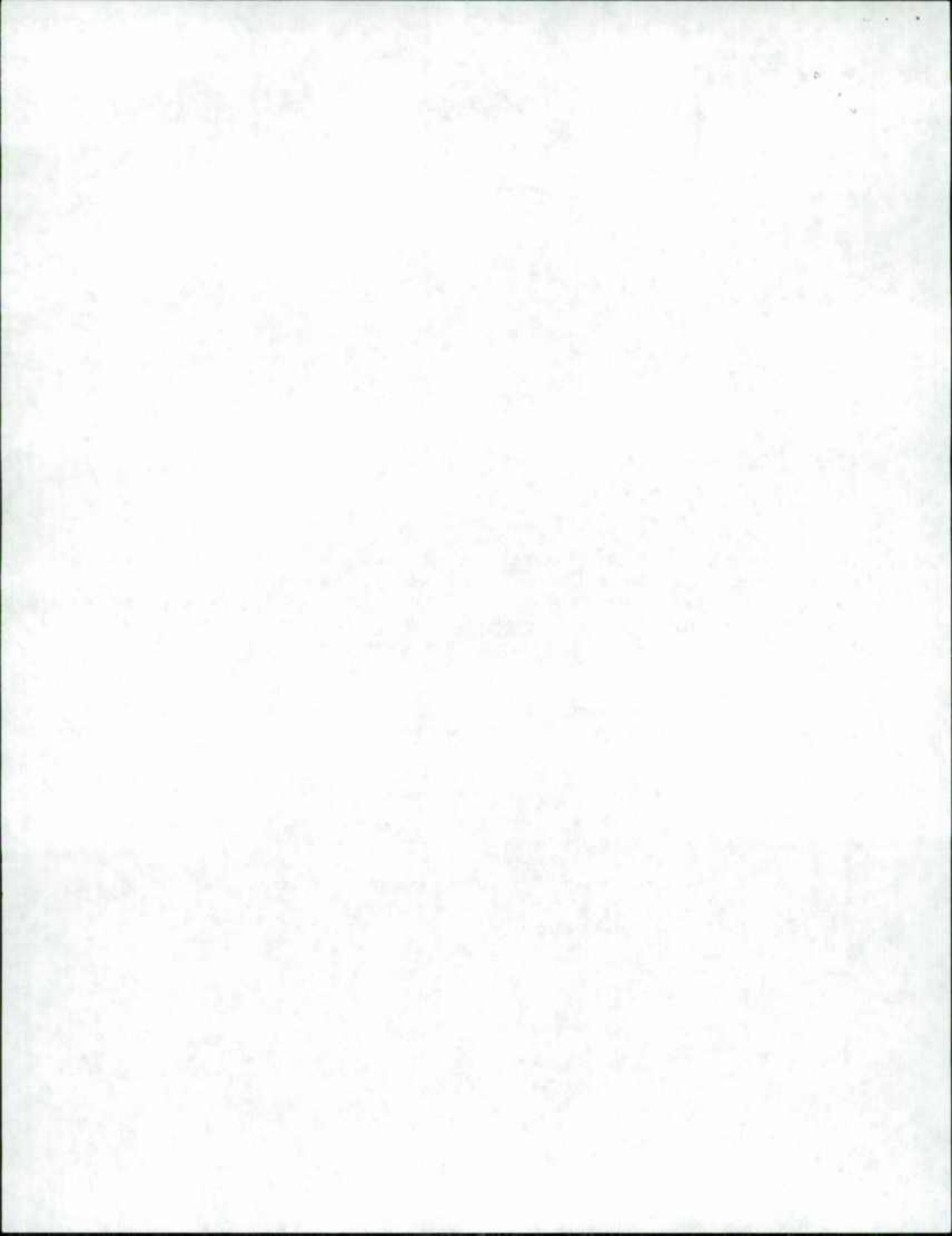
Sincerely,

A handwritten signature in black ink, appearing to read "Julie Roberts", with a long, sweeping underline.

Julie Roberts  
Natural Resource Planner

cc: BC 569-08

Enclosure



DOUGLAS F. GANSLER  
Attorney General

KATHERINE WINFREE  
Chief Deputy Attorney General

JOHN B. HOWARD, JR.  
Deputy Attorney General



MARIANNE E. DISE  
Assistant Attorney General  
Principal Counsel

SAUNDRA K. CANEDO  
Assistant Attorney General

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL  
CRITICAL AREA COMMISSION FOR THE  
CHESAPEAKE AND ATLANTIC COASTAL BAYS

FAX NO. (410) 974-5338

WRITER'S DIRECT DIAL NO. (410) 260-3466  
mdise@oag.state.md.us

July 2, 2008

Board of Zoning Appeals  
P O Box 773  
Perryville, Maryland 21903

**RE: Notice of Important Changes to Law re: Critical Area Variances**

Dear Board Chair:

This letter advises you of important changes to the law governing your authority to grant "after-the fact" variances to the Critical Area program. Effective July 1, 2008, Chapter 119 of the 2008 Laws of Maryland prohibits a local government from issuing a variance, permit, or special exception to legalize a development activity conducted in violation of the Critical Area law, unless certain conditions precedent have been fully met. **Accordingly, no "after the fact" Critical Area variance may be issued by a local government from this day forward, unless full compliance with Chapter 119 has been achieved.** See *Layton v. Howard County Board of Appeals*, 399 Md. 36 (2007), where the Court of Appeals held that in land use and zoning cases, the case is governed by "the law as it exists at the time the case is before us."

Chapter 119 of the 2008 Laws of Maryland applies directly to, and must be applied by, all local jurisdictions, including zoning boards, regardless of whether local ordinances, codes, or practices have been amended. Effective July 1, 2008, the law prohibits the Board from granting any Critical Area variance, permit, or special exception for an "after-the fact" development project without proof that the applicant has fully paid all fines and performed all mitigation required for the violation. For your information and assistance, this Office has prepared the following summary of the provisions of Chapter 119 relevant to variances.

- A development activity commenced without a required permit, approval, special exception, or variance is a violation of Code, Natural Resources Article Title 8 subtitle 18 ("Critical Area law"). Ch. 119, 2008 Laws at 750.

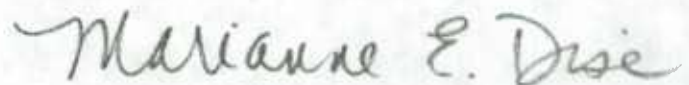
1804 West Street, Suite 100  
Annapolis, Maryland 21401

- Notwithstanding any provision in a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the requirements of this subtitle (Title 8 Subtitle 18) shall apply to, and be applied by, a local jurisdiction as minimum standards for its Critical Area Program. Ch. 119, 2008 Laws at 743.
- Each violation of the Critical Area law constitutes a separate violation, and each calendar day is a separate offense. Ch. 119, 2008 Laws at 747.
- A local jurisdiction may not accept an application for a variance to legalize a violation, including an unpermitted structure or development activity, unless the jurisdiction has first issued a notice of violation, including assessment of a penalty. Ch. 119, 2008 Laws at 750.
- A local jurisdiction may not grant a variance for an unpermitted development activity unless the person seeking the variance has fully paid all penalties imposed by the local government; has prepared (and the local jurisdiction has approved) a mitigation or restoration plan; and has performed the mitigation required for the violation. Ch. 119, 2008 Laws at 748.
- Satisfaction of all fines and penalties, and performance of mitigation “shall be a condition precedent to the issuance of any permit, approval, variance, or special exception for the affected property.” Ch. 119, 2008 Laws at 747.

**As of July 1, 2008, the prohibition on granting an “after the fact” variance without full satisfaction of the conditions precedent applies to all pending applications for “after the fact” variances regardless of when the application was accepted, when the hearing was held, or when the development activity occurred.**

This letter is not a formal Opinion of the Attorney General, nor does this summary purport to include all provisions of the 2008 Law which may affect your practice and procedures. However, it is the view of this Office that any “after the fact” variance issued after July 1, 2008, without proof of full satisfaction of fines and mitigation for the violation, is of no legal effect.

Sincerely,



Marianne E. Dise  
Assistant Attorney General  
Principal Counsel



IN THE MATTER OF  
DONALD AQUILANO, JR. - APPLICANT  
1510 GALENA ROAD

RE: CRITICAL AREA ADMINISTRATIVE  
VARIANCE REQUEST

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-08-142

\* \* \* \* \*

**ORDER OF DISMISSAL**

This matter comes before the Board on appeal of the decision of the Department of Environmental Protection and Resource Management (DEPRM) in which pursuant to Section 3-6-205 of the *Baltimore County Code* ("BCC"), a Code Enforcement Officer issued a Code Enforcement citation against the Applicant, Donald Aquilano. The citation cited violations of BCC Article 33 title 2 sections 104, 201 and 607; failure to comply with correction notice issued April 7, 2008; failure to remove concrete bulkhead and fill on residential property known as 1510 Galena Road, Baltimore, Md 21221.

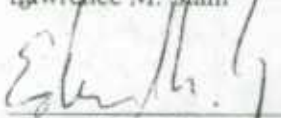
**WHEREAS**, the Board is in receipt of a Notice of Withdrawal of Appeal filed on August 24, 2009 via facsimile by Edward C. Covahey, Jr., Esquire, on behalf of Donald Aquilano, Appellant (a copy of which is attached hereto and made a part hereof); and

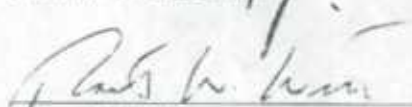
**WHEREAS**, said Appellant requests that the appeal taken in this matter be withdrawn and dismissed as of August 24, 2009.

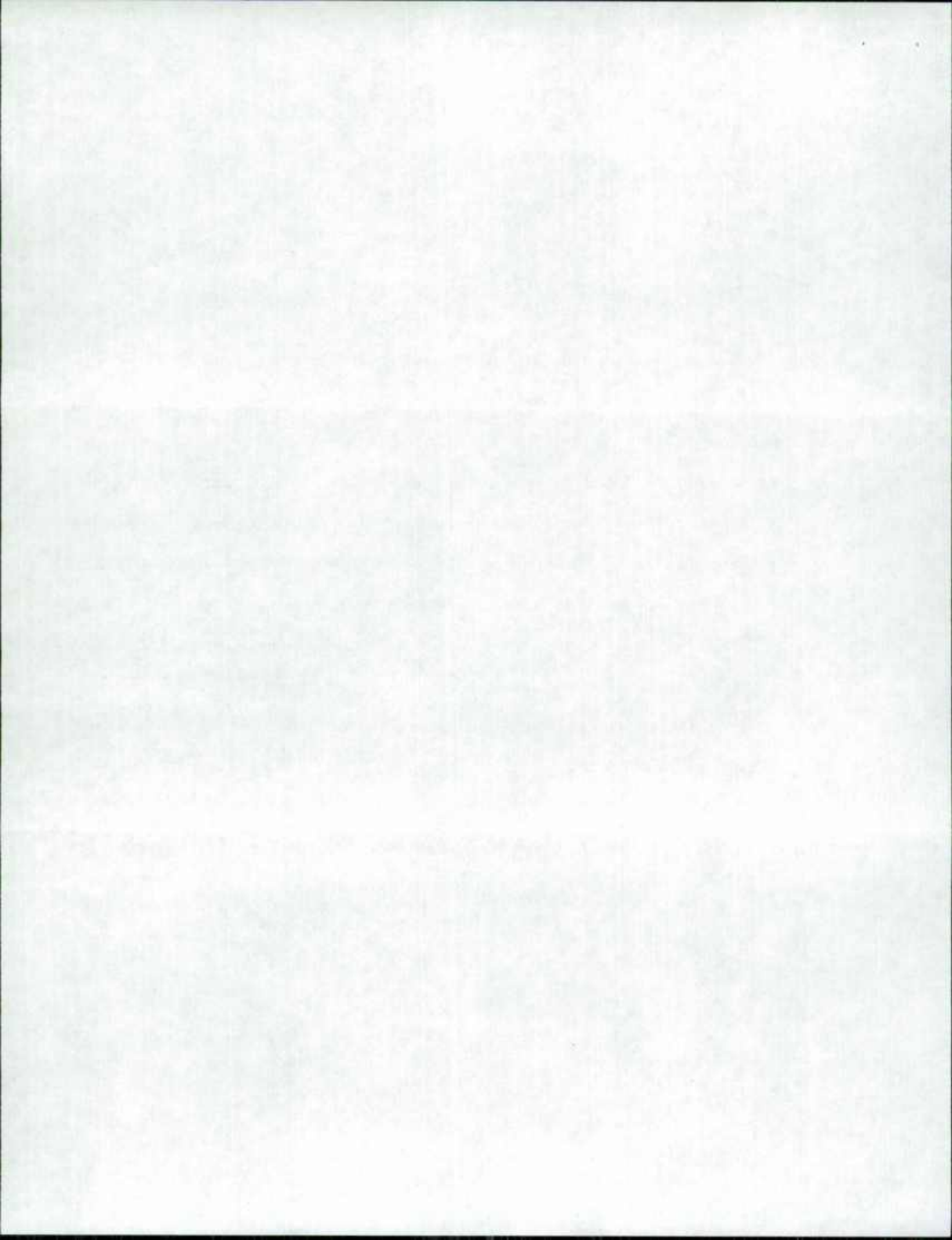
**IT IS ORDERED** this 28<sup>th</sup> day of August, 2009 by the Board of Appeals of Baltimore County that the appeal taken in Case No. CBA-08-142 be and is hereby **DISMISSED**.

BOARD OF APPEALS  
OF BALTIMORE COUNTY

  
Lawrence M. Stahl

  
Edward W. Crizer, Jr.

  
Robert W. Witt



RECEIVED

AUG 25 2009

IN THE COUNTY BOARD OF APPEALS  
FOR BALTIMORE COUNTY

BALTIMORE COUNTY  
BOARD OF APPEALS

In the matter of:	*	
Donald Aquilano, Jr.	*	Case No. CBA-08-142
Petitioner/Appellant	*	Critical Area Administrative Variance Appeal
	*	

\* \* \* \* \*

**WITHDRAWAL OF DISMISSAL**

Donald Aquilano, Jr., Petitioner/Appellant, by Edward C. Covahey, Jr. and Covahey, Boozer, Devan & Dore, P.A., his attorneys, withdraws the petition for Appeal as filed before the County Board of Appeals in the above-captioned case.



