

APPENDIX A

**Letter of Authorization from the
Maine Legislative Committee on Natural Resources**

SENATE

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JOHN L. MARTIN, DISTRICT 35
LOIS A. SNOWE-MELLO, DISTRICT 15

SUSAN Z. JOHANNESMAN, LEGISLATIVE ANALYST
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STATE OF MAINE

HOUSE

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ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

COMMITTEE ON NATURAL RESOURCES

June 6, 2005

Dawn Gallagher, Commissioner
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333

RE: LD 1466, An Act to Amend the Law Governing Spill Prevention Control and Countermeasure Regulation of Oil Storage Facilities

Dear Commissioner:

LD 1466 proposed to eliminate the repeal date in the law that authorizes the Department of Environmental Protection to enforce federal spill prevention and control regulations at certain aboveground oil storage facilities. The Joint Standing Committee on Natural Resources voted Ought To Pass As Amended on this bill.

At the worksession on LD 1466 Representative Saviello discussed the issue of setting different reporting requirements for those facilities that have an SPCC plan in place that meets federal requirements. The Department agreed to establish a focus group to review this issue. We request that you establish such a focus group and report your findings and any recommendations to the Committee by February 15, 2006.

If you have any questions in connection with this matter, please contact one of us or the Committee's Legislative Analyst, Susan Johannesman.

Sincerely,

Handwritten signature of Senator Scott Cowger.

Senator Scott Cowger
Senate Chair

Handwritten signature of Representative Ted Koffman.

Representative Ted Koffman
House Chair

cc: Members, Joint Standing Committee on Natural Resources

APPENDIX B

State Oil Discharge Reporting Survey Questionnaire

Survey of State Oil Spill Reporting Requirements



The Maine Legislature has requested that the Maine DEP convene a task force to review the issue of reporting oil spills in the state of Maine, and submit the group's findings and any recommended regulatory changes to the legislature next February. As a first step in this effort, we are gathering information on how other states regulate spill reporting and are seeking input from you on your state's spill reporting requirements.

This survey pertains both to aboveground oil storage tank (AST) facilities and underground oil storage tank (UST) facilities. Only the reporting of "oil" spills (which includes most any kind of liquid petroleum product - gasoline, kerosene, diesel, heating oil, motor oils, hydraulic fluid, etc) should be considered as you answer the following questions. For the purposes of this survey spill reporting for hazardous materials is not being considered.

Thank you for taking the time to help us in our task.

1. Oil spills are required to be reported to which state agency(-ies) in your state?

Name

Phone #

For the remainder of this survey please report only as it applies to your agency.

2. Are reporting requirements different for mobile vs. fixed facilities? If so, please explain how.
3. Are reporting requirements different for AST vs. UST facilities? If so, please explain how.
4. Are AST facilities that have an oil SPCC plan in place meeting 40 CFR Part 112 exempt from any reporting requirements? If so, what reporting requirements apply to such facilities? For example, does an AST facility with an SPCC plan in place have the same minimum reporting volume as one that does not?
5. Do any of the following criteria re: "product spilled" affect reporting requirements? If yes, please explain how.
 - A. Type of product spilled
 - B. Amount of product spilled
 - C. Is there any de minimus amount that is not required to be reported? If yes, please explain the circumstances in which this is true.
6. Do any of the following criteria re: "receptor"/"location of spill" affect reporting requirements? If yes, please explain how.
 - A. Into secondary containment (e.g. into a tank containment dike)

- B. Directly onto the ground (e.g. gravel, soil, grassed area, etc)
- C. Onto an impervious surface (e.g. asphalt, concrete pad, etc)
- D. Discharge into an industrial treatment plant:
 - a. That is equipped to treat oil discharges
 - b. That has no pre-treatment
- E. Discharge into a publicly owned treatment works
- F. Discharge/threat to surface water
- G. Discharge/threat to sensitive receptors
 - a. Wellhead protection area, private well, public drinking water supply
 - b. Other resource protection area (ex, wetlands, marine resource areas, significant wildlife habitats, etc.)
- H. Other (please explain)

7. What is the allowed time frame to report a spill? Do any of the factors of question 6 above affect that time frame? If so, please explain.

8. Are there any fines, penalties, or repercussions for violations? If yes, please explain.

9. Do your statutes or regulations provide any incentives for prompt reporting? If yes, please explain how.

Below please feel free to include any comments, recommendations, or referrals to places where we can find additional information (websites, offices, people, etc.).

For questions feel free to contact:

Christina Reppucci: christina.j.reppucci@maine.gov Telephone: (207) 287-3409
Thank you for your time and participation, it is greatly appreciated.

APPENDIX C

Selected Maine Oil Statutes

Selected Oil Spill/Discharge Reporting Sections from Title 38 of Maine Statute & Pursuant Regulations

Key Definitions

§542. Definitions

The following words and phrases as used in this subchapter shall, unless a different meaning is plainly required by the context, have the following meaning: [1969, c. 572, §1 (new) .]

4. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping. [1969, c. 572, § 1 (new) .]

