



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

IN THE MATTER OF:

SMOKEY'S GREATER SHOWS, INC. ) ADMINISTRATIVE CONSENT
YARMOUTH AND OXFORD, MAINE ) AGREEMENT
OIL DISCHARGE VIOLATIONS ) (38 M.R.S.A. § 347-A)
2011-092-O )

This Agreement, by and among Smokey's Greater Shows, Inc., 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. Smokey's Greater Shows, Inc. ("SGSI") is a Delaware corporation authorized to conduct business in Maine that operates a mobile carnival amusement ride business with headquarters in Bangor, Maine. George "Bud" Gilmore is the President SGSI.
2. Throughout the period of time addressed by this Agreement, SGSI 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 any coastal waters, estuaries, and lands adjoining the seacoast of the State, or into or upon any 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.
B. Oil Discharge Prevention and Pollution Control law, 38 M.R.S.A. § 548. This section require 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.

Yarmouth Oil Discharges (Spill # P-557-2011)

- 3. On or around July 17 - 18, 2011, SGSI staged carnival amusement ride equipment and vehicles at the William H. Rowe Elementary School parking lot ("Yarmouth Site"), located at 52 School Street in the Town of Yarmouth, Maine, for an event sponsored by the Town of Yarmouth and the Yarmouth Chamber of Commerce. The storm water

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207)760-3143

drainage system at the Yarmouth Site discharges from two outfalls directly to the Royal River.

4. On or around July 18, 2011, equipment and vehicles owned or operated by SGSI discharged oil at several locations at the Yarmouth Site. Photographs taken at the Yarmouth Site by an employee of the Town of Yarmouth document electrical equipment stored under a red trailer painted with the words "Smokey's Greater Shows Gen Set #208". Oil staining is observable in the photos on the rack that hold this electrical equipment, on the ground surface, and a storm drain grate located immediately below the trailer, equipment, and rack.
5. On or around 4:28 PM on July 19, 2011, an employee of the Town of Yarmouth reported to the Department the discovery of an oil discharge at the Yarmouth Site. SGSI represents to the Department that the Town of Yarmouth did not inform SGSI of its discovery.
6. Department staff investigated the report and observed multiple oil discharges and oil stains on soil, the surface of a parking lot, and a storm drain grate at the Yarmouth Site. Staff also observed oil sheen on the surface of water contained in the storm drain manway located below the oiled storm drain grate. Department staff photographed these oil stains and sheens, and took samples of oil from the Yarmouth Site for laboratory analysis.
7. On July 19, 2011, Department staff and the Town of Yarmouth staff took action to remove the discharges of oil at the Yarmouth Site described in Paragraphs 4 – 6, above, to the Commissioner's satisfaction pursuant to the authority granted in 38 M.R.S.A. § 548.
8. SGSI failed to report the discovery of the oil discharges described in Paragraphs 4 – 6, above.
9. SGSI failed to immediately undertake to remove the discharges described in Paragraphs 4 – 6, above, to the Commissioner's satisfaction.

**Oxford Oil Discharges (Spill # P-791-2011)**

10. On or around September 23 – 27, 2011, SGSI staged carnival amusement ride equipment and vehicles at the Oxford Fairground ("Oxford Site"), located at 68 Pottle Road in the Town of Oxford, Maine, at an event sponsored by the Oxford Fairgrounds Committee.
11. The Oxford Site is located on a Significant Ground Water Aquifer mapped by the Maine Geologic Survey ("MGS"), which is documented in MGS Open-File map Number 98-