DONALD AQUILANO,  
Petitioner/Appellant

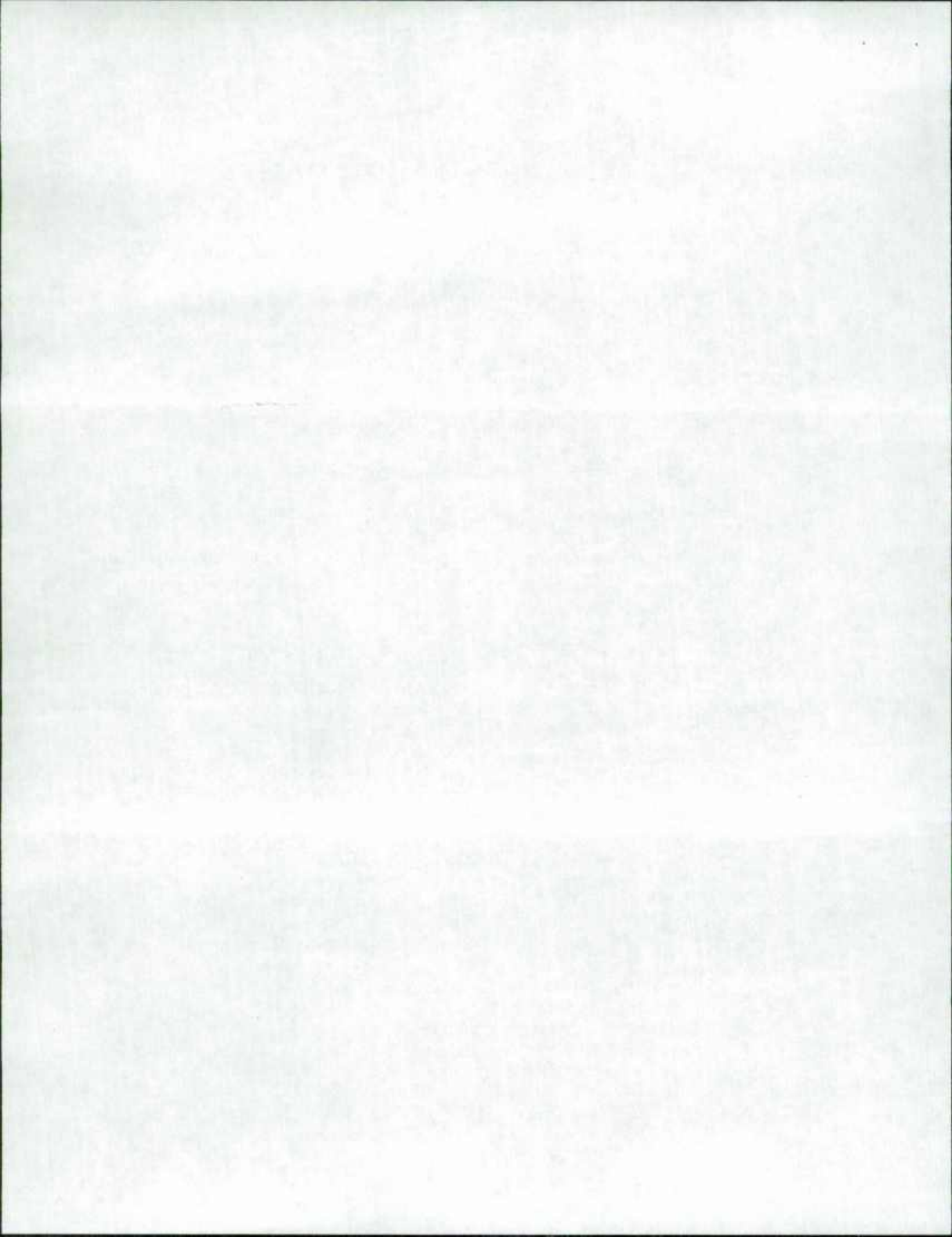
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EDWARD C. COVAHEY, JR.  
Covahey, Boozer, Devan & Dore, P.A.  
614 Bosley Avenue  
Towson, Maryland 21204  
410-828-9441  
Attorneys for Appellant Aquilano

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24 day of August, 2009, a copy of the foregoing Answer to Motion to Dismiss was mailed, first class, postage prepaid, to:

Adam M. Rosenblatt, Assistant County Attorney  
Baltimore County Office of Law  
Old Courthouse, Second Floor  
400 Washington Ave., Room 219  
Towson, Maryland 21204

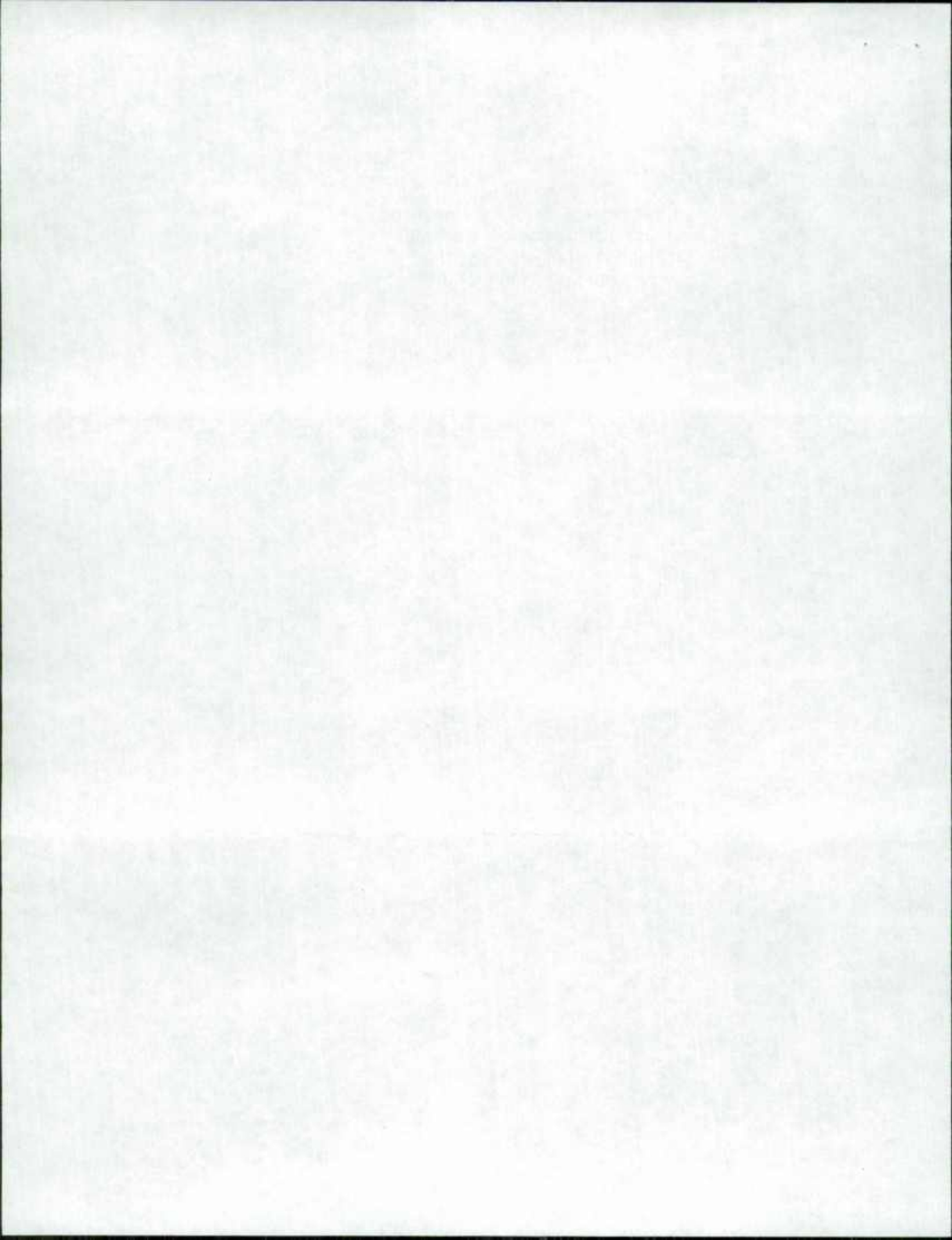


and

Marianne E. Dise, Assistant Attorney General  
Office of the Attorney General  
1804 West Street, Suite 100  
Annapolis, Maryland 21401

  
EDWARD C. COVAHEY, JR.

ldr090822



IN THE MATTER OF  
DONALD AQUILANO, JR. - APPLICANT  
1510 GALENA ROAD

RE: CRITICAL AREA ADMINISTRATIVE  
VARIANCE REQUEST

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-08-142

\* \* \* \* \*

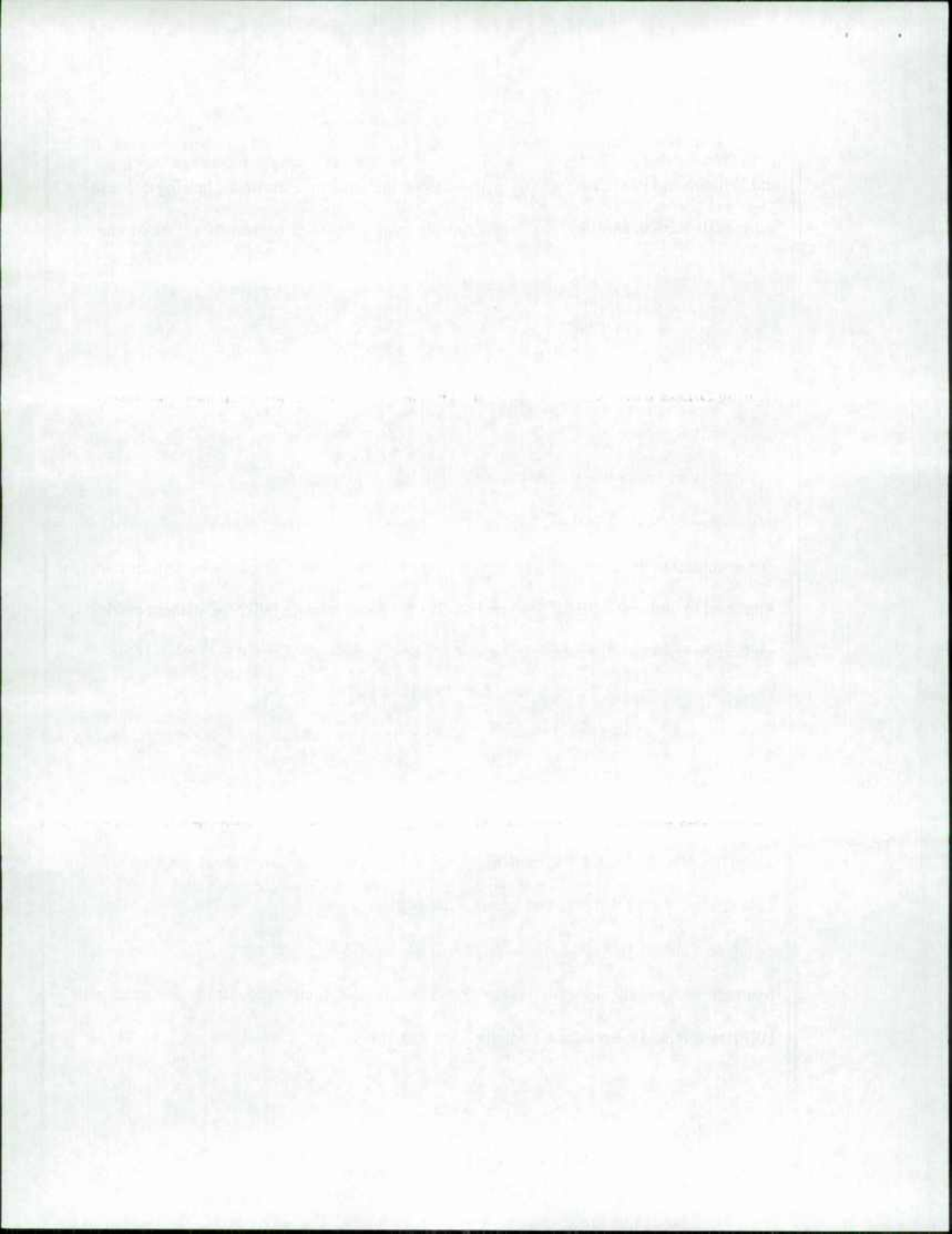
**OPINION**

This matter comes before the Board on a Motion to Dismiss the Critical Area Administrative Variance Appeal, filed by Baltimore County, on behalf of the Baltimore County Department of Environmental Protection and Resource Management (“DEPRM”). The Motion moves to dismiss an appeal of the denial of a Critical Area Administrative Variance, on the basis that Baltimore County is legally barred from granting the underlying variances.

Adam M. Rosenblatt, Assistant County Attorney, and the Baltimore County Office of Law represented DEPRM. Edward C. Covahey, Jr., Esquire and Covahey, Boozar, Devan & Dore, P.A. represented the Applicant, Donald Aquilano, Jr. The Board convened for a hearing on the Motion to Dismiss on January 29, 2009. Public Deliberation was held on February 24, 2009.

**BACKGROUND**

On May 8, 2008, pursuant to Section 3-6-205 of the *Baltimore County Code* (“BCC”), a Code Enforcement Officer issued a Code Enforcement citation against the Applicant, Donald Aquilano. The citation cited violations of BCC Article 33 title 2 sections 104, 201 and 607; failure to comply with correction notice issued April 7, 2008; failure to remove concrete bulkhead and fill on residential property known as 1510 Galena Road, Baltimore, Md 21221.





It should be noted that two (2) other neighbors of the Applicant (Herbert and Sara Ulrich and William and Patricia Hayes) were also cited at the same time in similar hearings. These individuals subsequently withdrew their appeals and the Board of Appeals heard the Motion to Dismiss only with respect to Applicant, Donald Aquilano.

The initial citation against the Applicant called for a proposed civil penalty of Fifteen Thousand (\$15,000.00) Dollars. Subsequently, a hearing was held before Code Enforcement Hearing Officer Raymond S. Wisnom, Jr. The Hearing Officer heard testimony with respect to the construction of a bulkhead at the Applicant's property and found that the Applicant had constructed a concrete bulkhead without first obtaining approval and the permit required by the BCC. The Applicant testified that the bulkhead was installed to protect his property from storm surges similar to those experienced during Tropical Storm Isabel. The Hearing Officer found the Applicant in violation of BCC Section 35-2-301 for constructing a bulkhead without making application to obtain a building permit, prior to construction. He fined the Applicant One Thousand (\$1,000.00) Dollars for failure to obtain a building permit.

The decision by the Hearing Officer was rendered on August 1, 2008. Subsequently, on September 8, 2008, Applicant filed an Administrative Variance Application – Chesapeake Bay Critical Area Regulations, with DEPRM. The application was hand written and filed without the assistance of legal counsel. On October 8, 2008, Jonas A. Jacobson, Director of DEPRM issued a letter to the Applicant denying the request for the variance based upon the five (5) criteria listed in COMAR 27.01.11. Mr. Jacobson contended that the Applicant did not meet any of the five criteria listed therein. On October 23, 2008, Applicant filed a Request for an Appeal with DEPRM and paid the requisite filing fee.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 350

LECTURE 10

ISSUES RAISED BY BALTIMORE COUNTY

On December 4, 2008, Mr. Rosenblatt filed the Baltimore County's Motion to Dismiss on behalf of DEPRM. As the basis for his Motion, he stated:

"The changes were incorporated into § 8-1808(4) of the Maryland Natural Resources Article, which states that a local jurisdiction may not issue a permit, approval, variance or special exception unless the person seeking the permit, approval, variance, or special exception has:

- (i) Fully paid all administrative, civil, and criminal penalties imposed under paragraph (1)(iii)15 of this subsection;
- (ii) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and
- (iii) Performed the abatement measures in the approved plan in accordance with the local critical area program."

ISSUES RAISED BY APPLICANT

In Answering the Motion to Dismiss, the Applicant admitted the provisions as set forth with respect to the Natural Resource Article, but stated that the Applicant had paid all the penalties as assessed; and had presented a Restoration and Mitigation Plan as prepared by a Registered Professional Engineer. Applicant contended that the plan was presented but was not accepted by DEPRM.

Applicant also denied that the Critical Area law update is applicable to the facts in this particular case and that this is not an issue before the Board.

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The Applicant also denied that the Applicant had failed to submit a Restoration or Mitigation Plan to Baltimore County as alleged in paragraph 8 of the Motion to Dismiss. Applicant requested a full evidentiary hearing to determine the issues with respect to the plans and meeting the requirements of the *Baltimore County Code*.

TESTIMONY AND EVIDENCE

The Board has reviewed the testimony and evidence presented with respect to the Motion To Dismiss. It is apparent that the Applicant has filed a Petition for an administrative variance with DEPRM with accompanying Plat showing a proposed concrete bulkhead and former rip rap bulkhead on the Applicant's property. Applicant asserts in his Answer to the Motion to Dismiss that he has paid the One Thousand (\$1,000.00) Dollar fine assessed by the Code Enforcement Hearing Officer. Whether or not the Petition for Administrative Variance meets the requirements of COMAR § 27.01.11 and is subject to the changes that were incorporated into § 8-1808(4) of the Maryland Natural Resources Article is something that can not be decided on the basis of the argument before the Board. The Board feels that the issues with respect to the granting of the Variance and the question of whether or not the Applicant has met the requirements of § 8-1808(4) of the Maryland Natural Resources Article and § 27.01.11 of COMAR will best be served through a hearing on these issues.

ORDER

**THEREFORE, IT IS THIS** 25<sup>th</sup> day of March, 2009 by the Board of Appeals of Baltimore County, hereby

**ORDERED** that the Motion to Dismiss filed by Baltimore County in the above matter be and is hereby **DENIED**; and it is further

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

5712 S. UNIVERSITY AVE. CHICAGO, ILL. 60637

TEL: 773-936-3700

PHYSICS 321

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101

PHYSICS 321


DONALD AQUILANO, JR. - APPLICANT  
1510 GALENA ROAD


**ORDERED** that this matter be set for a hearing on the issues, to be scheduled no later than sixty (60) days from the date of this Order.

