



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

SPRINGFIELD TERMINAL RAILWAY CO.)	
PORTLAND TERMINAL COMPANY)	CLEAN-UP ORDER BY CONSENT
20 RIGBY ROAD)	PURSUANT TO
SOUTH PORTLAND, MAINE)	38 M.R.S.A. § 568
CUMBERLAND COUNTY)	

This Clean-up Order by Consent (“COC”) by and among Springfield Terminal Railway Company (“STR”), Portland Terminal Company (“PTC”), and the Maine Department of Environmental Protection (“Department”) is issued pursuant to the authority of 38 M.R.S.A. § 568.

I. RESPONDENTS

- A. STR is a Vermont corporation authorized to conduct business in Maine, with its business headquarters located at 1700 Iron Horse Park, North Billerica, Massachusetts. David A. Fink is the President of STR.
- B. PTC is a Maine corporation with its principal place of business located at 20 Rigby Road, South Portland, Maine. David A. Fink is the President of PTC.

II. SITE DESCRIPTION

- A. PTC owns real property (hereinafter referred to as “Site”) located at 20 Rigby Road in South Portland, Maine and as described in a deed recorded in Book 9362, Page 301 of the Cumberland County Registry of Deeds.
- B. The Site is developed with a freight railway facility that has been active since circa 1887.
- C. STR and PTC operate a freight railway at the Site and elsewhere in Maine.
- D. The storm water drainage system at the Site discharges to municipal storm drains that outfall to Calvary Pond and Barberry Creek, which are tributaries of Long Creek and the Fore River, respectively. A portion of the storm water drainage system at the Site is routed through an oil-water separator prior to discharging to a municipal storm water system and Calvary Pond. Other portions of the storm water drainage system discharge directly to municipal storm drains, which outfall to Calvary Pond and to Barberry Creek. Storm water at the Site is impacted by

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

BANGOR
106 HOGAN ROAD
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

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discharges of petroleum. A portion of the contaminated storm water is directed to an oil-water separator. Ground water at the Site has been impacted by discharges of petroleum, and ground water discharges from the Site, in part, via the storm water drainage system.

III. LEGAL AUTHORITIES

A. Throughout the period addressed by this COC, STR and PTC were, and remain, subject to the *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. §§ 541 – 560 and the *Underground Oil Storage facilities and Ground Water Protection law*, 38 M.R.S.A. §§ 561 – 570-M.

B. The *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 coastal waters, estuaries, tidal flats, beaches and 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.
38 M.R.S.A. § 543

C. The *Oil Discharge 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 the manner prohibited by section 543 shall immediately undertake to remove that discharge to the commissioner’s satisfaction...Any unexplained discharge of oil within state jurisdiction...must be removed by or under the direction of the Commissioner. 38 M.R.S.A. § 548

D. The *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 542(9-C), states in relevant part:

Responsible party. "Responsible party" means any person who could be held liable under section 552. 38 M.R.S.A. § 542(9-C)

E. The *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 552(2), states in relevant part:

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State need not plead or prove negligence. The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, any person, vessel, licensee, agent or servant, including a carrier destined for or leaving a licensee's facility while within state waters, 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 or injury to, destruction of, loss of, or loss of use of natural resources and the reasonable costs of assessing natural resources damage. In any suit to enforce claims of the State under this section, to establish liability, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge. 38 M.R.S.A. § 552(2)

F. *The Underground Oil Storage facilities and Ground Water Protection law*, 38 M.R.S.A. § 568, states in relevant parts:

Any person discharging or suffering a discharge of oil to groundwater in the manner prohibited by section 543 and any other responsible party shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding this requirement, the commissioner may order the removal of that discharge pursuant to subsection 3 or may undertake the removal of that discharge and retain agents and contractors for that purpose, who shall operate under the direction of the commissioner. Any unexplained discharge of oil to groundwater within state jurisdiction must be removed by or under the direction of the commissioner. 38 M.R.S.A. § 568(1)

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The commissioner may investigate and sample sites where an oil discharge has or may have occurred to identify the source and extent of the discharge. During the course of the investigation, the commissioner may require submission of information or documents that relate or may relate to the discharge under investigation from any person who the commissioner has reason to believe may be a responsible party under this subchapter or subchapter 2-A. If the commissioner finds, after investigation, that a discharge of oil has occurred and may create a threat to public health or the environment, including, but not limited to, contamination of a water supply, the commissioner may issue a clean-up order requiring the responsible party to cease the discharge immediately and to take action to prevent further discharge and to mitigate or terminate the threat of human exposure to contamination or to explosive vapors... The commissioner may also order that the responsible party take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including a requirement that the responsible party restore or replace water supplies contaminated with oil with water supplies the commissioner finds are cost effective, technologically feasible and reliable and that effectively mitigate or minimize damage to, and provide adequate protection of, the public health, welfare and the environment. 38 M.R.S.A. § 568(3)

- G. This COC shall apply to and be binding upon STR, PTC and their successors and assigns from the date it is executed by the Commissioner of the Department.