6. Oil. "Oil means oil, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. [1977, c. 375, §2 (amd) .]

Basic Prohibition

§543. Pollution and corruption of waters and lands of the State prohibited

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. [1985, c. 496, Pt. A, § 8 (amd) .]

Notwithstanding the prohibition of this section, the department may license the discharge of waste, refuse or effluent, including natural drainage contaminated by oil into or upon any coastal waters if, and only if, it finds that the discharge will be receiving the best available treatment and that the discharge will not degrade existing water quality, perceptibly violate the classification of the receiving waters or create any visible sheen upon the receiving waters. A license is not required and a person may not be considered in violation of this section for the discharge of oil to surface waters of the State if the discharge occurs in the process of recovering, containing, cleaning up or removing an oil spill to surface waters and is undertaken in compliance with the instructions of the commissioner or the commissioner's designee. [1993, c. 333, §2 (amd) .]

Underground Tank Facilities

§564. Regulation of underground oil storage facilities used to store motor fuels or used in the marketing and distribution of oil

H. Reporting to the commissioner any of the following indications of a possible leak or discharge of oil:

- (1) Unexplained differences in daily inventory reconciliation values that, over a 30-day period, exceed 1.0% of the product throughput;
- (2) Unexplained losses detected through statistical analysis of inventory records;
- (3) Detection of product in a monitoring well or by other leak detection methods;
- (4) Failure of a tank or piping precision test, hydrostatic test or other tank or piping tightness test approved by the department; and
- (5) Discovery of oil on or under the premises or abutting properties, including nearby utility conduits, sewer lines, buildings, drinking water supplies and soil.

The rules may not require the reporting of a leak or discharge of oil above ground of 10 gallons or less that occurs on the premises, including, but not limited to, spills, overfills and leaks, when those leaks or discharges do not reach groundwaters or surface waters of the State and are cleaned up within 24 hours of discovery, if a written log is maintained at the facility or the owner's place of business in this State. For each discharge the log must record the date of discovery, its source, the general location of the discharge at the facility, the date and method of cleanup and the signature of the facility owner or operator certifying the accuracy of the log; [2003, c. 551, §11 (amd) .]

Licensed Marine Oil Terminals (Chapter 600 of DEP regulations)

4. Oil Discharges

A. Oil Discharge Reporting Procedure. In the event of any discharge prohibited by 38 M.R.S.A. Section 543, the person, firm or corporation responsible for the discharge shall immediately undertake to remove such discharge as required by 38 M.R.S.A. Section 548. Responsibility for removal remains with the person, firm or corporation responsible for the illegal discharge. In addition to the regular procedures, the following actions must be taken:

- (1) Telephone Report. An initial telephone report of any discharge must be made to the Commissioner as soon as practicable but within two hours. The report must include:
 - (a) Time of discharge;
 - (b) Location of discharge;
 - (c) Type and amount of oil;
 - (d) Name and telephone number of person making report; and
 - (e) Other pertinent information.
- (2) Written Reports. Once removal of the discharge has been completed, the person, firm or corporation responsible for the discharge shall prepare a complete written report of the occurrence and submit that report to the Commissioner within 10 days. If circumstances make

a complete report impossible, a partial report must be submitted. This report must include, but not be limited to, the following information:

- (a) Date, time, and place of discharge;
- (b) Name of parties involved;
- (c) Amount and type of oil discharged;
- (d) Complete description of circumstances causing discharge;
- (e) Procedures, methods and precautions instituted to prevent a similar occurrence from recurring;
- (f) Recommendations to the Commissioner for changes in rules or operating procedures;
- (g) Name and address of any person, firm or corporation that may be affected by the discharge; and
- (h) In the case of any oil discharge into the waters of the State from an intrastate pipeline, oil terminal facility, or vessel going to or coming from a facility, the person, firm or corporation responsible for the discharge shall submit a report, in writing, to the Commissioner, setting forth the amount of oil recovered.

(3) Oil Discharge Containment and Clean-up. 38 M.R.S.A. Section 548 requires any person discharging oil, or its by-products in a manner prohibited by 38 M.R.S.A. Section 543, to undertake immediately to remove the discharge to the Commissioner's satisfaction. Nothing in the rules or regulations adopted by the Board is intended to relieve any person from this responsibility. Any person who has discharged or caused to be discharged oil as prohibited by law shall contain such oil and remove it from the waters of the State as quickly and completely as possible.

(4) Delegation of Supervisory Authority. The Commissioner or the Commissioner's authorized representative shall receive reports of oil discharges and shall supervise or undertake the removal of any oil discharge, where such actions by the Commissioner are authorized under 38 M.R.S.A. Section 548, and upon the completion of removal of any discharge the Commissioner or the Commissioner's authorized representative may indicate satisfaction with such removal.

(5) Notification of the Commissioner in no way should delay the proper notification of other authorities such as local and federal agencies concerned. Protection of life and property by proper notification and action is mandatory and should be accomplished in the most expeditious manner possible.

Oil Spills at All Other Oil Storage & Handling Facilities and Other Spills

§550. Enforcement; penalties

Any person who causes or is responsible for a discharge in violation of section 543 is not subject to any fines or civil penalties if that person: [1991, c. 66, Pt. A, §18 (rpr).]