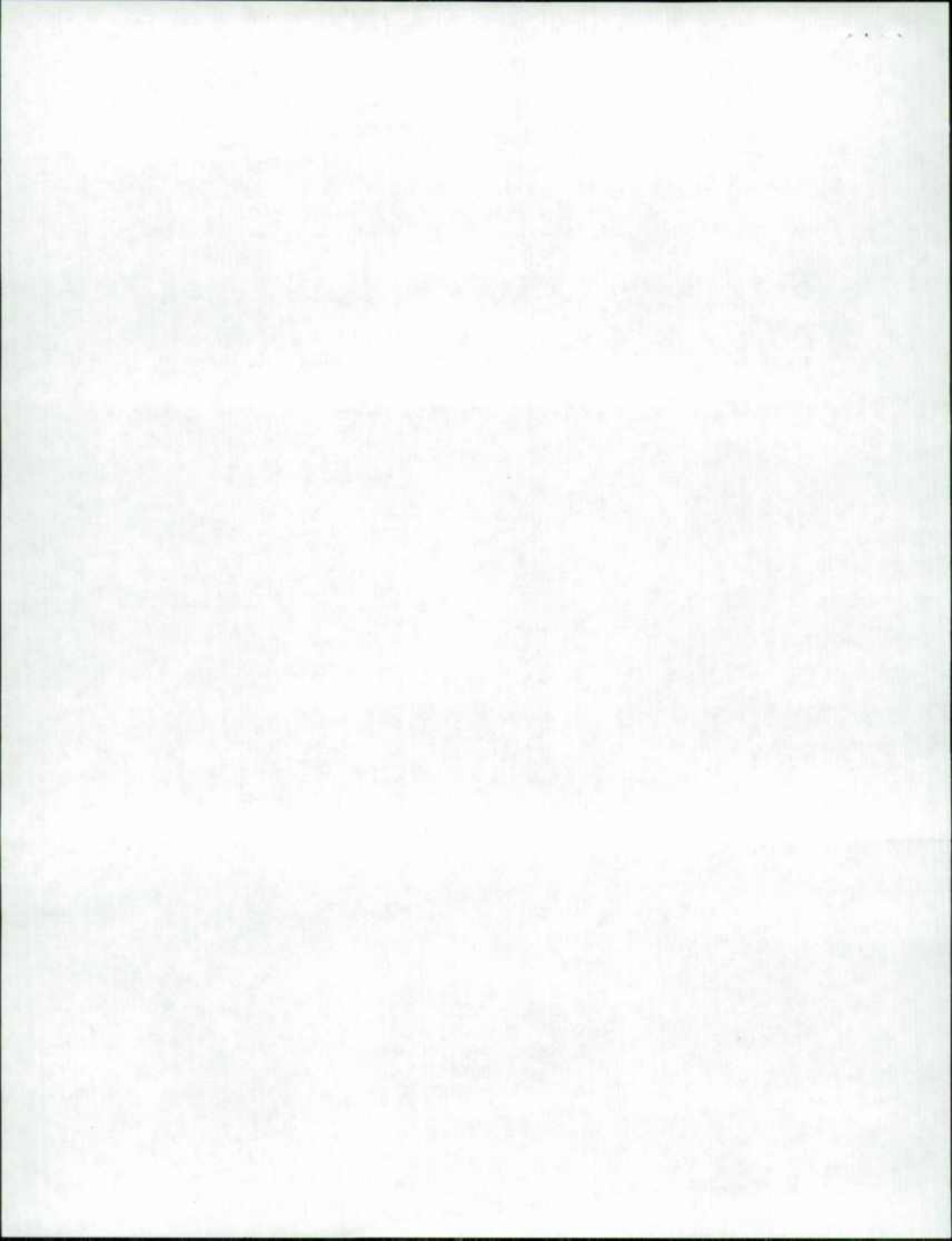
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Lawrence S. Wescott, Panel Chairman

  
Robert W. Witt

  
Edward W. Crizer, Jr.





waiting for pla.

**SETTLEMENT AGREEMENT**

The Maryland Department of the Environment (“MDE” or “the Department”), Baltimore County, Maryland [“The County”], and Regal Bank & Trust (“Regal Bank”) hereby enter into this Settlement Agreement and Consent Order (“Agreement”) regarding the implementation of measures to bring the property located at 1510 Galena Road, Essex, Baltimore County, Maryland, 21221 (the “Property”) into compliance with State and County environmental laws arising out of the filling of tidal wetlands and grading activities in connection with the construction of a concrete bulkhead at the Property.

**EXPLANATORY STATEMENT**

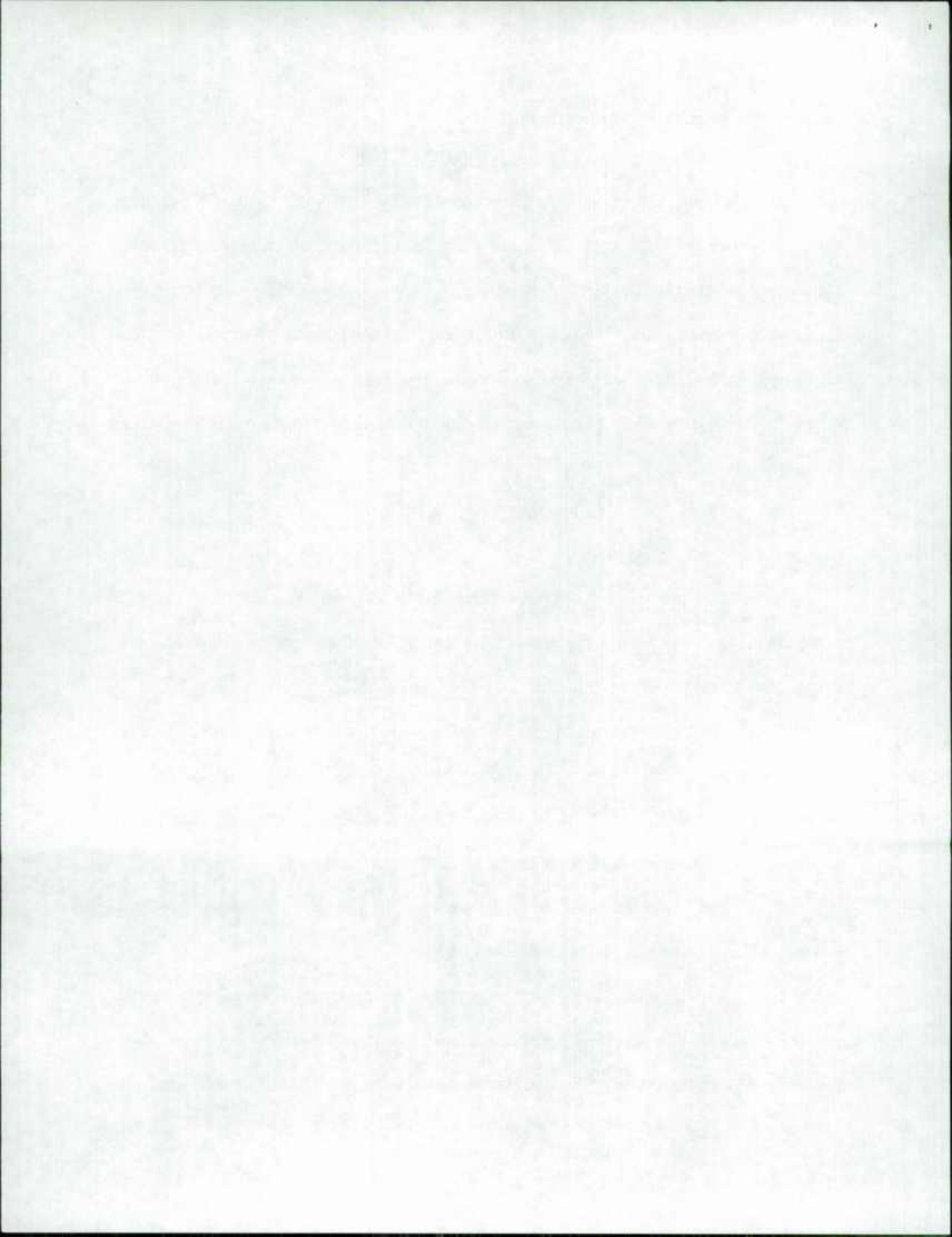
**State Regulation of Tidal Wetlands**

A. The State’s regulatory scheme regarding State tidal wetlands is contained in Title 16 of the Environment Article. The law prohibits the dredging or filling of State wetlands without a license. Md. Code Ann., Envir. § 16-202(a); COMAR 26.24.02.01.

B. “State tidal wetlands” means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Md. Code Ann., Envir. § 16-101(n); COMAR 26.24.01.02(52). The State owns all State tidal wetlands not patented into private ownership prior to 1862 and holds them in trust for all Maryland citizens.

C. “Mean high water line” means the line where the land meets the water surface at the elevation of mean high water. COMAR 26.24.01.02(32).

D. “Filling” means (a) the displacement of tidal water by the depositing into State or private wetlands of soil, sand, gravel, shells, or other materials, including pilings, piers, boathouses, deadweights, or riprap; (b) the artificial alteration of tidal water levels by any physical structure,



drainage ditch, or otherwise; and (c) storm drainage projects which flow directly into tidal waters of the State. Md. Code Ann., Envir. § 16-101(f); COMAR 26.24.01.02(18).

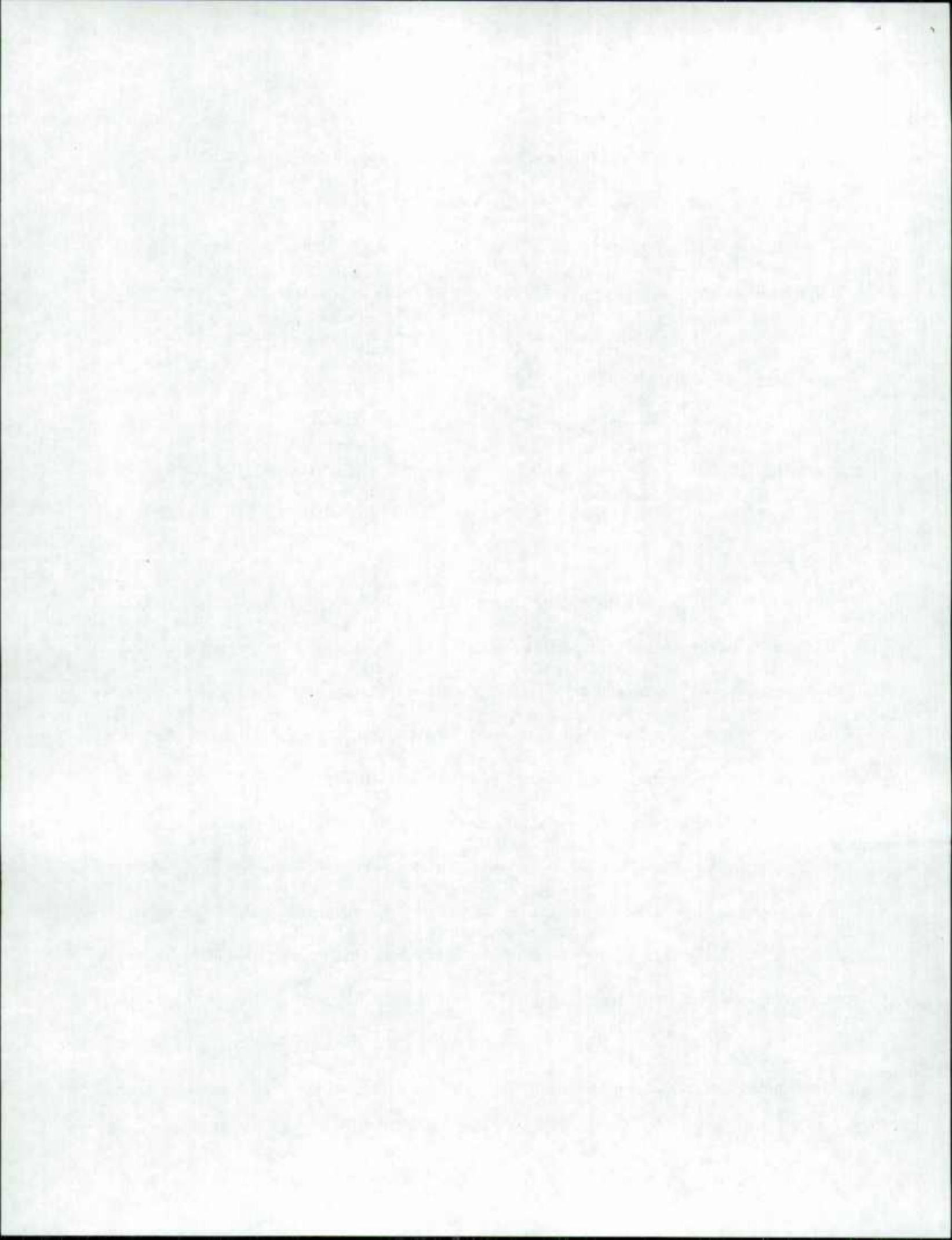
E. “License” means written authorization by the Board of Public Works under § 16-202 of the Environment Article to dredge, fill, construct structures, or conduct certain other activities involving State tidal wetlands. Once issued, a license conveys a limited property interest in the submerged lands. COMAR 26.24.01.02(27).

F. MDE assists the Board of Public Works in rendering licensing decisions and, pursuant to COMAR 23.02.04.04A, the Board has delegated to MDE its authority to issue licenses and other authorizations for a variety of structures, including piers and pilings. *See also* COMAR 26.24.01.03.

G. MDE has promulgated regulations governing the dredging, filling, and placement of structures in State wetlands. *See generally* COMAR 26.24.01.01 *et seq.* With respect to shore erosion control, MDE has established an order of preference, beginning with non-structural measures such as marsh creation, proceeding on to stone revetments, and ending with bulkheads as the least preferable means of shoreline stabilization. COMAR 26.24.04.01C(5).

H. Where revetments are appropriate, they must be constructed of materials that are (a) of adequate size, weight, and strength to function as intended; (b) free of protruding objects; and (c) selected because they minimize impacts to water quality and plant, fish, and wildlife habitat. COMAR 26.24.04.01C(8). The backfill material must be “free of materials such as junk, metal, tree stumps, logs, or other unsuitable materials.” COMAR 26.24.04.01C(9).

I. MDE enforces the tidal wetlands statute in accordance with § 16-502 of the Environment Article. Section 16-502(a)(1) provides for the imposition of civil penalties up to



\$10,000 for any violation of Title 16, or any regulation, permit, license or order issued thereunder.

Section 16-502(b) authorizes MDE to seek injunctive relief to require a person to cease any violation of the Act and restore the area unlawfully dredged or filled.

County Regulation of Structures and the Critical Area

J. The County's regulatory scheme regarding development in the Chesapeake Bay Critical Area is contained in Article 33, Title 2 of the Baltimore County Code ("B.C.C.").

K. The County has promulgated regulations for issuing and obtaining building, grading, or use and occupancy permits in the Chesapeake Bay Critical Area. B.C.C. 33-2-201.

L. The County has also developed regulations pertaining to Shore Erosion Protection Measures in the Critical Area. B.C.C. 33-2-607. *See also* COMAR 26.24.02.04B(11).

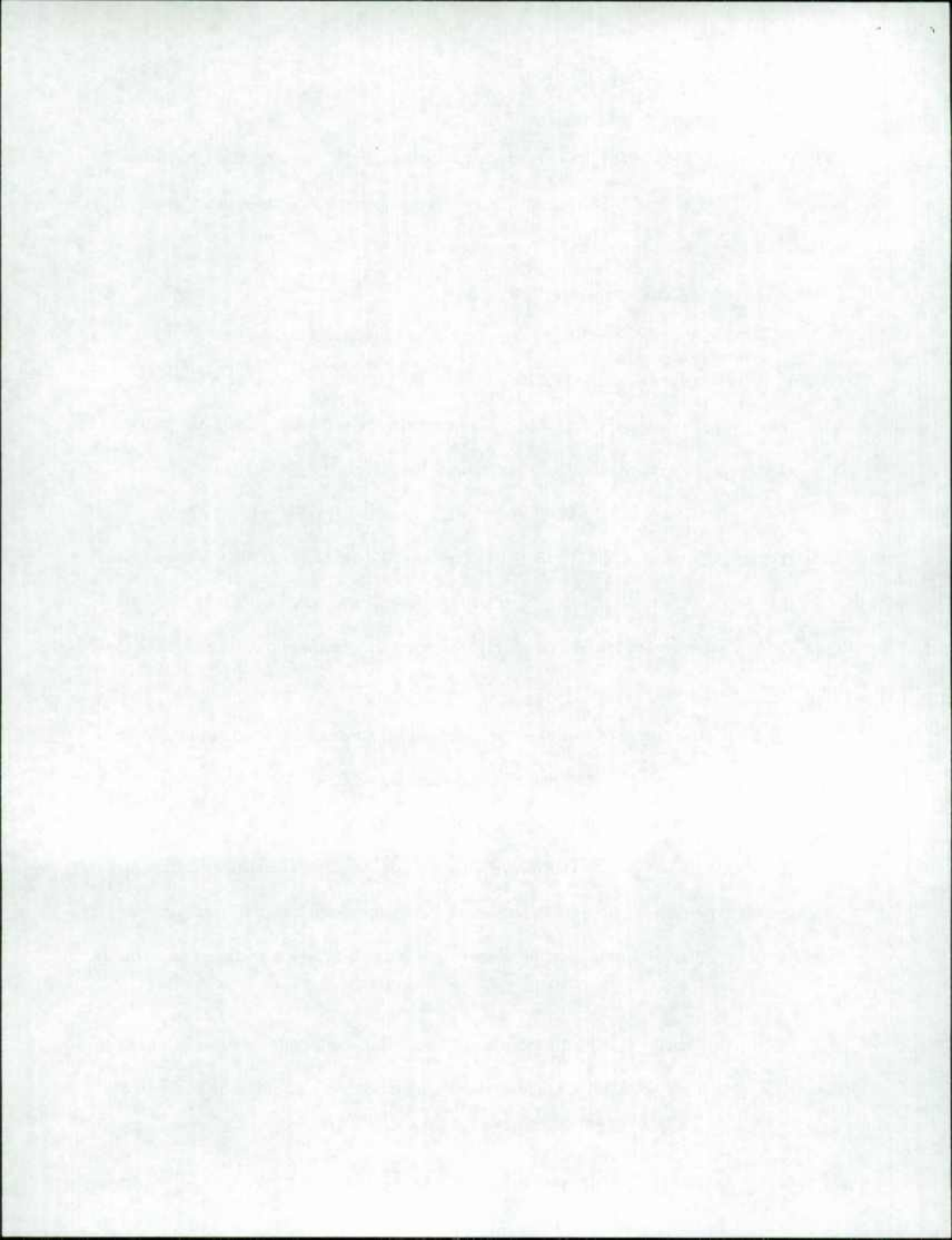
M. The County has also developed regulations pertaining to the amount of impervious surface and tree coverage required in a Limited Development area such as the property in question. B.C.C. 33-2-603.