IV. STATEMENT OF PURPOSE

The objective of this COC is to provide for the remediation of potential threats to public health and to the environment that may be posed by contaminants discharging from the storm water drainage system at the Site and present in the soil or ground water at the Site.

V. FINDINGS OF FACT

- A. On multiple occasions in 2007, 2008, and 2009, Department staff inspected the Site and observed evidence of recent and historic prohibited discharges of oil at the Site, including discharges to soil, ground water and the storm water drainage system at the Site. These prohibited discharges of oil appear to be predominantly surface spills of lubricating and fuel oils from railroad operations at the Site.
- B. Between 1978 and 2003, Department staff documented approximately twenty-two (22) prohibited oil discharge incidents at the Site. As a result of the twenty-two

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documented incidents, approximately 11,760 gallons of oil were discharged at the Site. These discharges were cleaned up to the Department's "Baseline" standards for petroleum discharges at industrial sites, which specify the removal of free phase oil and oil-saturated soil.

- C. Sources of oil discharges at the Site include locomotives' fuel and lubrication systems, locomotive fueling operations, including storage tanks, piping, loading racks, and associated equipment, equipment maintenance operations, and transportation accidents. Since 2007, Department and STR staff have observed and/or reported numerous incidents of oil discharges from locomotives at Rigby Yard. In December of 2008, Department and STR staff observed petroleum-saturated soil and free-phase petroleum on the ground water surface in the vicinity of an apparent abandoned fueling facility.
- D. Groundwater and soil at the Site and water in the storm water drainage system at the Site were sampled and analyzed for the presence of petroleum contamination. The results of these laboratory analyses demonstrate the presence of contamination consistent with lubricating and fuel oils in soil, groundwater, and water in the storm water drainage system at the Site.
- E. STR and PTC do not have, and have never had, a waste discharge license authorizing the discharge of oil from the Site to waters of the State.
- F. Storm water at the Site is impacted by discharges of petroleum.
- G. Ground water at the Site is impacted by past discharges of petroleum. Ground water from the Site, in part, discharges via the storm water drainage system.
- H. On April 13, 2009, Pan Am submitted a plan and schedule for characterization of subsurface oil contamination at the Site ("Characterization Plan"), as requested by the Department. On May 15, 2009, the Department conditionally approved the Characterization Plan. In June and July of 2009, STR's contractor completed the actions outlined in the conditionally approved Characterization Plan.
- I. On October 19, 2009, STR and PTC isolated waste oil collection devices ("drip pans") at the Site from the storm water drainage system and installed oil-sorbent material ("track mats") in locomotive idling areas at Rigby Yard.

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VI. CONCLUSIONS

- A. STR and PTC have caused, permitted or suffered a discharge or discharges of oil to soil and the storm water drainage system at the Site in violation of 38 M.R.S.A. § 543.
- B. To date, STR and PTC have undertaken initial site assessment and remediation efforts at the Site. However, STR and PTC have failed to remove or abate all sources of oil contamination from the Site to the commissioner’s satisfaction in violation of 38 M.R.S.A. §§ 548 and 568. By entering into this COC and completing the corrective actions described in this COC, STR and PTC will address these violations in a manner and schedule acceptable to the Department.
- D. The demonstrated presence of oil-contaminated soils and water at the Site pose a threat to public health and the environment.
- E. PTC, as owner, and STR, as operator, of the Site, are persons who have permitted or suffered prohibited discharges of oil at the Site.
- F. STR and PTC are Responsible Parties as defined in 38 M.R.S.A. §§ 542(9-C) and 552(2).

VII. CONSENT TO ENTRY OF ORDER

- A. STR and PTC consent to the issuance of this COC.
- B. STR and PTC agree that they are jointly and severally responsible for carrying out requirements described in this COC.
- C. STR and PTC waive their right to appeal the issuance of this COC and the requirements set forth herein as provided for in 38 M.R.S.A. § 568.
- D. By entering into this COC, or by taking action in accordance with this COC, STR and PTC do not admit to any of the Findings of Fact or Conclusion set forth in this COC.
- E. By entering into this COC, none of the parties waives its right to assert that persons other than the Respondents identified in Paragraphs I(A) and (B) are

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responsible for any liability or environmental problems that may be associated with the Site or offsite impacts to ground water or surface water, to seek indemnity or contribution from such persons, to assert any claim, or to impose any other defense against such persons which may be available under the law. In addition, the Department reserves all rights and causes of action it may have against STR and PTC for site conditions identified in Section V or identified as a result of activities undertaken pursuant to Section VIII.

