



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: February 18, 2010
RE: Administrative Consent Agreement, Douglas Henderson

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...lands adjoining the seacoast of the State, or 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. § 551(5), states in relevant part: “Money from the Maine Coastal and Inland Surface Oil Clean-up Fund shall be disbursed for the following purposes and no others:...All costs...involved in the removal of oil, the abatement of pollution and the implementation of remedial measures including restoration of water supplies, related to the discharge of oil, petroleum products and the their by-products covered by this subchapter, including all discharges from interstate pipelines and other discharges prohibited by section 543.”

The *Oil Spill Prevention and Pollution Control Law*, 38 M.R.S.A. § 552, states in relevant part: “Any person...who permits or suffers a prohibited discharge or other polluting condition to take place is liable to the State for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D, E, H, and I or other damage incurred by the State, including damage for injury to, destruction of, or loss of use of natural resources and the reasonable costs of assessing natural resource damage.”

The *Rules for Underground Oil Storage Facilities*, 06-096 CMR 691(11)(A)(1)(b) and Appendix J(3), state in relevant parts: “The owner or operator of an underground oil storage facility or tank that has been or is intended to be out-of-service for a period of more than 12 months must close the facility or tank in accordance with this section. Closure must include: Emptying and cleaning tanks of all liquids and accumulated sludge; Removal of tanks and facilities must be conducted in the sequence required in Appendix J to the satisfaction of the commissioner. All liquid that can be pumped out must be removed, and any liquids that cannot be used for their originally intended purpose must be disposed of in accordance with the department Waste Oil Management Rules, Chapter 860.”

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Location: 278 Station Road, Easton, Maine

Description: Douglas Henderson (“Henderson”) 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 06-096 CMR 691(11)(A)(1)(b) and Appendix J(3). For several years prior to July 28, 2009, Henderson stored excavated and abandoned underground oil storage tanks (“UST”) aboveground at 278 Station Road, Easton, Maine. As of July 28, 2009, one of these UST contained approximately 400 gallons of oil. By failing to remove all liquids from an abandoned UST at the time of their removal from the ground and prior to storage or disposal, Henderson violated the *Rules for Underground Oil Storage Tank Facilities*, 06-096 CMR 691.11 and Appendix J. On July 28, 2009, Henderson or his agents caused the prohibited discharge of approximately 400 gallons of oil during the disposal of the UST containing oil. Henderson and the Department subsequently took action to remove this discharge to the Commissioner’s satisfaction. Via the proposed Agreement, Henderson has agreed to reimburse the Department clean-up costs in the amount of four thousand two hundred twenty eight dollars and thirty one cents (\$4,228.31).

Environmental Issues: Oil discharges and oil-contaminated soil and water at the site pose a threat to public health and the environment, including threats to ground water used as a drinking water supply at a residence located approximately 350 feet from the discharge site.

Department Recommendation: After performing an evaluation of Mr. Henderson’s ability to pay a higher amount, the Department recommends acceptance of this Administrative Consent Agreement as proposed, including Mr. Henderson’s agreement to:

- a. Clean up any future 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;
- b. Reimburse the Department’s outstanding investigation and clean up costs in the amount of four thousand two hundred twenty eight dollars and thirty one cents (\$4,228.31); and
- c. Pay a monetary penalty of one thousand eight hundred dollars (\$1,800.00).

On January 8, 2010, Henderson submitted an initial payment of three hundred twenty eight dollars and thirty one cents (\$328.31). Henderson will pay the remaining penalty and clean up costs totaling six thousand dollars (\$5,700.00) by making nineteen (19) payments in the amount of three hundred dollars (\$300.00) each, with the first payment due on February 1, 2010, and subsequent payments due on the first day of each month thereafter.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

DOUGLAS R. HENDERSON)
EASTON, MAINE) ADMINISTRATIVE CONSENT
AROOSTOOK COUNTY) AGREEMENT
OIL DISCHARGE PREVENTION AND) (38 M.R.S.A. § 347-A)
POLLUTION CONTROL)

This Agreement, by and among Douglas R. Henderson ("Henderson"), the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General ("AG"), 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. Henderson is an individual who resides in Easton, Maine.
2. Henderson and Janice A. Henderson own real property ("Henderson property") described in a deed recorded in Book 3841, Page 164 at the Aroostook County Registry of Deeds.
3. Raymond Kennedy ("Kennedy") owns real property ("Kennedy property") described in a deed recorded in Book 4611, Page 185 at the Aroostook County Registry of Deeds and located at 278 Station Road in the Town of Easton, Maine. The Kennedy property is adjacent to the Henderson property.
4. Throughout the period of time addressed by this Agreement, Henderson 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. §§ 551 and 552. These sections state that any person who permits or suffers a prohibited discharge or other polluting condition to take place is liable to the State for all disbursements from the Maine Coastal and Inland Surface Oil Clean-up Fund involved in the removal of oil, the abatement of pollution and the implementation of remedial measures.
C. Rules for Underground Oil Storage Facilities, 06-096 CMR 691(11)(A)(1)(b) and Appendix J(3). These sections require that any

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abandoned underground oil storage tank (“UST”) be emptied of all liquids and sludge, the oil and sludge must be disposed of in accordance with the *Waste Oil Management Rules*, 06-096 CMR 860.