N. Additionally, the County has developed regulations governing structures on Private and Nonmarina Commercial Property in the Critical Area. B.C.C. 33-2-605.

FACTUAL BACKGROUND

O. On or about \_\_\_\_\_, Donald Aquilano, Jr. ("Mr. Aquilano") purchased the Property, acquiring it as an investment and not as his primary residence. In order to finance his purchase of the Property, Mr. Aquilano obtained a mortgage from Regal Bank, which took a mortgage lien on the Property.

P. On March 19, 2009, the Department filed suit in the Circuit Court for Baltimore County, Case No. 03-C-09-003159 OT, alleging that Mr. Aquilano built a concrete bulkhead, pier,



and pilings at the Property without first obtaining a license under the Act and without complying with restrictions on the extent of the size and channelward encroachment of the structures ("Alleged State Violations"). The Department sought civil penalties totaling \$40,000 and injunctive relief requiring Mr. Aquilano to remove the bulkhead and fill material behind it and restore the area to its pre-existing condition. The Complaint contains no allegations against Regal Bank.

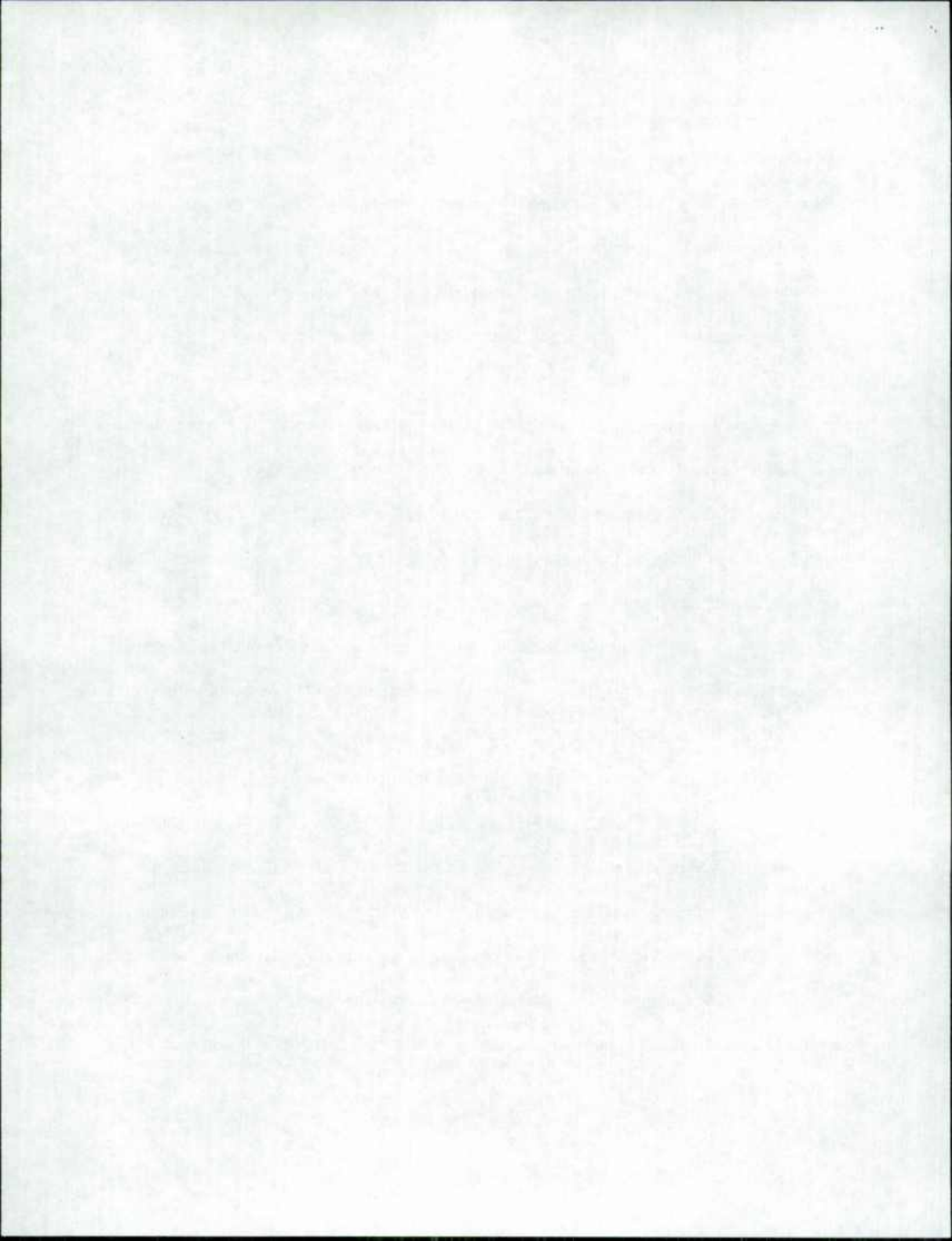
Q. The Complaint is separated into four counts, only two of which – Counts I and II – are affected by this Agreement. Count I seeks civil penalties and injunctive relief with respect to the bulkhead and Count II seeks the same with respect to the fill behind the bulkhead.

R. Subsequent to the filing of the Complaint, Regal Bank took title to the Property through a deed in lieu of foreclosure and wishes to bring the Property into compliance with all applicable environmental restrictions.

S. The Department and Regal Bank wish to settle the portions of Counts I and II seeking injunctive relief at the Property without the expense and inconvenience of litigation and without the admission, imposition, or adjudication of liability or guilt. In addition, Regal Bank wishes to improve the Property with a stone revetment to protect against shoreline erosion.

T. The property is also currently in violation of the County Critical Area Regulations including the construction of a bulkhead and pier without the required permits, developing far in excess of the 25% impervious surface limitation for property designated as a Limited Development Area, and failing to maintain the required tree coverage for a Limited Development Area.

U. The County and Regal Bank also wish to settle the County violations without the expense and inconvenience of litigation and without the admission, imposition, or adjudication of liability or guilt.

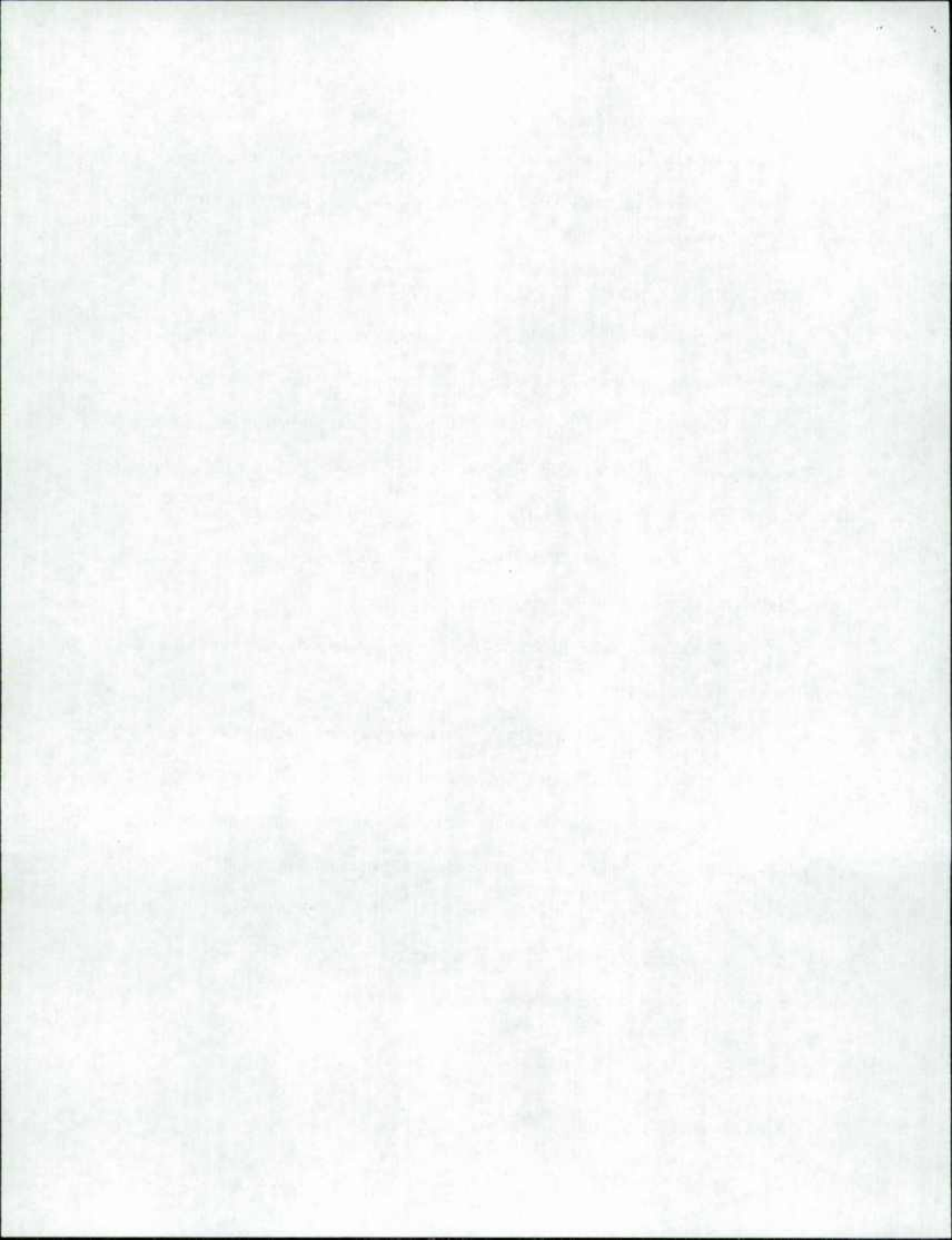




**NOW THEREFORE**, in consideration of the promises and commitments set forth below, MDE, the County, and Regal Bank (“the Parties”) **AGREE** and MDE **ORDERS** the following:

WORK TO BE PERFORMED

1. Regal Bank shall remove the unauthorized concrete bulkhead and fill material from State tidal wetlands in accordance with a remediation plan approved by MDE (“Restoration Work”).
2. Within 30 calendar days of the execution of this Agreement, Regal Bank shall submit to MDE, for its review, modification, and approval, a proposed plan and schedule for carrying out the Restoration Work (“Remediation Plan”).
3. Upon approval of the Remediation Plan by MDE, Regal Bank shall carry out the Restoration Work in accordance with the approved Remediation Plan.
4. Regal Bank shall be responsible for obtaining any local and federal permits necessary to perform the Restoration Work.
5. Within 30 calendar days of approval of the Remediation Plan by MDE, Regal Bank shall submit to MDE an application for after-the-fact authorization of the pier and pilings at the Property, which application must be accompanied by the appropriate application fee. At its discretion, Regal Bank may also apply for authorization of a stone revetment along the shoreline after it has been restored pursuant to the Remediation Plan. Upon receipt of the application, MDE will review and, if appropriate, issue a license for the applied-for structures in accordance with the standard regulatory process required by applicable statute and regulation.



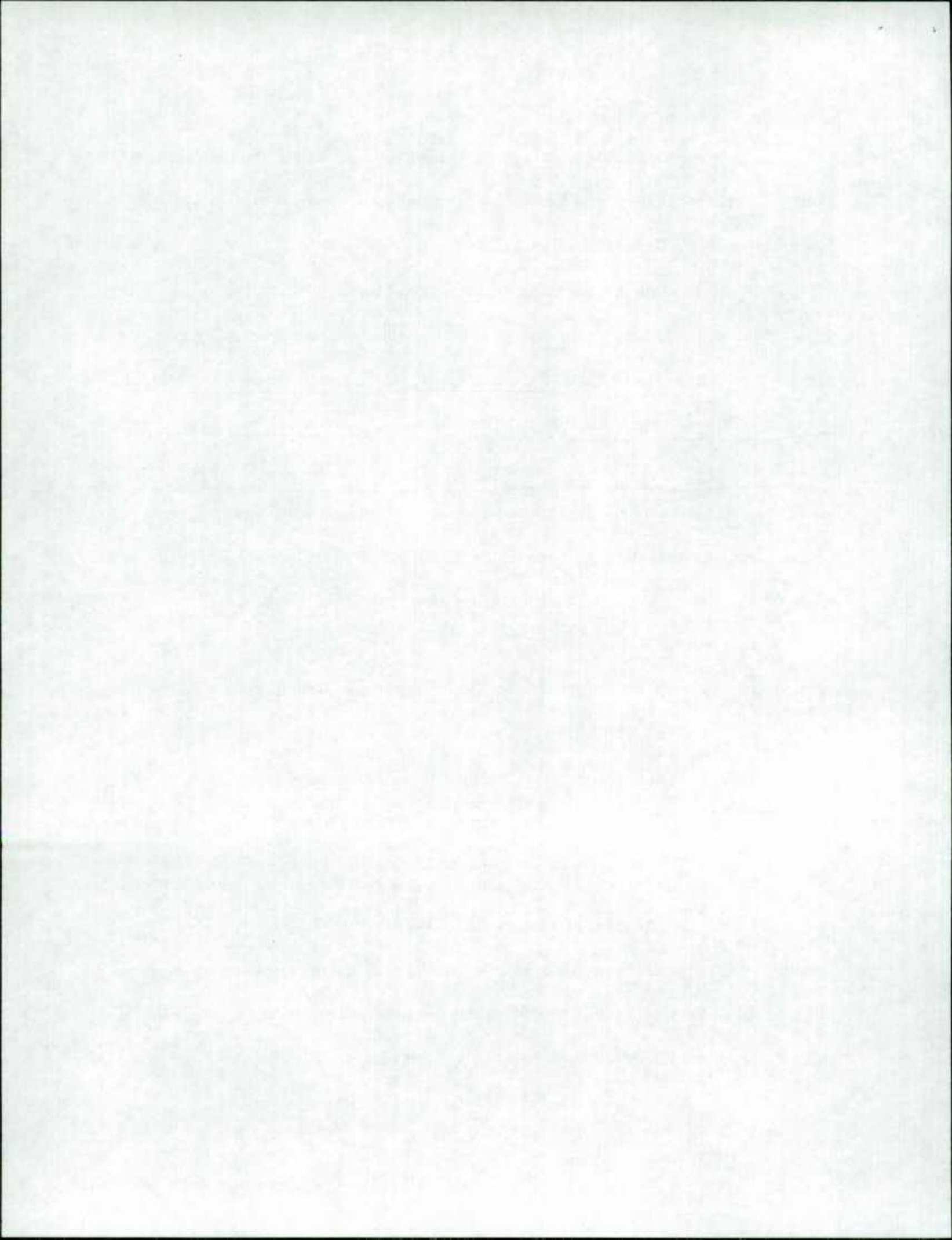
6. In the event the Department denies the application seeking after-the-fact authorization of the pier and/or the pilings, Regal Bank agrees to remove the disapproved structure(s) within 90 days of the date of the Department's decision.

7. Regal Bank will also submit a Restoration Plan to the County providing for the removal of all stone and gravel on the roadside of the home other than that reasonably necessary to maintain a driveway and parking area. The Restoration Plan must also provide for the planting of a mix of several trees and shrubs on the waterfront side of the home. Regal Bank agrees that the plantings will be inspected by a licensed landscape architect at Regal Bank's expense prior to construction, then 6 months after construction is initiated. At any time before the expiration of this six-month period, Regal Bank agrees to replace any damaged plants with the same plant at a reasonable initial size at Regal Bank's sole cost and expense.