VIII. AGREEMENT

- A. Immediately and in the future, STR and PTC agrees to collect and remove any discharges of oil as required by 38 M.R.S.A. §§ 548 and 568, and continue to report all spills to the Department by calling 1(800) 482-0777 (in state, 24 hours).
- B. STR and PTC agree to dispose of any oil or oil spill clean up debris in accordance with Department regulations, including the *Water Quality Monitoring, Leachate Monitoring, and Waste Characterization Rules*, 06-096 CMR 405 and the *Waste Oil Management Rules*, 06-096 CMR 860.
- C. In the event that any waste oil collection devices, including any floor drains located in oil storage or maintenance areas, are discovered or made accessible at the Site, STR or PTC agree to immediately notify the Department in writing and remove or isolate these connections from the storm water drainage system or the municipal sanitary sewer.
- D. Within thirty (30) days of signature to this agreement, STR and PTC agree to submit for the Department's review and comment a written standard operating procedure describing a plan for inspection, maintenance, replacement, and disposal of the track mats described in Paragraph V(I) of this COC, including the following requirements:
 - (1) STR and PTC will maintain a written record of monthly track mat inspections and any track mat maintenance and replacement. These records must be maintained at Rigby Yard for a minimum of three (3) years and made readily available for the Department's inspection.

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- (2) STR and PTC will designate specific locomotive idling or parking areas at Rigby Yard, overlay these areas with by track mats, and require that all locomotives at Rigby Yard intended to be idle or inactive for a period exceeding two (2) consecutive hours be parked over track mats.
 - (3) After an initial period of six (6) months of inspecting and maintaining track mats in accordance with the standard operating procedure described above, STR and PTC may submit for the Department's review and approval a written request to modify the standard operating procedure. The Department may approve, deny, or approve the request with conditions.
- E. Monitor the level of any oil that accumulates in the oil water separator located at Rigby Yard daily by inspection and remove, characterize and properly dispose of waste oil as necessary. Records of this activity must be maintained at Rigby Yard for a minimum of three (3) years and made readily available for the Department's inspection, as required in STR's Storm Water Pollution Prevention Plan ("SWPPP") for Rigby Yard.
- F. The results of the initial site characterization described in Paragraph V(H) document areas where free-phase petroleum potentially occurs in the subsurface. STR and PTC agree to complete additional characterization of these areas by submitting to the Department a plan and schedule for the installation of additional monitoring wells at the Site and assessing the ground water and soil borings for petroleum contamination. This action is to be completed, and a status report summarizing actions taken will be submitted to the Department, by no later than December 31, 2009.
- G. In order to assess the effectiveness of the remedial activities described in the COC in achieving the clean up goals described in Paragraph IV, until STR and PTC's responsibilities under this COC have been satisfied and this COC is terminated, STR shall:
- (1) Monthly during dry weather (low flow, non-storm events), sample water in the storm water drainage system at drainage system catch basins identified on a map prepared for STR by ERM and dated June 9, 2008 as "CB-22" and "CB-115";

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- (2) Once during every month in which any rain fall event measured at the Portland Jetport exceeds 0.1 of an inch, sample water in catch basins identified on a map prepared for STR by ERM and dated June 9, 2008 as "CB-22" and "CB-115" (see Appendix A). These samples must be collected within the first sixty (60) minutes (or as soon thereafter as practicable, but not to exceed 2.25 hours) of when the runoff or snowmelt begins discharging from the facility. All such samples must be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The 72-hour storm interval is waived when the preceding measurable storm did not yield a measurable discharge, or if STR is able to document that less than a 72-hour interval is representative for local storm events during the sampling period;
- (3) Have the samples described in Paragraphs VIII(G)(1) and (2), above, analyzed using the Massachusetts Extractable Petroleum Hydrocarbon Method ("EPH") at a qualified laboratory;
- (4) Measure ground water elevation and record the presence and thickness of any free product layer in all monitoring wells at Rigby Yard on a quarterly basis for two (2) years. The results of this monitoring must be submitted to the Department on a quarterly basis; and
- (5) Submit to the Department the results of the laboratory analysis described in Paragraph VIII(G)(3), above, within seven (7) days of receiving the written results from the laboratory via the Maine Electronic Data Deliverable version 5.0 ("EDD v5.0") format.