215. The Oxford Site is also located within the modeled source water protection area of a public water supply well operated by the Norway Water District.
12. On or around September 22, 2011, Oxford Fair staff discovered a prohibited discharge of oil at the Oxford Site attributable to SGSI. On September 23, 2011, Oxford Fair staff reported to the Department the discovery of an oil discharge at the Oxford Site. Department staff investigated the report and met with SGSI and Oxford Fair staff at the Oxford Site. When Department staff arrived at the Oxford Site on September 23, 2011, SGSI staff was preparing to remove oil-contaminated soil from one location at the Oxford Site with hand tools. At this time, SGSI staff admitted to Department staff that equipment belonging to SGSI had failed and had caused a discharge of hydraulic oil to the soil at a single location at the Oxford Site. Department staff subsequently directed SGSI to mobilize heavy equipment to this spill site in order to remove the oil-contaminated soil to the Commissioner's satisfaction.
  13. On September 27, 2011, Department staff returned to the Oxford Site. Oxford Fair staff reported to Department staff the discovery of several additional locations at the Oxford Site where oil attributable to SGSI had discharged to soil. Department staff observed these oil discharges at locations distinct from the location of the oil discharge observed at the Oxford Site on September 23, 2011. Department staff determined that SGSI was responsible for the equipment located in the areas of the Oxford Site where oil discharges were discovered on September 27, 2011.
  14. SGSI staff removed and disposed of oil-contaminated soil from the Oxford Site under the Department's supervision on September 27, 2011. Oil-contaminated soil removed from the Oxford Site by SGSI staff included the oil contamination discovered on September 23 as well as the oil contamination discovered on September 27, 2011. The Department took clean-up and disposal action to mitigate these oil discharges pursuant to the authority granted in 38 M.R.S.A. § 548.
  15. To date, the Department has spent three hundred seventy nine dollars and twenty nine cents (\$379.29) for the disposal of oil-contaminated soil described in Paragraphs 12 – 14, above. SGSI is a Responsible Party within the meaning of 38 M.R.S.A. § 542(9-C) and is liable for the costs incurred by the Department in removing oil discharges at the Oxford Site pursuant to 38 M.R.S.A. §§ 552(2) and 551(6). SGSI must promptly reimburse the Department's investigation and clean up costs upon demand pursuant to 38 M.R.S.A. § 551(6).
  16. SGSI failed to report the discovery of the oil discharges described in Paragraphs 12 – 13, above.
  17. SGSI failed to immediately undertake to remove the discharges described in Paragraphs 12 – 13, above, to the Commissioner's satisfaction.

**Brunswick Oil Discharge (Spill # P-531-2010)**

18. On or around July 6, 2010, a truck belonging to SGSI had been repaired at the parking lot of the Brunswick Wal-Mart ("Brunswick Site"), located at 15 Tibbets Drive in the Town of Brunswick, Maine. During or subsequent to this repair activity, approximately 20 gallons of diesel fuel was discharged to the surface of the parking lot at the Brunswick Site. At some point after the discharge of oil began, Wal-Mart staff placed oil-absorbent speedi-dri around the truck in an effort to contain the discharge of oil.
19. On July 7, 2010, Wal-Mart staff contacted the Brunswick Fire Department ("BFD"), who in turn reported to the Department the discovery of a prohibited discharge of oil attributable to SGSI located at the Brunswick Site.
20. On July 7, 2010, SGSI staff were not present at the Brunswick Site when BFD staff responded to the report of an oil discharge. BFD staff subsequently cleaned up the Brunswick Site to the Commissioner's satisfaction.
21. SGSI failed to report the discovery of the oil discharges described in Paragraphs 18 – 19, above.
22. SGSI failed to take any action to remove the discharges described in Paragraphs 18 – 19, above.
23. By causing multiple discharges of oil to soil, ground water and surface water resources as described in this Agreement, SGSI violated 38 M.R.S.A. § 543.
24. By failing to immediately undertake to remove multiple prohibited discharges of oil to the Commissioner's satisfaction as described in this Agreement, SGSI violated 38 M.R.S.A. § 548.
25. On November 1, 2011 the Department issued a Notice of Violation to SGSI for the activities described in Paragraphs 4 – 7, 12 – 14 and 18 – 20 of this Agreement, in accordance with 38 M.R.S.A. § 347-A(1)(B).
26. On February 13, 2011, SGSI submitted to the Department a plan for undertaking the following oil spill awareness, reporting, mitigation, and prevention activities:
  - A. Development and implementation of oil spill mitigation and oil spill reporting training for SGSI staff;

- B. Acquisition of oil spill mitigation and clean-up materials (e.g., oil absorbent pads) for use by SGSI staff at mobile carnival ride operations; and
- C. Installation of physical spill control and prevention structures on SGSI's mobile equipment (e.g., oil drip collection pans).