8. Until termination of this Agreement, MDE, the County, and their authorized representatives and contractors shall have the authority at all reasonable times to enter the Property to:

- a. Monitor the activities required by this Agreement;
- b. Verify any data or information submitted to MDE or the County pursuant to this Agreement;
- c. Obtain samples relevant to the work contemplated by this Agreement; and
- d. Inspect and evaluate the Restoration Work.

9. The provisions of paragraph 8 are in addition to, and in no way limit or otherwise affect, the statutory authorities of MDE or the County to conduct inspections, to require monitoring, and to obtain information from Regal Bank as authorized by law.



STIPULATED PENALTIES

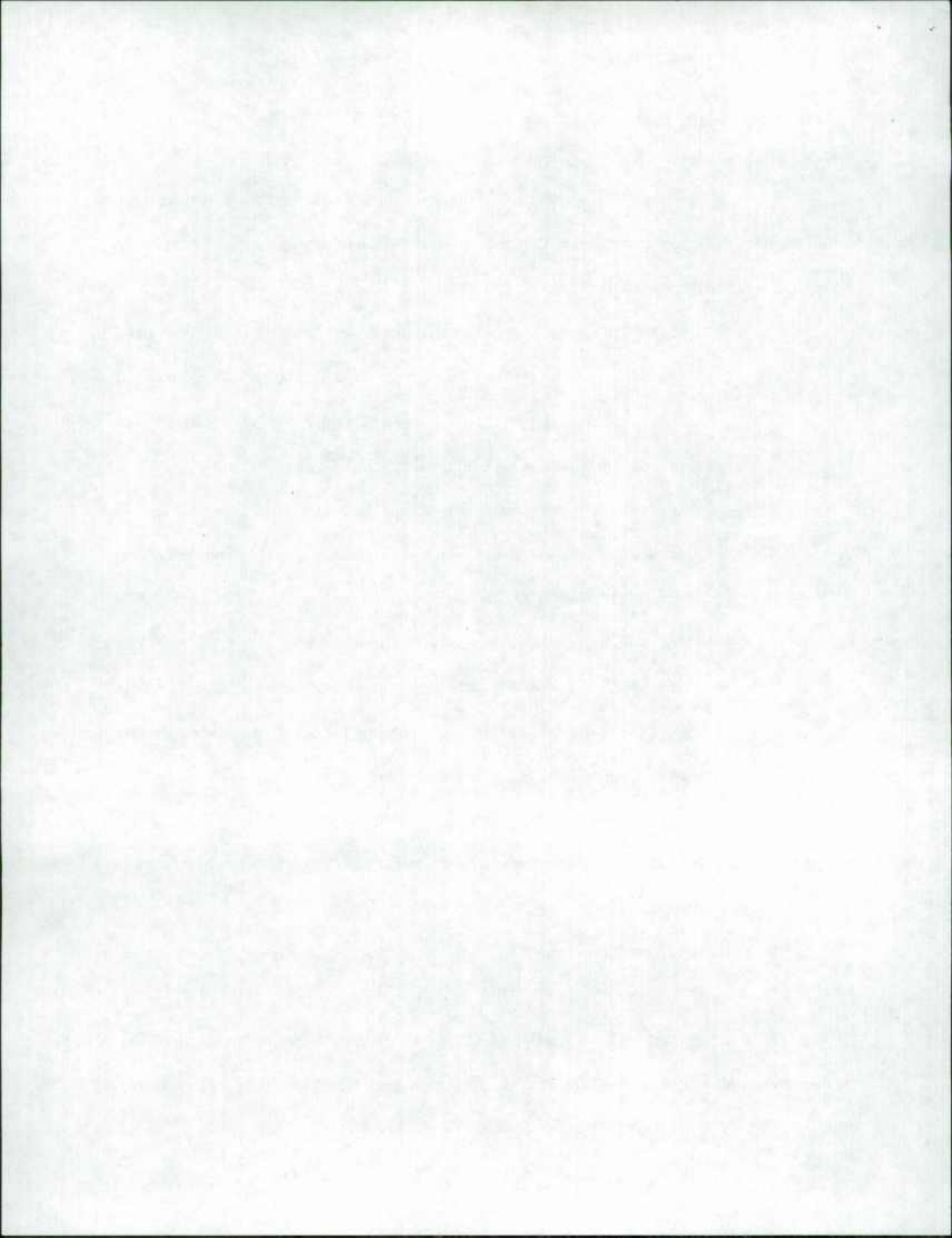
10. In the event that Regal Bank fails to carry out the Restoration Work in accordance with the Remediation Plan as required above, it will be in default of this Agreement and agrees to pay stipulated penalties to MDE as set forth below:

- a. Upon written demand by the Director of the Water Management Administration, Regal Bank shall pay to the Department a stipulated penalty of one hundred dollars (\$100.00) a day for each day beyond the milestone date required by the approved Remediation Plan until the requirement is met.
- b. Any stipulated penalty due pursuant to this Agreement shall be by check made payable to the Tidal Wetlands Compensation Fund, c/o the Maryland Department of the Environment, P.O. Box 2057, Baltimore, Maryland 21203-2057. The check should include in the lower left hand corner the notation, "PCA 13762/8964." The Administration may in its discretion reduce or waive a stipulated penalty if it determines that noncompliance is beyond the reasonable control of Regal Bank as set forth in this Agreement.
- c. Regal Bank shall make payment of any stipulated penalty no later than thirty (30) days after receiving written demand from the Director of the Water Management Administration.

11. **[Insert County requirements]**

NOTIFICATION

12. Regal Bank shall notify MDE ten (10) days before beginning the Restoration Work and upon completion of the Restoration Work, and shall notify the County ten (10) days before



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beginning the Restoration Work and upon completion of the Restoration Work provided for in this agreement. All notifications required under this Agreement shall be in writing and be sent to the following people:

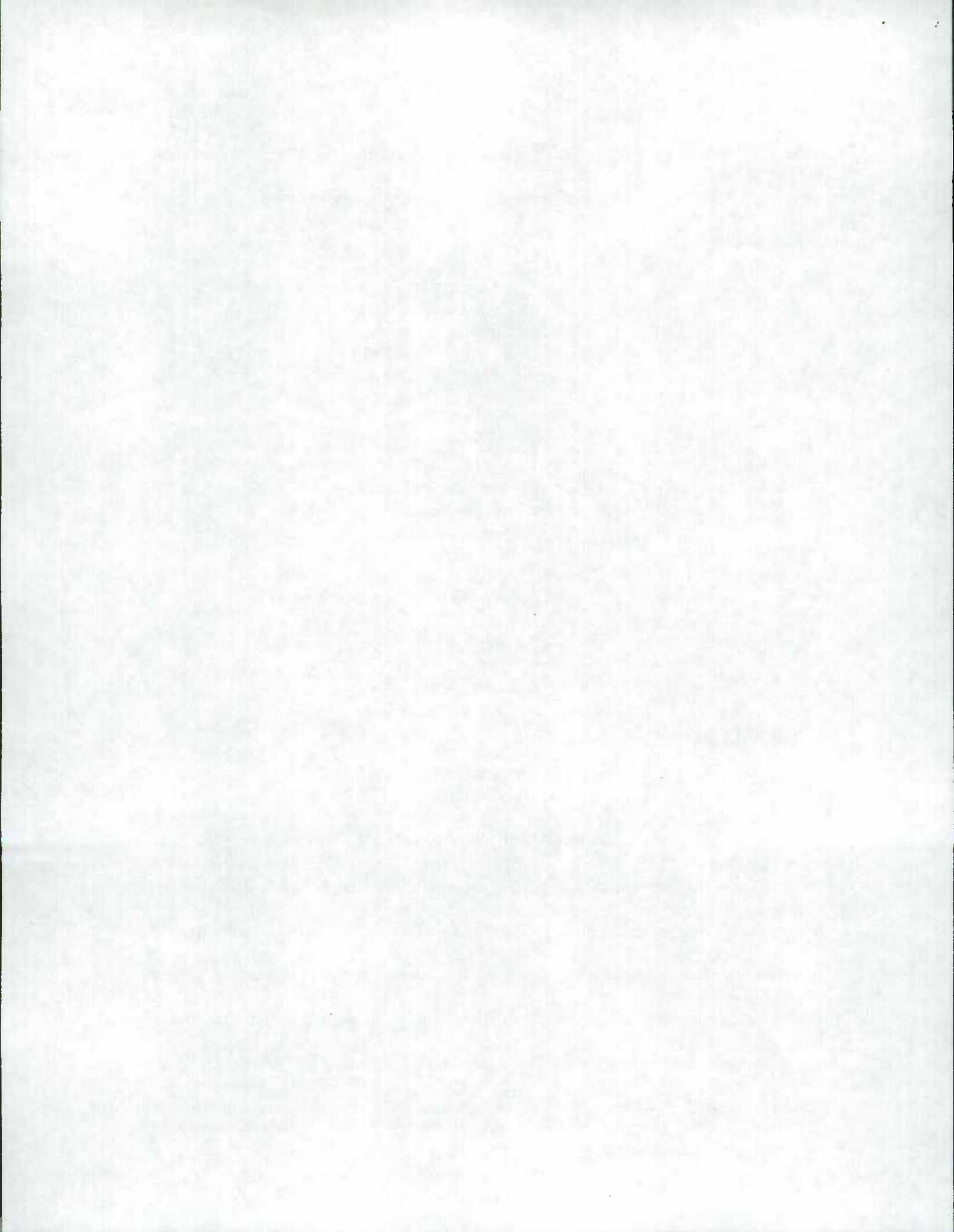
For the Maryland Department of the Environment  
Ms. Carol Coates  
Chief, Enforcement Division  
Water Management Administration  
Maryland Department of the Environment  
1800 Washington Boulevard, Baltimore, Maryland 21230

For Baltimore County, Maryland  
Mr. Brian Lindley  
Baltimore County Department of  
Environmental Protection and Resource Management  
Jefferson Building  
Fourth Floor  
105 W. Chesapeake Avenue  
Towson, Maryland 21204

For Regal Bank  
John C. Bryan, Jr., Esq.  
Vice President  
Compliance and Special Assets  
Regal Bank & Trust  
P.O. Box 426  
11436 Cronhill Drive, Unit 1  
Owings Mills, Maryland 21117

PERSONS BOUND BY ORDER

13. This Agreement shall be binding upon MDE, the County, and Regal Bank and their respective agents, employees, successors and assigns. Restoration Work performed by Regal Bank, its successors and assigns, officers, directors, employees, agents, independent contractors, contractors, subcontractors, and consultants shall be carried out in accordance with the requirements of this Agreement, and each party shall be responsible for the failure of its officers, directors, employees, independent contractors, contractors, subcontractors or consultants to do so.





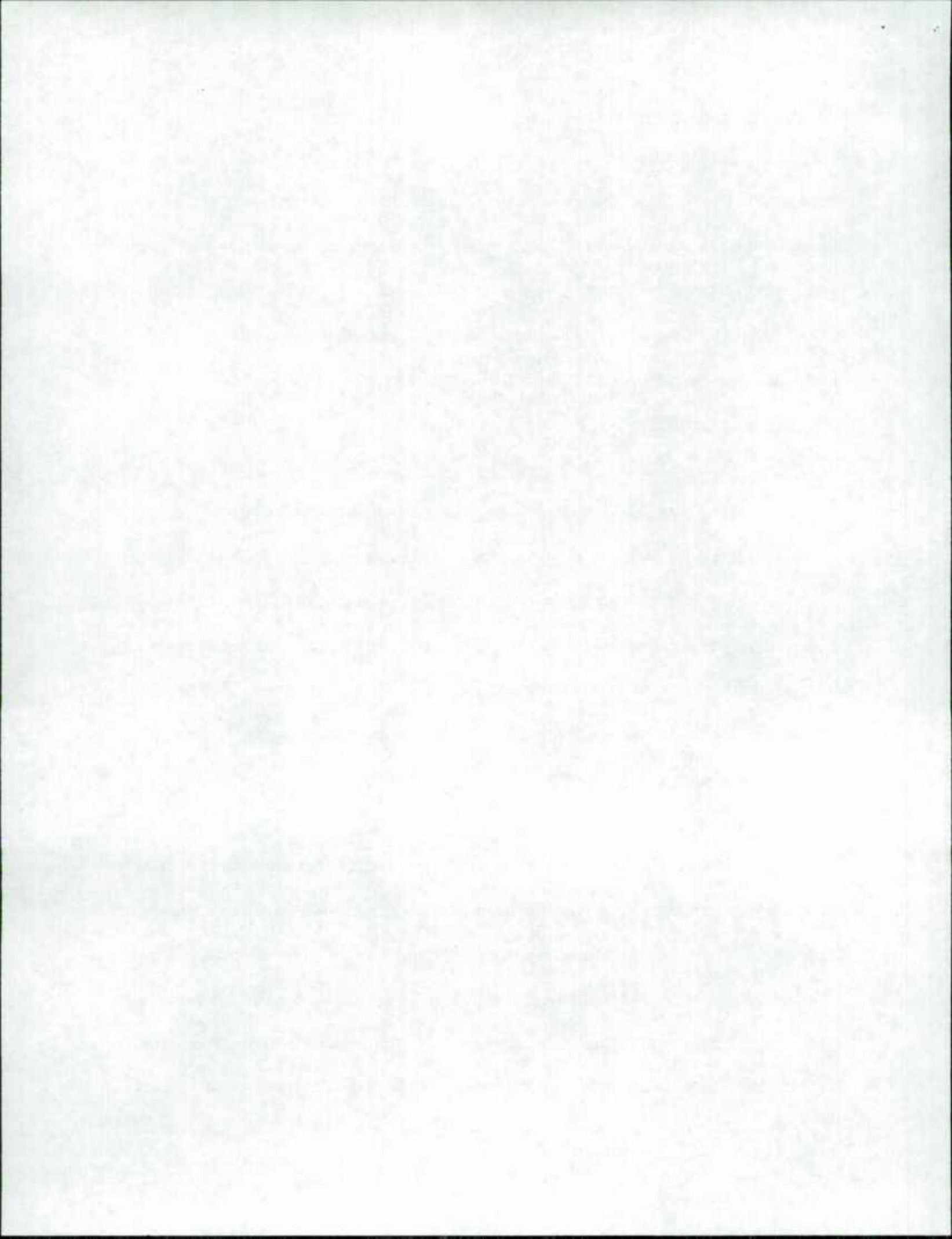
14. The transfer of ownership or other interest in the Property shall not alter or relieve Regal Bank of his obligation to comply with all of the terms of this Agreement. At least fifteen (15) days prior to the transfer of ownership or other interest in the Property, Regal Bank shall provide written notice and a true copy of this Agreement to its successors in interest and shall simultaneously notify MDE and the County at the addresses specified in paragraph 8 above that such notice has been given. As a condition to any such transfer, Regal Bank shall reserve all right to comply with the terms of this Agreement.

NO ADMISSIONS OR WAIVERS

15. This Agreement is understood and intended by all parties to be without any admission of liability or fact, and nothing in this Agreement shall be considered as an admission by any Party in these proceedings. Nothing contained herein shall constitute a waiver of the rights of the Department to proceed in an administrative or civil action for violations of the terms of this Agreement or any other violations of Maryland law not alleged in the Complaints filed in the actions governed by this Agreement. Nor shall anything set forth in this Agreement be deemed to be a waiver of Regal Bank's right to contest such proceedings.

DELAY

16. If any event occurs which causes, or which Regal Bank reasonably expects to cause, a delay in the achievement of any requirement imposed by this Agreement, Regal Bank shall notify the Department and the County, in writing, within ten (10) working days of obtaining knowledge of the occurrence of such event and of its impact on timely compliance. The notice shall identify the cause of the delay, an estimate of the anticipated length of delay, the measures taken and to be taken by Regal Bank to prevent or minimize the delay and an estimate of the date by which such measures



will be completed. Regal Bank shall promptly implement all reasonable measures to prevent or minimize any such delay and to comply with all requirements of the Agreement as soon as reasonably possible. Regal Bank may request, in writing, an extension of any deadline at least ten (10) working days prior to such deadline. The Department and the County may, at their sole discretion, grant an extension upon such a request. If such an extension is granted, any stipulated penalty, if applicable, shall not accrue.

