STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Andrew Flint, Bureau of Remediation and Waste Management

DATE: July 16, 2009

RE: Administrative Consent Agreement, Precision Paving

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Statute and Rule Reference: *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 543, states in relevant part, "The discharge of oil into or upon any…lake, pond, river, stream, sewer, surface water drainage, ground water or other waters of the State or any public or private water supply or onto lands adjacent to, on, or over such waters of the State is prohibited."

The *Oil Spill Prevention and Pollution Control Law*, 38 M.R.S.A. § 548, states in relevant part: "Any person discharging or suffering the discharge of oil in a manner prohibited by section 543 shall immediately undertake to remove the discharge to the commissioner's satisfaction…"

Locations: State Route 15 and an unnamed stream tributary to Moosehead Lake, Greenville.

Description: Precision Paving has entered into the attached Consent Agreement as proposed by Department staff in order to resolve violations of 38 M.R.S.A. §§ 543 and 548. While transporting over-height equipment on State Route 15, Precision Paving caused or suffered a prohibited discharge of oil to soil, a storm drain, and a stream tributary to Moosehead Lake in Greenville, Maine, and failed to promptly undertake the removal of this oil discharges to the Commissioner's satisfaction.

Environmental Issues: Oil discharges and oil-contaminated soil and water pose threats to public health and the environment, including threats to surface water and groundwater used as a private drinking water supply.

Department Recommendation: The Department recommends acceptance of this Administrative Consent Agreement as proposed, stipulating a monetary penalty of three thousand five hundred dollars ($3,500.00), and with the requirements that Precision Paving clean up any future oil discharges immediately to the Commissioner's satisfaction. Using its penalty guidance policy, the Department originally calculated a monetary penalty of $13,000.00 based on the severity and environmental harm of violations. However, Precision Paving provided financial documents that demonstrated an inability to pay the proposed amount. As a result, a significant adjustment was made to the proposed penalty to account for Precision Paving's unique financial situation.

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

PRECISION PAVING	)	
BANGOR, MAINE	)	**ADMINISTRATIVE CONSENT**
PENONSCOT COUNTY	)	**AGREEMENT**
OIL DISCHARGE PREVENTION AND	)	**(38 M.R.S.A. § 347-A)**
POLLUTION CONTROL	)	

This Agreement, by and among Precision Paving, 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. Precision Paving is a Maine corporation that operates a paving business with its principal location of business at 977 Odlin Road in the City of Bangor, Maine. Paul R. Theriault ("Theriault") is President of Precision Paving.

2. Throughout the period of time addressed by this Agreement, Precision Paving was subject to the following Maine environmental standards:

   a. *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 543. This section prohibits the unlicensed discharge of oil to surface water, ground water, surface water drainages, sewers, and lands adjacent to, on, or over such waters of the State.

   b. *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 548. This section requires any person discharging or suffering the discharge of oil in a manner prohibited by 38 M.R.S.A. § 543 to immediately undertake to remove the discharge to the Commissioner's satisfaction.

3. On May 22, 2008, Town of Greenville Police Department ("GPD") staff documented oil discharges to the east-bound lane of State Route 15/6 between Greenville Junction and Downtown Greenville, the parking lot of the Greenville One Stop located at 241 Pritham Avenue (Route 15/6), storm water drains located adjacent to Route 15, and a stream tributary to Moosehead Lake.

4. GPD staff investigated multiple eyewitness reports and physical evidence, and determined that the prohibited discharges of oil were caused by a Precision Paving tractor

trailer rig driven by Precision Paving employee Theriault that was hauling a Daewoo 300LL de-barking machine on May 22, 2008. GPD staff determined that the de-barking machine Precision Paving was hauling had struck the Montreal, Maine & Atlantic Railroad bridge that crosses Route 15/6 in Greenville, causing damage to the bridge and a hydraulic hose on the de-barking machine. The de-barking machine was operating at the time of the incident, and the damage to the hose caused the discharge of oil described above.

5. After striking the bridge, Theriault discovered that the debarking machine was discharging oil, stopped at the Greenville One Stop parking lot approximately one mile from the bridge, and subsequently turned off the machine to prevent further oil discharge from the machine's hydraulic system. Theriault contacted other Precision Paving staff by two-way radio, advised them of the oil discharge and arraigned for Precision Paving staff to assist Theriault with oil spill mitigation and removal activities. Precision Paving staff report undertaking limited oil spill clean up activities at the Greenville One Stop.

