



JANET T. MILLS
GOVERNOR

STATE 023 MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

IN THE MATTER OF:

TOWN OF WISCASSET)	ADMINISTRATIVE CONSENT
WISCASSET, MAINE)	AGREEMENT
AIR QUALITY VIOLATION)	(38 M.R.S. § 347-A)
2019-164-A)	

This Agreement, by and among the Town of Wiscasset and the Department of Environmental Protection (“Department” or “DEP”), as approved by the Maine Board of Environmental Protection (“Board”), is entered into pursuant to the laws concerning the Department’s *Organization and Powers*, 38 M.R.S. §§ 347-A(1) and 341-D(6).

THE PARTIES AGREE AS FOLLOWS:

1. The Town of Wiscasset is a municipal corporation, which is organized and exists under the laws of the State of Maine and is located in the County of Lincoln.
2. The Town of Wiscasset operates a volunteer, paid-on-call fire department that serves the citizens and visitors to the Town of Wiscasset and neighboring towns.
3. The violation described herein occurred at property owned by Wiscasset Bath BTS Retail, LLC, formerly known as Huber’s Market, located at 279 Bath Road in Wiscasset and more specifically described in the deed recorded in Book 5388, Page 19 at the Lincoln County Registry of Deeds (hereinafter referred to as the “Huber’s Market property”).
4. Throughout the period of time addressed by this Agreement, the Town of Wiscasset was subject to Department rules *Open Burning*, 06-096 C.M.R. ch. 102, §§ 2(A) and 2(A)(3), which states in pertinent parts:

(A) Permissible Open Burning With Permit. When not prohibited by local ordinances the following types of burning are permissible if a permit has been obtained from the Town Forest Fire Warden, forest ranger, or local fire prevention official having jurisdiction over the location where the fire is to be set, so long as the burning is conducted according to the terms and conditions of such permit and provided no nuisance is created.

(3) Burning of solid or liquid fuels and structures for the purpose of research or bona fide instruction and training of municipal or volunteer firefighters pursuant to Maine Revised Statutes Title 26, section 2102 and industrial fire fighters in

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17 STATE HOUSE STATION
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(207) 287-7688 FAX: (207) 287-7826

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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
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IN THE ~~MATTER~~^{Q24} OF:

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methods of fighting fires when conducted under the direct control and supervision of qualified instructors and with a written objective for the training. For purposes of this section, "qualified instructor" means the fire chief or designee or a fire-fighting instructor. Structures burned for instructional purposes must first be emptied of waste materials that are not part of the training objective.

5. On August 6, 2019, the Department became aware of a structure that had been burned for a purported fire training exercise organized by Wiscasset Fire Chief T. J. Merry that had occurred on August 4, 2019 in the Town of Wiscasset at the Huber's Market property.
6. On August 8, 2019, the Department investigated the reports that a fire training exercise occurred at the Huber's Market property. While on site, staff observed that waste materials appeared to have been burned, including but not limited to: fluorescent lighting tubes, lighting fixtures, small appliances, aerosol and paint cans, and various other waste items.
7. During the investigation, the Department verified that no written training plan for the exercise had been prepared or submitted to the Department. Non-wood waste materials were not removed prior to the intentional burning of the building.
8. During the investigation, the Town of Wiscasset provided staff a copy of a Pre-Demolition Asbestos Survey by ATC, dated November 11, 2018, that had been completed prior to the burn of the Huber's Market building.
9. During the investigation, the Town of Wiscasset informed staff that smoke complaints were received and traffic was disrupted on US Route 1 during the fire training exercise described in Paragraph 5 of this Agreement.
10. Traffic disruption on US Route 1 from smoke due to the burning of the structure created a nuisance that violated 06-096 C.M.R. ch. 102, § 2(A).
11. By burning a structure without a written objective for training or without first removing waste materials from the structure, the Town of Wiscasset violated 06-096 C.M.R. ch. 102, § 2(A)(3).
12. On September 26, 2019, the Department issued a Notice of Violation to the Town of Wiscasset for the activities described in Paragraphs 5-11 of this Agreement in accordance with 38 M.R.S. § 347-A(1)(B). The parties agree that this Agreement constitutes a Notice of Violation pursuant to 38 M.R.S. § 347-A(1)(B) for any violations specifically cited in this Agreement but not previously noticed, and the parties agree that they have been adequately noticed for all respective violations herein.

IN THE REGISTER OF:

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13. The Town of Wiscasset performed the following corrective actions:

- a. Ash residue was analyzed, and a report documents the material burned contained no RCRA 8 Metals.
- b. Ash and other debris were removed and transported by Riverside Disposal of Chelsea, Maine, and Grimmel Industries of Topsham, Maine. Both companies are licensed to transport Category A wastes in Maine.
- c. Copies of records of laboratory analysis and facility tipping receipts for the corrective actions listed in subparts b and c of this Paragraph 13 were provided to the Department.

14. This Agreement is not effective until it is approved and signed by the Board and the Office of the Attorney General.

15. To resolve the violation referred to in Paragraphs 5-11 of this Agreement, the Town of Wiscasset agrees to pay to the *Treasurer, State of Maine*, immediately upon signing this Agreement, a civil monetary penalty in the amount of one thousand dollars (\$1,000.00).

16. The Department and Office of the Attorney General grant a release of their causes of action against the Town of Wiscasset for the specific violation listed in Paragraphs 4-11 of this Agreement on the express condition that all actions listed in Paragraph 15 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. This release shall not become effective until all requirements of this Agreement are satisfied, as determined by the Department and the Office of the Attorney General in their sole discretion.

17. Any non-compliance with this Agreement, as determined by the Department and the Office of the Attorney General in their sole discretion, voids the release set forth in Paragraph 16 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.

18. By signing and executing this Agreement, the Town of Wiscasset knowingly, voluntarily, intentionally, permanently, and irrevocably waives any and all defenses it has or might have with respect to the enforcement of this Agreement.

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

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages:

TOWN OF WISCASSET

BY: J. W. O'Connell DATE: December 17, 2019
JOHN O'CONNELL, TOWN MANAGER

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
MARK C. DRAPER, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
LAURA JENSEN, ASSISTANT ATTORNEY GENERAL