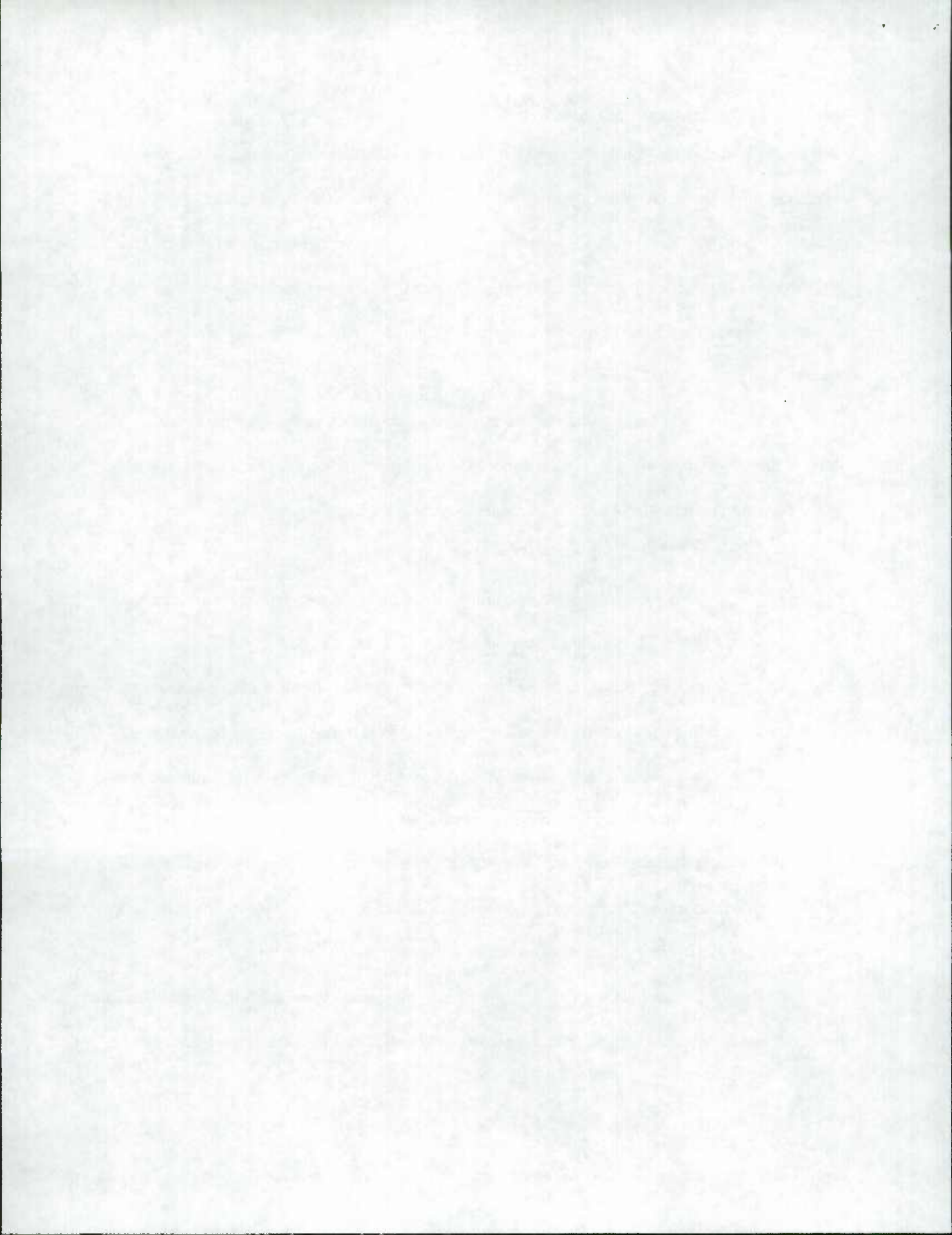
17. An event occurs which causes, or which Regal Bank reasonably expects to cause, a delay in the achievement of a requirement imposed by this Agreement may not include the failure of Regal Bank to obtain any local permits necessary to carry out the Restoration Work.

FORCE MAJEURE

18. Regal Bank shall perform the requirements of this Agreement in the manner and within the time limits set herein, unless the performance is prevented or delayed by events that constitute a force majeure. Regal Bank shall have the burden of proving such a force majeure. A force majeure is defined by any event or circumstance arising from causes not reasonably foreseeable and beyond the control of Regal Bank, which cannot be avoided or overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Agreement.

19. Circumstances beyond the control of Regal Bank include earthquake, flood or other act of God, war, riot, injunction, fire, freight embargo, or strike. Such circumstances do not include increased costs of performance, changed economic circumstances, or normal inclement weather.

20. Within ten (10) working days after becoming aware of any event that Regal Bank believes constitutes a force majeure, Regal Bank shall notify the Department and the County of such



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event in accordance with paragraph 10 herein. Failure to comply with the notice provision of this section shall constitute a waiver of Regal Bank's rights to assert a force majeure claim.

21. If the Department or the County determines that the event or anticipated event that has caused or will cause the delay constitutes a force majeure, the Department or the County may extend in writing the time for performance for an appropriate period of time as determined by the Department or the County.

#### SUBSEQUENT MODIFICATION

22. This Agreement contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. This Agreement may not be modified except by written agreement of the Parties and shall be effective upon signature by the Department.

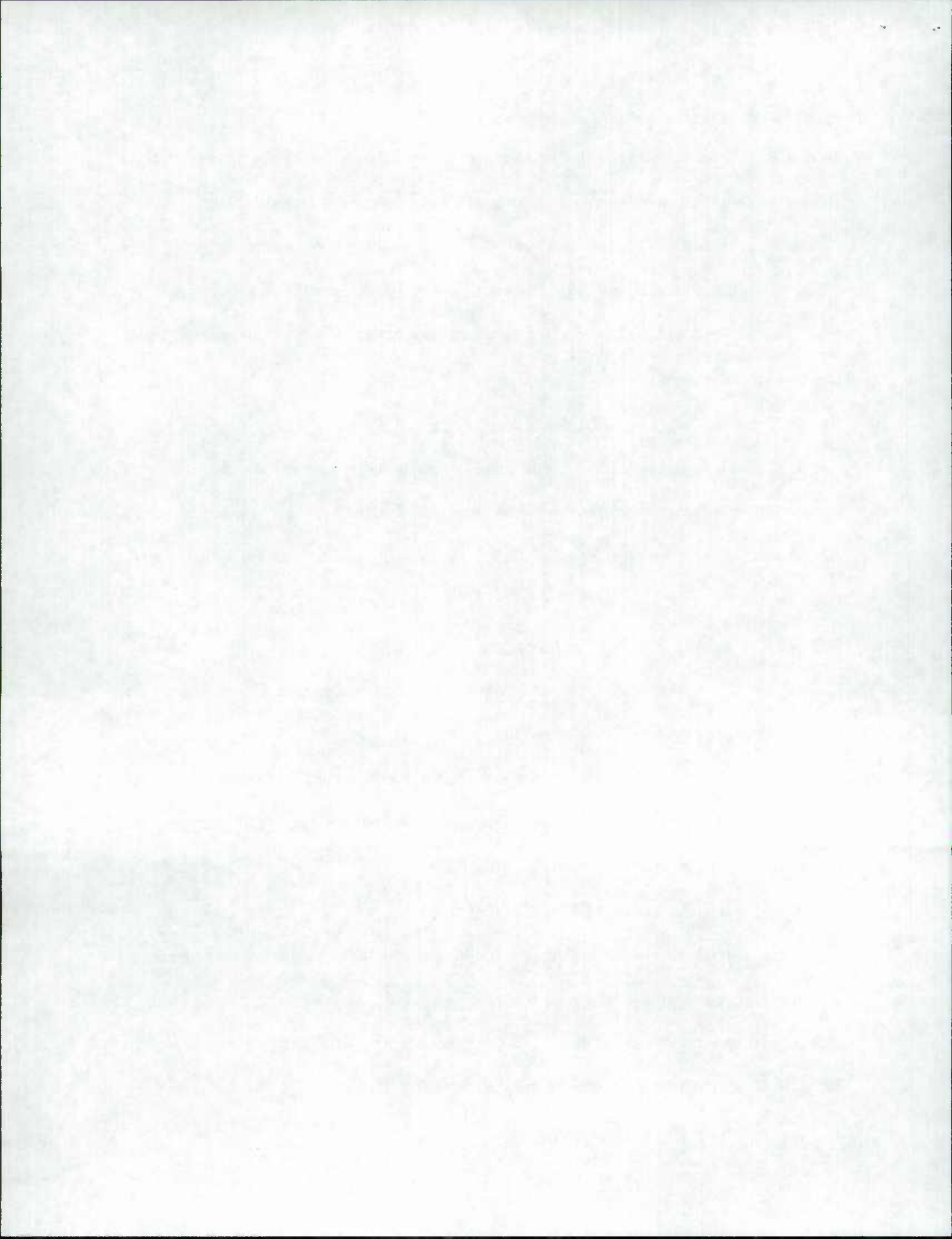
#### NOT A PERMIT

23. This Agreement is not and shall not be interpreted to be a license or permit or modification of any existing license or permit.

24. This Agreement releases, resolves, and settles any civil liability Regal Bank may have under State or County law for the Alleged Violations referenced herein and shall, once executed, remove the *lis pendens* currently encumbering the Property.

#### SEVERABILITY

25. If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of this Agreement shall not be affected thereby and shall remain in full force.



TERMINATION

26. This Agreement shall remain in force and effect until all obligations and terms referred to herein have been completed or satisfied.

27. This Agreement will be executed in counterparts, each of which shall constitute one and the same instrument, and shall be deemed effective as of the date the last party signs the Agreement.

FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jay G. Sakai, Director  
Water Management Administration  
Maryland Department of the Environment

FOR BALTIMORE COUNTY, MARYLAND

\_\_\_\_\_  
Date

\_\_\_\_\_  
Adam M. Rosenblatt  
Assistant County Attorney

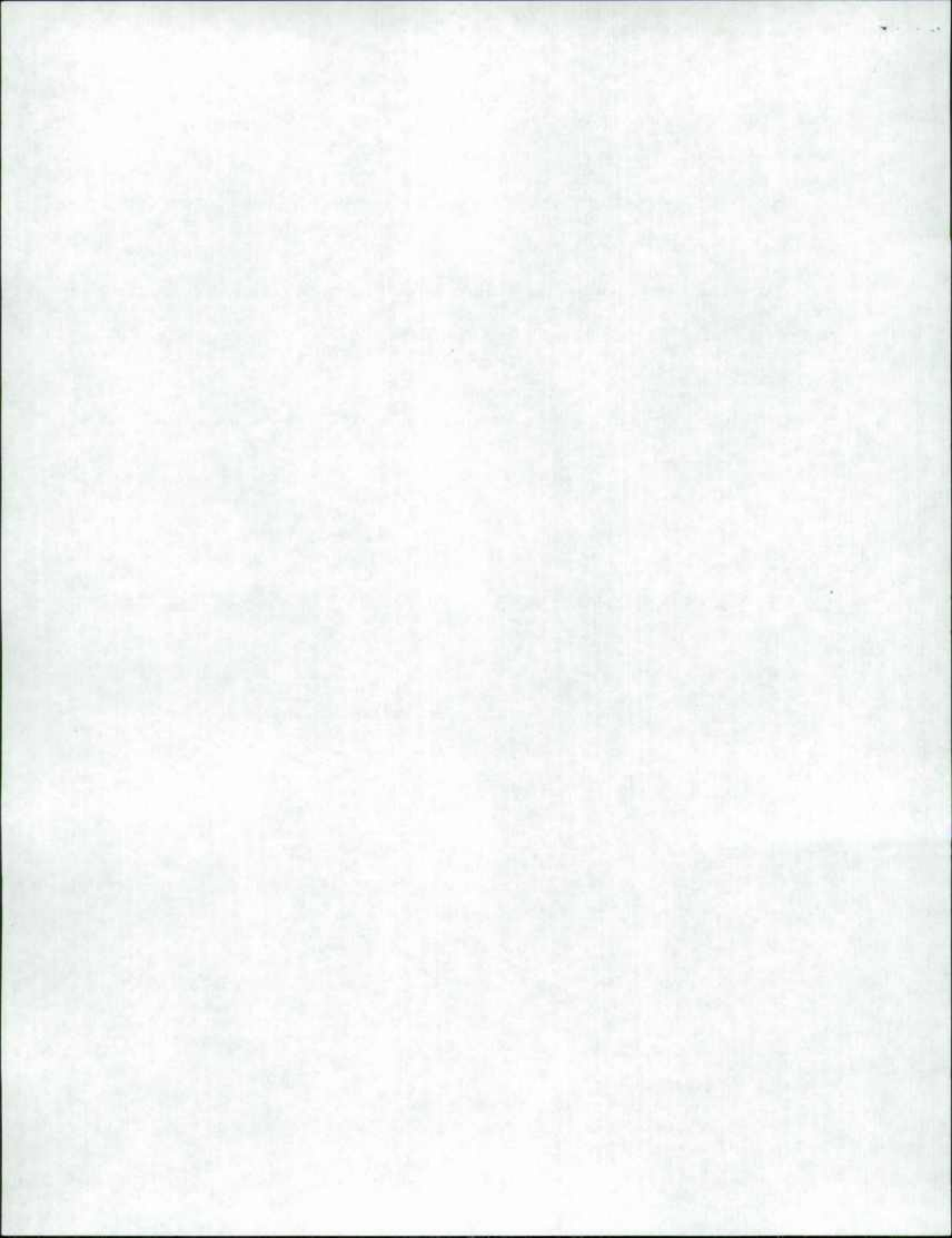
FOR REGAL BANK & TRUST:

\_\_\_\_\_  
Date

\_\_\_\_\_  
John C. Bryan, Jr., Esq.  
Vice President  
Compliance and Special Assets  
Regal Bank & Trust

Approved this \_\_\_\_ day of September, 2009,  
as to form and legal sufficiency.

\_\_\_\_\_  
Adam D. Snyder  
Assistant Attorney General





Aquilano

STATE OF MARYLAND  
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

STATE OF MARYLAND,  
DEPARTMENT OF THE  
ENVIRONMENT  
1800 Washington Boulevard  
Baltimore, Maryland 21230,

Plaintiff,

v.

DONALD AQUILANO, JR.  
1510 Galena Road  
Baltimore, Maryland 21221,

Defendant.

Case No.

C-09-01359

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CIRCUIT COURT  
BALTIMORE COUNTY

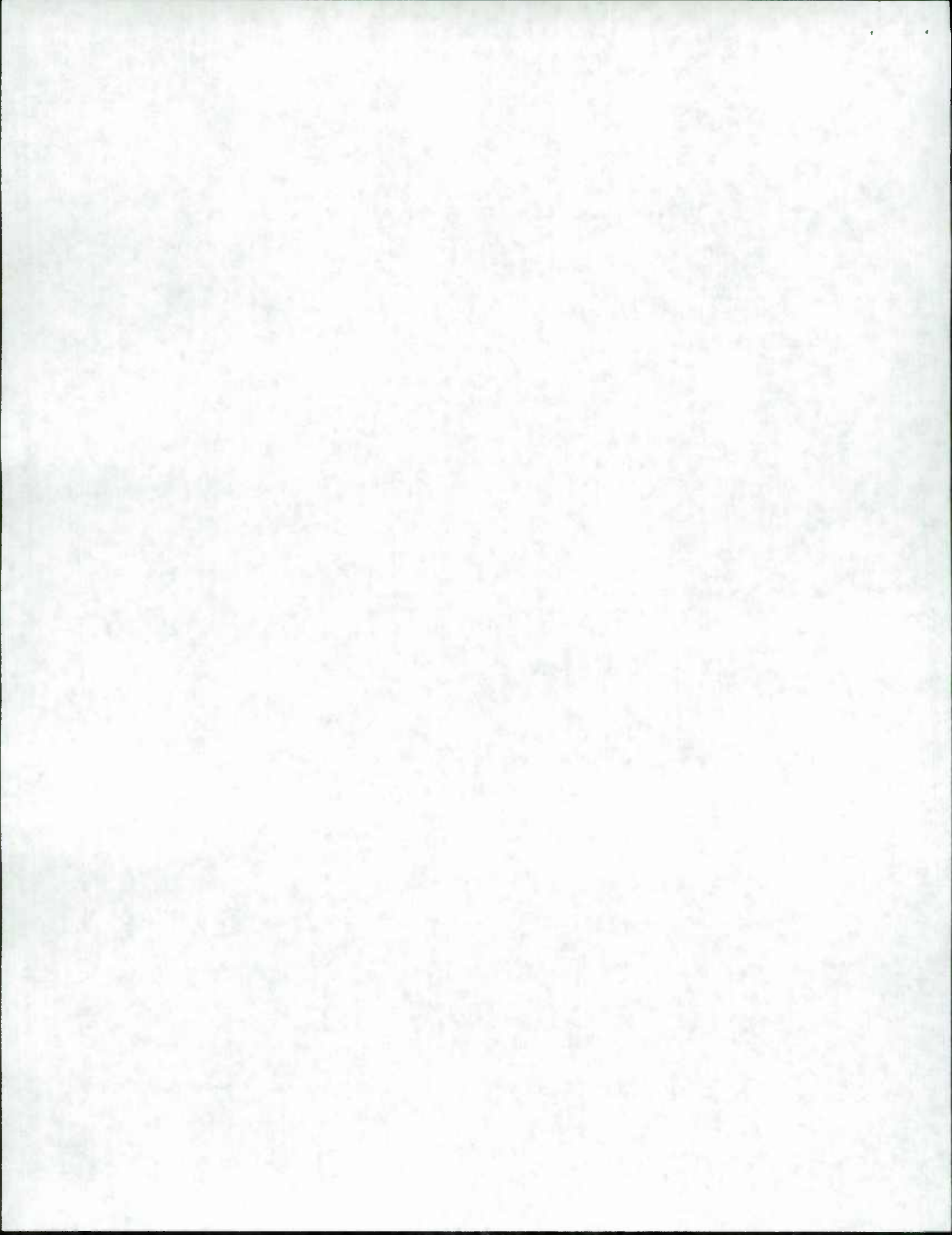
COMPLAINT

The State of Maryland, Department of the Environment ("MDE" or "the Department"), by and through its attorneys Douglas F. Gansler, Attorney General of Maryland, and Adam D. Snyder, Assistant Attorney General, files this Complaint seeking injunctive relief and civil penalties against Donald Aquilano, Jr. ("Aquilano"), and states:

**INTRODUCTION**

1. The Department brings this action to address violations of the Tidal Wetlands Act, Md. Code Ann., Envir. § 16-101 *et seq.* ("the Act"), carried out by Defendant at property located at 1510 Galena Road, Baltimore, Baltimore County, Maryland, 21221 (the "Site").