6. Approximately one hour after responding to the report of the rig striking the bridge and the prohibited discharge of oil described above, GPD staff discovered the Precision Paving tractor trailer and de-barking machine in Lily Bay Township, approximately 12 miles from the initial spill location. GPD staff observed evidence of oil discharge and damage to the de-barking machine's hydraulic system. Several minutes after discovering the Precision Paving tractor trailer, GPD staff made contact with Theriault in Lily Bay Township.

7. Neither Precision Paving nor Theriault reported the discovery of the oil discharge to the Department or to Greenville public safety officials. No responsible party reported to the Department the prohibited discharge of oil described above.

8. A review of the Department's records demonstrates that no waste discharge license authorizing the discharge of oil or other pollutants to the Greenville storm water drainage system or to surface waters has been issued by the Department to Precision Paving.

9. A review of the Department's records demonstrates that Precision Paving failed to immediately undertake sufficient efforts to clean up the discharge of oil described above.

10. By discharging oil as described in Paragraphs 3 - 8 of this Agreement, Precision Paving suffered or caused a prohibited discharges of oil in violation of 38 M.R.S.A. § 543.

11. By failing to immediately undertake to remove the prohibited oil discharges described in Paragraph 3 - 9 of this Agreement to the Commissioner's satisfaction, Precision Paving violated 38 M.R.S.A. § 548.

12. Upon discovery of the spill described above, GPD staff contacted Greenville Fire Department staff, who subsequently responded and cleaned up the oil spill to the Department's satisfaction.

13. On August 22, 2008, Theriault was adjudicated of operating a vehicle over height restrictions on May 22, 2008, as described above. On December 16, 2008, Precision Paving was convicted in Dover-Foxcroft District Court of failing to immediately report the May 22, 2008 motor vehicle accident, described above, to a law enforcement agency.

14. On January 23, 2009, the Department issued a Notice of Violation to Precision Paving for the activities described in Paragraphs 3-11 of this Agreement, in accordance with 38 M.R.S.A. § 347-A(1)(B).

15. 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 ("Board"), which is part of the Department.

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

17. To resolve the violations referred to in Paragraphs 3 - 11 of this Agreement, Precision Paving agrees to:

A. In the future, clean up any oil spills immediately to the Department's satisfaction, including immediately reporting all oil spills to the Department of Environmental Protection within two (2) hours of discovery. This may be done by calling 1-800-482-0777 (24 hours). The Department will make the decision on how much clean up is needed. This also includes taking actions to control and clean up a spill before Department staff is notified or arrives on site, and properly disposing of oil and associated waste; and

B. Immediately upon signing this Agreement, pay to the *Treasurer, State of Maine, c/o the Maine Coastal and Inland Surface Oil Clean-up Fund* a civil monetary penalty in the amount of three thousand five hundred dollars ($3,500.00).

18. The Department and Office of the Attorney General grant a release of their causes of action against Precision Paving for the specific violations listed in Paragraphs 3 - 11 of this Agreement on the express condition that all actions listed in Paragraph 17 of this Agreement are completed in accordance with the express terms and conditions of this Agreement, except that no release is granted for any contamination of surface waters, ground waters, soils, sediment or ambient air as a result of the violations set forth in this Agreement. This Agreement shall not prohibit the Department from requiring additional corrective measures or other remedial actions if the Department determines that such action is necessary to protect public health, safety, or the environment. This release shall not become effective until all requirements of this Agreement are satisfied.

19. Non-compliance with this Agreement voids the release set forth in Paragraph 18 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.

20. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, laws, and orders including but not limited to licensing requirements.

21. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of five (5) pages:

PRECISION PAVING	)	
BANGOR, MAINE	)	ADMINISTRATIVE CONSENT
PENONSCOT COUNTY	)	AGREEMENT
OIL DISCHARGE PREVENTION AND	)	(38 M.R.S.A. § 347-A)
POLLUTION CONTROL	)	

PRECISION PAVING

BY: Paul Theriault DATE: 6-19-09
PAUL R. THERIAULT, PRESIDENT

MAINE BOARD OF ENVIRONMENTAL PROTECTION

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

MAINE OFFICE OF THE ATTORNEY GENERAL

BY:_____ DATE:_____
MARY M. SAUER, ASSISTANT ATTORNEY GENERAL

Precision paving aca/djp