SGSI represented to the Department that these efforts would cost approximately five thousand dollars (\$5,000.00) to complete.

- 27. Agreement shall become effective only if it is approved by the Commissioner and the Office of the Attorney General. In the event that this Agreement is not approved by the Commissioner, nothing herein shall be considered an admission by SGSI.
- 28. To resolve the violations referred to in Paragraphs 4 – 7, 12 – 14 and 18 – 20 of this Agreement, SGSI agrees to:
  - A. In the future, clean up any oil spills immediately to the Department's satisfaction, including immediately reporting 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, Attention Spill # P-791-2011, the sum of three hundred seventy nine dollars and twenty nine cents (\$379.29) to reimburse the Department's oil spill clean-up costs; and
  - C. Pay to the Treasurer, State of Maine c/o the Maine Coastal and Inland Surface Oil Clean-up Fund the sum of twenty five thousand dollars (\$25,000.00) as a civil monetary penalty in accordance with the following schedule:
    - (1) Pay the amount of three thousand dollars (\$3,000.00) immediately upon signing this Agreement.

AND

- (2) Pay four (4) payments in the amount of five thousand five hundred (\$5,500.00) each, with the first payment due on

**SMOKEY'S GREATER SHOWS, INC.  
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**6 ADMINISTRATIVE CONSENT  
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) (38 M.R.S.A. § 347-A)  
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July 15, 2012, and subsequent payments due on the 15<sup>th</sup> day of month each month thereafter.

If any payment is more than five (5) days late, pay to the *Treasurer, State of Maine*, upon demand by the Department, the amount of one hundred dollars (\$100.00) per day for each payment not made in accordance with the time specified in this Agreement.

If any payment is more than thirty (30) days late, the full outstanding balance of the unpaid penalty is immediately due and payable upon demand by the Department.

In the event that unanticipated circumstances arise during the course of this Agreement that renders SGSI unable to comply with the payment terms of Paragraph 28(C)(2) above, SGSI shall contact the Department at least ten (10) days before the payment due date and the Department may restructure the payment provisions of Paragraph 28(C)(2) for good cause. If discussions between deadline, the five day and thirty day grace periods in the previous paragraphs are tolled until the conclusion of the discussions.

29. The Department and Office of the Attorney General grant a release of their cause of action against SGSI for the specific violations listed in Paragraphs 4 – 7, 12 – 14 and 18 – 20 of this Agreement on the express condition that all actions listed in Paragraph 28 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.
30. Non-compliance with this Agreement voids the release set forth in Paragraph 29 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.
31. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders including but not limited to licensing requirements.
32. 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.

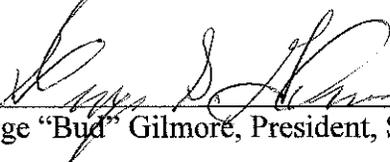
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**ADMINISTRATIVE CONSENT  
AGREEMENT  
(38 M.R.S.A. § 347-A)**

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of seven (7) pages:

**SMOKEY'S GREATER SHOWS, INC.**

BY:  DATE: 3/7/2012  
George "Bud" Gilmore, President, SGSI

**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
PATRICIA W. AHO, COMMISSIONER

**MAINE OFFICE OF THE ATTORNEY GENERAL**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MARY M. SAUER, ASSISTANT ATTORNEY GENERAL