2. Specifically, Aquilano built, or arranged to have built, a concrete bulkhead at the Site, placed fill material into State wetlands behind the bulkhead, and built, or arranged to have built, a pier and pilings at the Site, all without first obtaining a license under the Act and without complying with restrictions on the extent of the size and channelward encroachment of the structures.



3. Defendant, at all times relevant to this Complaint, engaged in the filling of State tidal wetlands in violation of Maryland law and regulations. Pursuant to § 16-502(a) of the Environment Article, the Department seeks a civil penalty of \$10,000 from Aquilano for each of four violations involved in the construction of the bulkhead, fill, pier, and pilings, for an aggregate civil penalty of \$40,000.

#### **JURISDICTION AND VENUE**

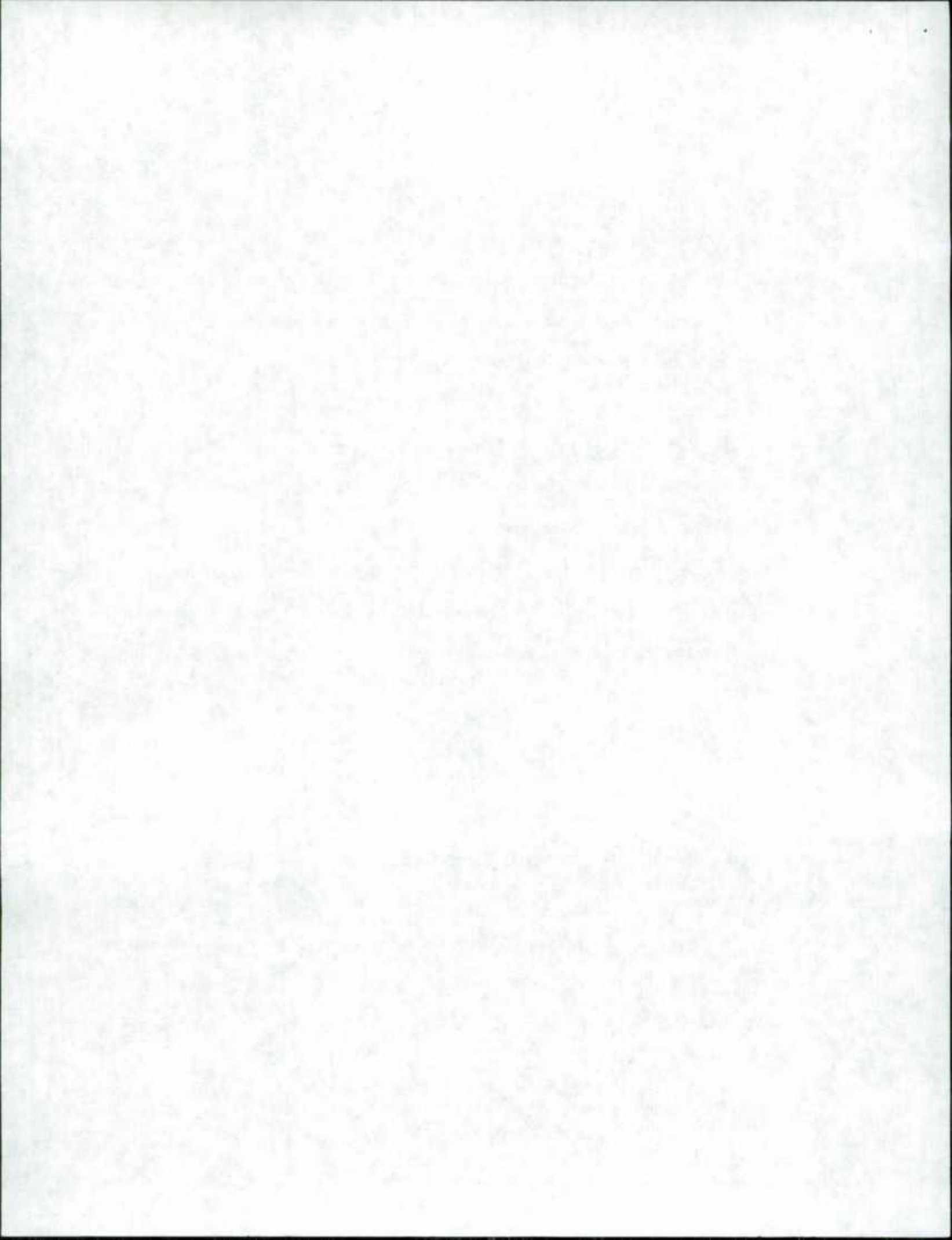
4. This Court has jurisdiction pursuant to §§ 6-102 and 6-103 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, as Defendant has an interest in property and/or conducted business in Maryland at all times relevant to this Complaint.

5. This Court is the proper venue for this action pursuant to § 6-201 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because Defendant owns property and/or are engaged in activities relevant to this Complaint in Baltimore County, Maryland.

#### **PARTIES**

6. Plaintiff is a State agency within the Executive Branch of the State of Maryland. The Secretary of the Department of the Environment is charged with preserving the tidal wetlands of the State, preventing their loss and despoliation, and achieving a net resource gain in tidal wetlands acreage and function by enforcing the laws and regulations concerning tidal wetlands throughout the State. The Department's responsibility includes the processing of applications for licenses to conduct activities in or over State tidal wetlands and the construction, reconstruction, or repair of structures on State tidal wetlands, pursuant to Title 16 of the Environment Article, Annotated Code of Maryland.

7. Aquilano is the owner of the Site and either constructed, or arranged for the



construction of, the bulkhead, fill, and pier structures that are at issue in this Complaint.

8. Defendant, his agents or assigns, at all times relevant to this Complaint, engaged in the filling of State tidal wetlands without proper permits or approvals under the Tidal Wetlands Act.

### REGULATORY AUTHORITY

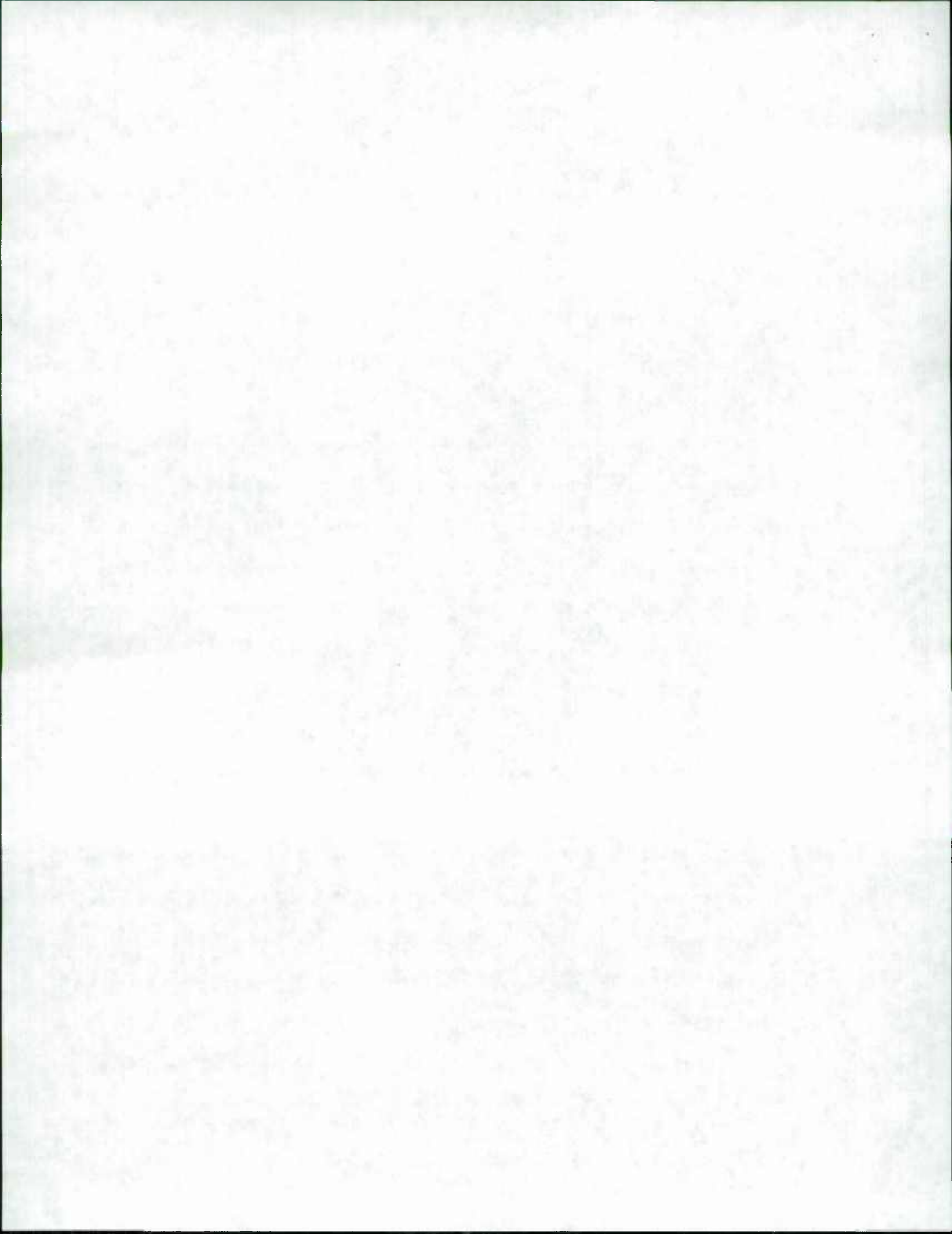
9. The State's regulatory scheme regarding State tidal wetlands is contained in Title 16 of the Environment Article. The law and its implementing regulations prohibit, among other things, the dredging or filling of tidal wetlands, or the construction of any structure in, on, over, or under tidal wetlands, without a license. Md. Code Ann., Envir. § 16-202(a); COMAR 26.24.02.01; 23.02.04.04B.

10. "State tidal wetlands" means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Md. Code Ann., Envir. § 16-101(n); COMAR 26.24.01.02(52). The State owns all State tidal wetlands not patented into private ownership prior to 1862 and holds them in trust for all Maryland citizens.

11. "Mean high water line" means the line where the land meets the water surface at the elevation of mean high water. COMAR 26.24.01.02(32).

12. "Filling" means (a) the displacement of tidal water by the depositing into State or private wetlands of soil, sand, gravel, shells, or other materials, including pilings, piers, boathouses, deadweights, or riprap; (b) the artificial alteration of tidal water levels by any physical structure, drainage ditch, or otherwise; and (c) storm drainage projects which flow directly into tidal waters of the State. Md. Code Ann., Envir. § 16-101(f); COMAR 26.24.01.02(18).

13. "License" means written authorization by the Board of Public Works under § 16-202



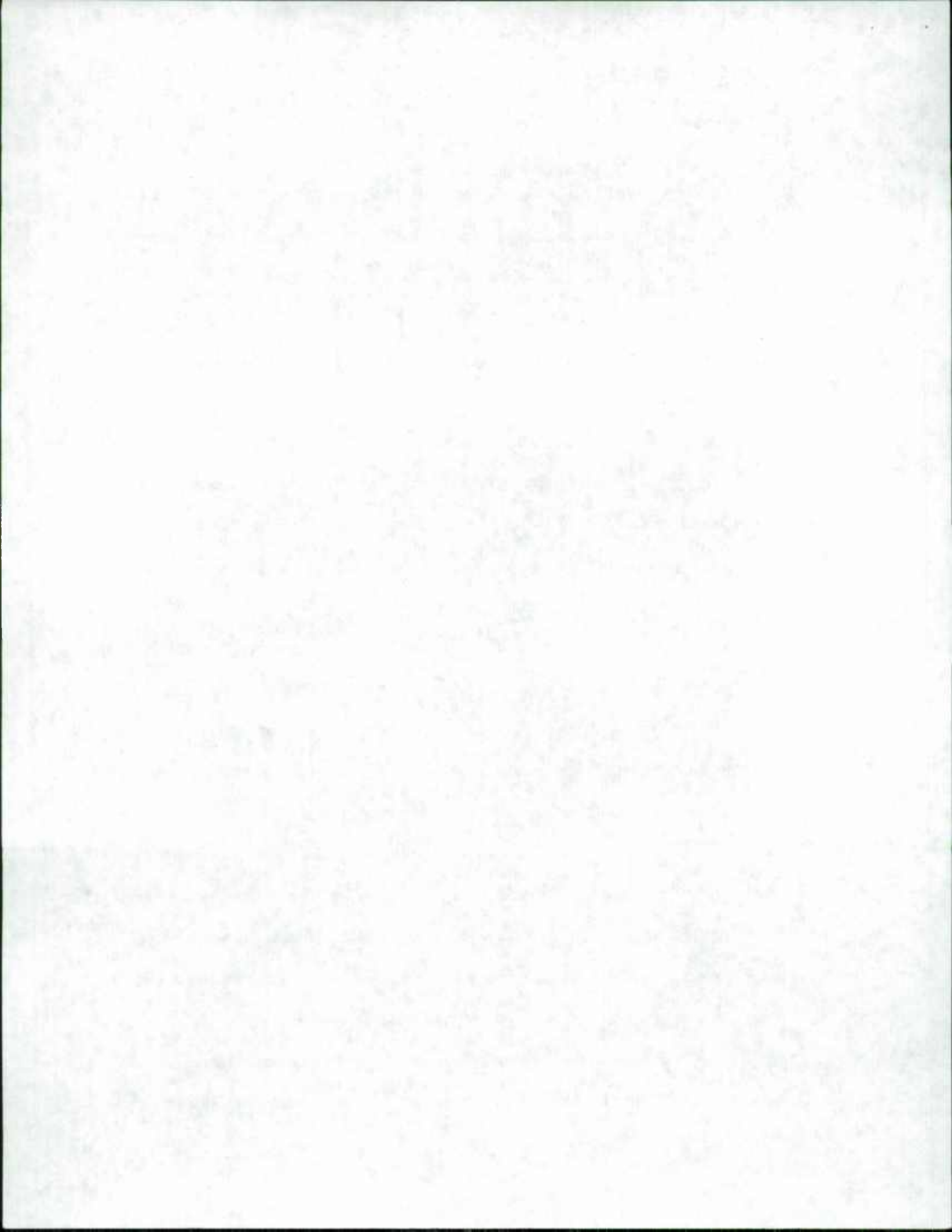
of the Environment Article to dredge, fill, construct structures, or conduct certain other activities involving State tidal wetlands. Once issued, a license conveys a limited property interest in the submerged lands. COMAR 26.24.01.02(27).

14. Pursuant to COMAR 23.02.04.04A, the Board of Public Works has delegated to the Department its authority to issue licenses and other authorizations for a variety of structures, including piers and pilings. *See also* COMAR 26.24.01.03.

15. On February 14, 1994, the Department established regulatory criteria for residential piers and pilings that limit the number, width, and total area of piers, finger piers, and their associated pilings. COMAR 26.24.04.02A & B. Piers that exceed 100 feet channelward of mean high water require the issuance of a license. *See* COMAR 26.24.04.02A(10) (exempting piers below 100 feet in length, under certain conditions).