5. Henderson is a former Maine Certified Underground Oil Storage Tank Installer (expired license #217) and is president of the administratively suspended Henderson Oil Company, an oil storage tank installation, removal, and heating oil business that formerly operated at the Henderson property.
6. Prior to July 28, 2009, Henderson stored three excavated and abandoned USTs on the Henderson property. These USTs were located 350 feet west of Kennedy’s residence on the Kennedy property.
7. On or around July 28, 2009, Henderson hired D & N Metals Co. Ltd. (“D & N”), a New Brunswick metal recycling corporation, to remove the USTs from the Henderson property for disposal as scrap metal. D & N staff reported that D & N had specifically agreed with Henderson to remove empty USTs from the Henderson property.
8. Upon moving one of the USTs at the Henderson property, D & N staff reported that the UST rolled over and rapidly discharged its contents of oil to the ground. Oil discharged from the UST to both the Henderson property and the Kennedy property. D & N staff rolled the UST over again in hopes of stopping the discharge. Upon inspection, D & N staff determined that nearly all of the oil contained in the UST had been discharged to the soil. D & N staff subsequently loaded the UST and left the site. D & N staff reports that Henderson was present at the Henderson property and Kennedy property during the events of July 28, 2009, described above.
9. At 7:10 PM on July 28, 2009, a member of Kennedy’s household reported to the Maine State Police the discovery of the prohibited discharge of oil at the Kennedy property. Department staff responded to the site and observed a discharge of heavy bunker C oil estimated to be in excess of 400 gallons at the Henderson property and Kennedy property.
10. Beginning on the evening of July 28, 2009, the Department undertook and subsequently completed clean up of the oil spill pursuant to the authority of 38 M.R.S.A. § 548. As a result of the clean up and disposal of the prohibited discharge of oil described above, to date, the Department has incurred investigation and clean up expenses in the amount of four thousand two hundred twenty eight dollars and thirty one cents (\$4,228.31).
11. Prior to Department staff’s inspection of the spill site on July 28, 2009, neither Henderson nor D & N had undertaken sufficient action to complete the removal of the discharge of oil described above, and neither Henderson nor D & N had reported to the

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Department the discovery of the oil discharges described above. On the morning of July 29, 2009, Henderson met with Department staff at the Department's Presque Isle office to discuss additional steps needed to cooperatively complete the removal of the oil discharge. Henderson subsequently hired contractors to complete the clean up of the oil discharge to the Department's satisfaction.

12. By discharging oil as described in Paragraph 8 of this Agreement, Henderson suffered or caused a prohibited discharge of oil in violation of 38 M.R.S.A. § 543.
13. By failing to remove all liquids and sludge from the abandoned UST described in Paragraph 8 of this Agreement, Henderson violated 06-096 CMR 691(11)(A)(1)(b) and Appendix J(3).
14. On August 24, 2009, the Department issued Henderson a Notice of Violation for the activities described in Paragraphs 8 – 13 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 8 – 13 of this Agreement, Henderson 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 in accordance with federal, state, and local requirements;
 - B. Pay to the Treasurer, State of Maine c/o the Maine Coastal and Inland Surface Oil Clean-up Fund the sum of six thousand twenty eight dollars and thirty one (\$6,028.31) as a civil monetary penalty and to reimburse the Department's investigation and clean up costs in the amount of four thousand two hundred twenty eight dollars and thirty one cents (\$4,228.31). The total amount due of \$6028.31 will be paid pursuant to the following schedule:

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1. Pay the amount of three hundred twenty eight dollars and thirty one cents (\$328.31) immediately upon signing this Agreement; and
2. Pay nineteen (19) payments in the amount of three hundred dollars (\$300.00) each, with the first payment due on February 1, 2010, and subsequent payments due on the first day of each month thereafter.

If any payment is more than ten (10) days late, the full outstanding balance of the unpaid penalty and reimbursement is immediately due and payable upon demand by the Department.

18. The Department and Office of the Attorney General grant a release of their causes of action against Henderson for the respective specific violations listed in Paragraphs 8 – 13 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. In the event that contamination from any oil discharge described above is found to threaten public health, safety or the environment, this Agreement shall not prohibit the Department from requiring additional corrective measures or other remedial actions the Department determines are 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.

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

DOUGLAS R. HENDERSON

Douglas R. Henderson DATE: *5 Jan 2010*
DOUGLAS R. HENDERSON

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