H. Upon review of characterization report described in Paragraph VIII(F) and the results of monitoring activities described in Paragraph VIII(G), above, the Department may request that STR and PTC submit for the Department's review and approval a Remediation Plan and Schedule for the removal and/or treatment of free product identified in soil and groundwater in accordance with the Department's guidance. The Department will review and approve the Remediation Plan and Schedule with or without conditions, or disapprove of the Remediation Plan and Schedule with comments.

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- I. In the event that the Department requests a Remediation Plan and Schedule and upon the Department's approval of the Remediation Plan with or without conditions, within thirty (30) days of the Department's approval of the Remediation Plan and Schedule, STR and PTC will initiate the plan for removal and/or treatment of free product and petroleum saturated soil and sediment at the Site.
- J. PTC will emplace institutional controls (deed restrictions) as approved by the Department, with or without conditions, that conforms with the requirements of the *Maine Uniform Environmental Covenants Act*, 38 MRSA §§ 3001-3013, and that would require notification of the Department in the event of a property transfer. The deed restrictions must prohibit residential development, the use of groundwater, and discharges to groundwater that may cause changes in groundwater movement at the subject property, unless approved by the Department. Further, these institutional controls will include a soil management plan stipulating the following:
- (1) Screening of all petroleum-impacted soils discovered at Rigby Yard for petroleum saturation via the "shake test" method described in the Department's petroleum remediation guidance documents;
 - (2) Notification of the Department in the event that any oil-saturated soil is discovered at Rigby Yard; and
 - (3) Prompt characterization, removal and off-site disposal of any oil-saturated soil discovered at Rigby Yard.
- K. Unless instructed otherwise by the Department, STR and PTC will forward all deliverables (e.g., reports, schedules) and correspondence to:
- Andrew Flint, Environmental Specialist
Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333-0017
- L. Delay in Performance and Force Majeure:
- STR, PTC and the Department agree that timely completion of the work required by this COC is important. STR and PTC shall use their best efforts and shall undertake all reasonable measures to ensure that the requirements set forth in this

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COC, including time schedules, are met. All deadlines for action established by this COC, including any additional deadlines and work that may be required by the Department, shall be reasonably extended as a result of Acts of God or War, failure of governmental authorities to issue required permits, labor strikes, or other conditions beyond the reasonable control of STR, PTC or their contractors constituting Force Majeure. STR or PTC shall notify the DEP within forty eight (48) hours following their awareness that events constituting Force Majeure have occurred or are likely to occur.

M. In the event that the Department determines, after specification of the remedies and monitoring criteria pursuant to Paragraphs VIII(A) – (I) but prior to the termination of this COC, that additional work is necessary to protect public health or the environment, the Department will request in writing that STR and PTC modify the relevant work plan and schedule and perform the additional work. The Department will also specify the time frame for performing such work and will specify the basis and reason for the Department’s determination that the additional work is necessary. STR and PTC shall have an opportunity to meet with the Department to discuss the additional work which the Department has requested.

N. Termination and Satisfaction:

Upon completion of the activities set forth in this COC, STR and PTC shall promptly notify the Department, and may request that the Department assess the effectiveness of the activities. If the Department finds that the activities have been performed in accordance with the approved plans and that remediation of the Site is protective of public health and the environment, the Department shall notify STR and PTC in writing that their responsibilities under this COC have been satisfied and this COC shall terminate. In assessing the effectiveness of the actions described in Paragraphs VIII(A) – (H) in achieving the goals described in Paragraph IV of this COC, the Department will primarily consider the lines of evidence described in Paragraph VIII(I), above, over a period of at least two (2) years following the completion of the remedial action plans described in Paragraphs VIII(D) – (G).

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L. By entering into this COC, or by taking action in accordance with this COC, STR and PTC do not admit or consent to any of the Findings of Fact, Conclusion, or the Determinations of the Department.

IT IS SO AGREED:

SPRINGFIELD TERMINAL RAILWAY COMPANY

BY: David A. Fink
David A. Fink, PRESIDENT

DATE 12/21/09

PORTLAND TERMINAL COMPANY

BY: David A. Fink
David A. Fink, PRESIDENT

DATE 12/21/09

STATE OF MAINE, DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: David P. Littell
David P. Littell, Commissioner

DATE 21 DEC 09

SEEN AND AGREED TO:

By: Nancy Macirowski
Nancy Macirowski, Assistant Attorney General

DATE 12/22/09