16. Department regulations establish an order of preference for shoreline erosion control measures, beginning with non-structural measures such as marsh creation, proceeding on to stone revetments, and ending with bulkheads as the least preferable means of shoreline stabilization. COMAR 26.24.04.01C(5). The Department authorizes the construction of replacement bulkheads under a streamlined General License when there is an existing functional bulkhead at the site and the new bulkhead extends no further than eighteen inches channelward of the existing bulkhead. COMAR 26.24.02.04B(11). Bulkheads that encroach into tidal wetlands in excess of 3 feet beyond the mean high water line are prohibited, unless a design report verifies the necessity for the encroachment, and that other structural and nonstructural alternatives have been considered and determined to be impractical. COMAR 26.24.04.01C(4).

17. Bulkheads and other structural shoreline erosion control measures shoreline must be constructed with materials such as stone or broken concrete, wood, metal, plastic, or other





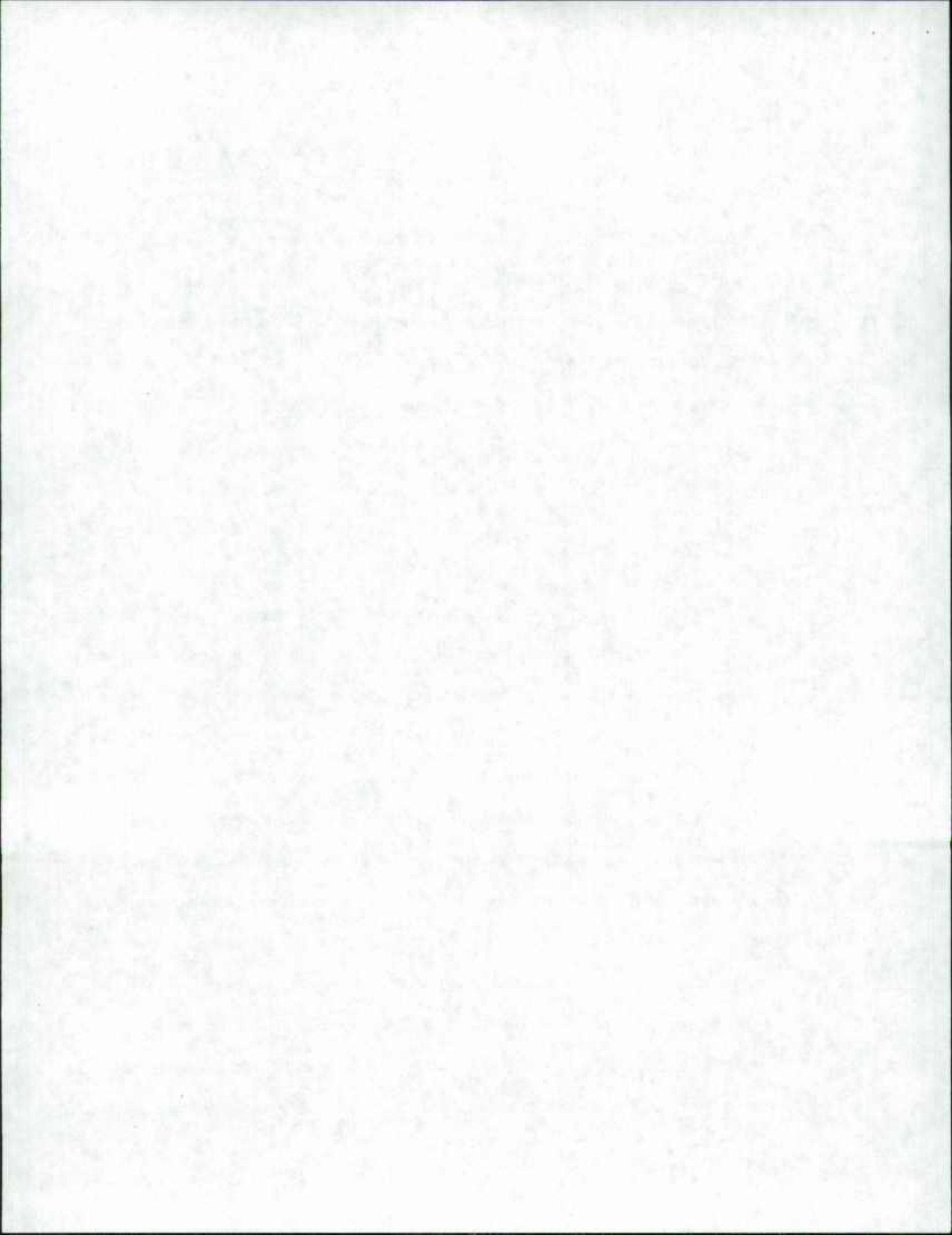
similar materials that are of adequate size, weight, and strength to function as intended, free of protruding objects, and selected because they minimize impacts to water quality and plant, fish, and wildlife habitat. COMAR 26.24.04.01C(8). The material used to backfill behind the bulkhead must be free of materials such as junk, metal, tree stumps, logs, or other unsuitable materials. COMAR 26.24.04.01C(9).

18. The Department enforces the tidal wetlands statute in accordance with § 16-502 of the Environment Article. Section 16-502(a)(1) provides for the imposition of civil penalties up to \$10,000 for each violation of Title 16, or any regulation, permit, license or order issued thereunder.

#### **FACTUAL ALLEGATIONS**

19. The Site is an approximately 0.25-acre residential lot with approximately 41 feet of frontage on the Back River, a tidal river. Aerial photographs indicate that, between 2002 and 2007, the Site was not improved with either a pier or a functional bulkhead.

20. On March 20, 2008, Mr. Thomas Krispin, an inspector with the Baltimore County Department of Environmental Protection and Resource Management (DEPRM), called in a complaint to MDE concerning the construction of a concrete bulkhead within tidal wetlands at the Site without a permit. John Hurt, an MDE inspector, inspected the Site on the same day and discovered that a 41-foot long concrete bulkhead had been constructed across the front of the Site approximately 24 feet channelward of the shoreline. The area behind the bulkhead was being backfilled with material that appeared to be a mix of earthen fill, crushed concrete, and asphalt millings. A Potts & Callahan truck was on site to dump additional millings but was turned away by Mr. Aquilano. Mr. Hurt issued Site Complaint and Order No. SC-O-08-0716 ordering the removal of the concrete bulkhead and restoration of the shoreline to its pre-existing



condition.

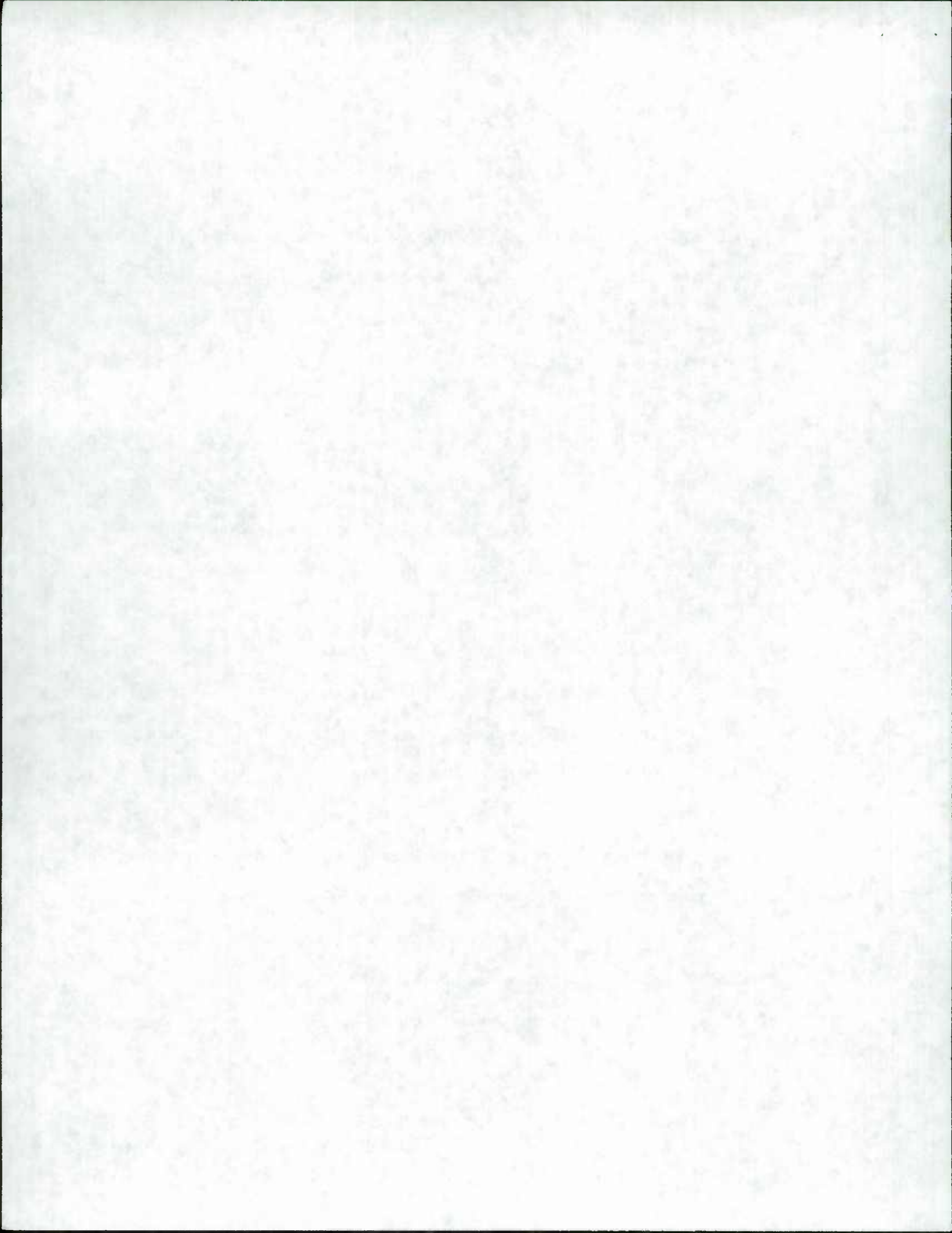
21. During the March 20, 2008, inspection, Mr. Hurt also observed that the Site had been improved with a pier, platform, and pilings. Subsequent to the initial inspection, the Site was re-assigned to another MDE inspector, Mr. Tom Blair, who performed a search of MDE's wetland permit database and learned that no permits had ever been issued for the pier and pilings or the concrete bulkhead and fill.

22. On June 18, 2008, Mr. Aquilano met with MDE and the owners of neighboring properties with similar violations to discuss the potential resolution of the violations.

23. On July 2, 2008, Mr. Blair returned to the Site and measured the pier to be 5'10" x 155' with a 16' x 10' platform and a 1'10" x 10' pier extension, with a total channelward encroachment of 177 feet from mean high water.

24. The construction of the bulkhead, the backfilling of the bulkhead, and the construction of the pier and pilings constitute the filling of, and placement of structures in and over, State tidal wetlands. Neither Aquilano nor anyone on his behalf obtained authorization under the Tidal Wetlands Act for any of the work performed.

25. Section § 16-502(a) of the Environment Article authorizes MDE to seek, and this Court to impose, civil penalties of up to \$10,000 for any violation of the Tidal Wetlands Act or its implementing regulations. The work carried out, or arranged for, by Aquilano constitutes four separate violations of the Tidal Wetlands Act and its implementing regulations: (a) construction of a bulkhead without a license, in violation of § 16-202 of the Environment Article; (b) the filling of State wetlands behind the concrete bulkhead without a license, in violation of § 16-202 of the Environment Article; (c) construction of a pier longer than 100 feet without a license, in violation of § 16-202; and (d) installation of pilings without a license, in violation of §



**WHEREFORE**, the Department asks that this Court, pursuant to § 16-502(a) of the Environment Article:

- (a) Impose a second civil penalty of \$10,000 on Aquilano under Count II; and
- (b) Issue an injunction requiring Aquilano to remove the fill that was placed behind the bulkhead and restore the area to its pre-existing condition.

**COUNT III**  
**CIVIL PENALTIES AGAINST AQUILANO FOR THE UNAUTHORIZED**  
**CONSTRUCTION OF A PIER IN TIDAL WETLANDS**

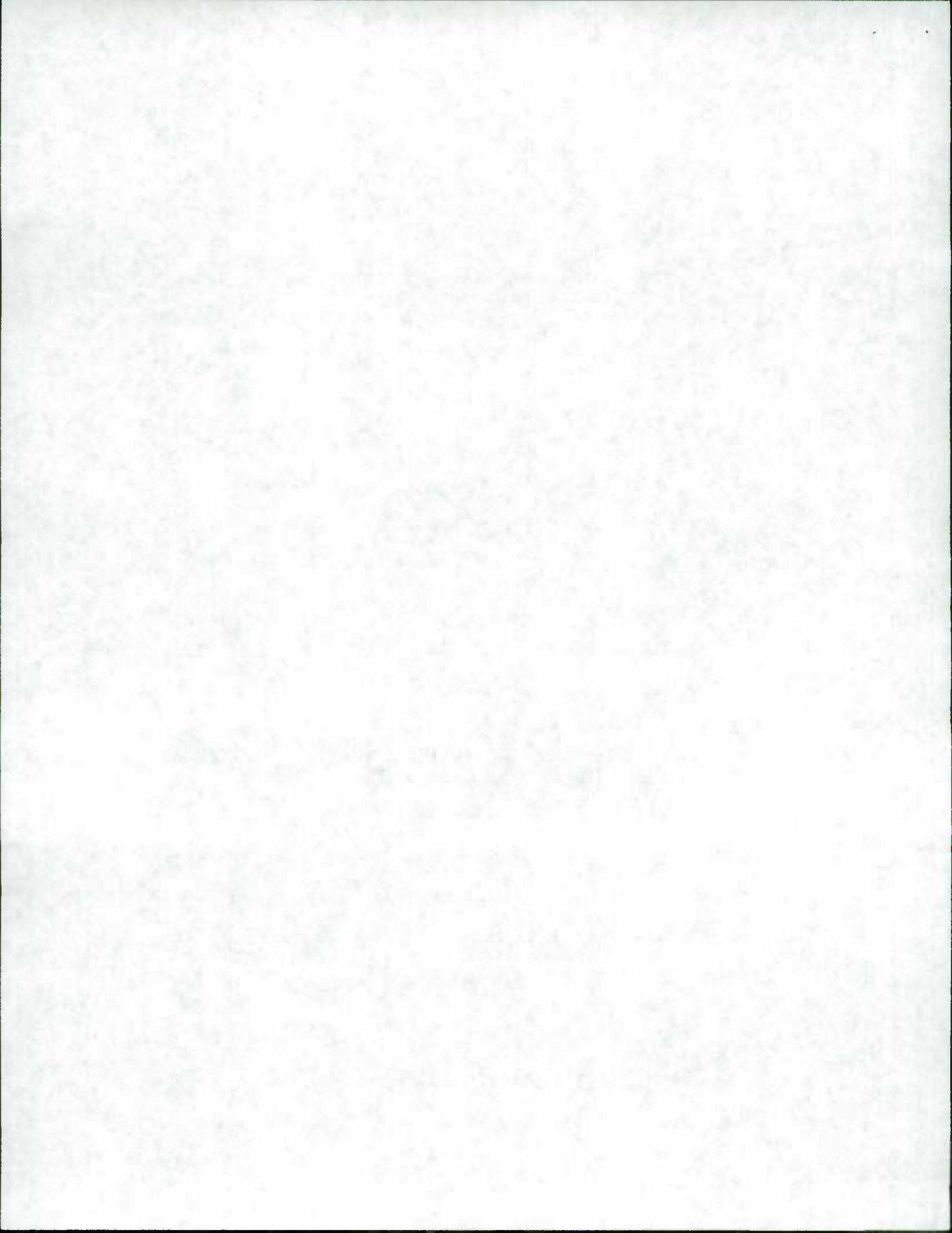
- 31. Paragraphs 1 through 29 are incorporated herein by reference.
- 32. The construction of a pier greater than 100 feet in length without first obtaining a license under the Act is a violation of § 16-202 of the Environment Article and its implementing regulations.

**WHEREFORE**, the Department asks that this Court, pursuant to § 16-502(a) of the Environment Article, impose a third civil penalty of \$10,000 on Aquilano under Count III.

**COUNT IV**  
**CIVIL PENALTIES AGAINST AQUILANO FOR THE UNAUTHORIZED**  
**CONSTRUCTION OF PILINGS IN TIDAL WETLANDS**

- 33. Paragraphs 1 through 31 are incorporated herein by reference.
- 34. The installation of four pilings at the Site without first obtaining a license under the Act is a violation of § 16-202 of the Environment Article and its implementing regulations.

**WHEREFORE**, the Department asks that this Court, pursuant to § 16-502(a) of the Environment Article, impose a fourth civil penalty of \$10,000 on Aquilano under Count IV.



Respectfully submitted,

DOUGLAS F. GANSLER  
Attorney General of Maryland



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Adam D. Snyder  
Assistant Attorney General  
Office of the Attorney General  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230  
(410) 537-3034

*Counsel for the Maryland Department of the  
Environment*