1. Report and remove. Reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or commissioner; and [1991, c. 66, Pt. A, §18 (rpr) .]

2. Reimburse. Reimburses the department for any disbursement made from the fund in connection with the discharge pursuant to section 551, subsection 5, paragraph B within 30 days of demand. [1991, c. 66, Pt. A, §18 (rpr) .]

Board of Environmental Protection Rulemaking Authority

§546. Regulatory powers of board

1. Procedure for adopting rules and regulations. [1977, c. 300, § 36 (rp) .]

2. Emergency rules and regulations without hearing. [1977, c. 300, § 36 (rp) .]

3. Enforcement of rules and regulations. [1977, c. 300, § 36 (rp) .]

4. Extent of regulatory powers. The board shall have the power to adopt rules and regulations including but not limited to the following matters:

A. Operating and inspection requirements for facilities, vessels, personnel and other matters relating to licensee operations under this subchapter, including annual inspections of oil terminal facilities; [1991, c. 454, §2 (amd) .]

B. Procedures and methods of reporting discharges and other occurrences prohibited by this subchapter; [1989, c. 546, §9 (amd) .]

C. Procedures, methods, means and equipment to be used by persons subject to regulations by this subchapter; [1989, c. 546, § 9 (amd) .]

D. Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants; [1989, c. 546, §9 (amd) .]

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds, including the state marine oil spill contingency plan required under section 546-A. Those plans must include provision for annual drills, sometimes unannounced, to determine the adequacy of response plans and the preparedness of the response teams; [1991, c. 454, §3 (amd).]

F. The establishment from time to time of control districts comprising sections of the Maine coast and the establishment of rules and regulations to meet the particular requirements of each such district; [1989, c. 546, §9 (amd).]

G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities and refineries and the approach and departure from terminals, facilities and refineries; [1989, c. 546, §9 (amd).]

H. Such other rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this subchapter; and [1989, c. 546, §9 (amd).]

I. [1985, c. 496, Pt. A, § 10 (rp).]

J. [1985, c. 496, Pt. A, § 10 (rp).]

K. Operation and inspection requirements for interstate and intrastate oil pipelines excluding natural gas and artificial gas pipelines. [1989, c. 546, §9 (new).]
[1991, c. 454, §§2, 3 (amd).]

APPENDIX D
2002 Proposed Bill

DRAFT

“An Act to Address Reporting of Certain Low Quantity Releases”

January 14, 2002

38 M.R.S.A, § 550-A, is enacted to read:

Enforcement and Penalties for Certain Discharges of 50 Gallons or less

Any person who causes or is responsible for a discharge in violation of section 543 is not subject to fines or civil penalties if the following conditions, where pertinent, are met:

1. **Remove Material** . Promptly removes the discharge in accordance with the rules and orders of the board or commissioner;
 - A. Material discharged is limited to: hydraulic fluid; lubricating oil; motor oil; #2 fuel oil; diesel fuel; #5 oil; #6 oil; and mineral oil known to contain less than 50 parts per million PCBs;
 - B. The discharge or release does not reach surface water or ground water;
 - C. Quantity of material discharged or released is 50 gallons or less; provided however that no such quantity limitations shall apply to a discharge within a structure or secondary containment if the material is entirely contained within the immediate spill area, or where such discharge is conveyed via floor drains or sewer lines to an on-site waste water treatment plant that is licensed by the department and is operated and maintained to prevent the material from reaching surface or ground water.
 - D. For discharges or releases occurring at a facility over which a person has control and/or ownership, a facility-specific Spill Prevention, Control and Countermeasure (SPCC) plan meeting all requirements of 40 C.F.R. Part 112, exists;
 - E. For discharges or releases occurring at a location over which the owner of the equipment suffering the discharge or release does not have control or ownership, a company-wide Spill Contingency Plan and procedures exist that address such discharges or releases; and
2. **Recordkeeping**. Such discharges or releases are documented by the owner or operator of the equipment suffering the discharge or release. Such documentation shall be maintained by the owner or operator for a period of no less than 3 years, and shall be made available upon request of the Maine Department of Environmental Protection. Documentation shall include: date, location, material discharged or released, quantity, cause, description of area affected, and cleanup measures implemented.

APPENDIX E

List of Memoranda of Agreements

**DEP / Madison Paper Industry Oil Discharge Reporting
Memorandum of Agreement**

OIL SPILL REPORTING-MEMORANDUM OF AGREEMENTS
November 8, 2005

	NAME	LOCATION	FACILITY TYPE	STATUS
1.	Dom Tar	Baileyville	Pulpmill	Expired
2.	Georgia Pacific	Baileyville	Structural Panel Mill	Expired
3.	Cyro Industries	Sanford	Manufacturing	Active
4.	Knight Celutex formally Masonite Corp.	Lisbon Falls	Manufacturing	Active
5.	Maritimes Northeast	Dennysville	Energy	Active
6.	Maritimes Northeast	Richmond	Energy	Active
7.	Bath Iron Works	Main Plant-Bath	Ship Building & Repair	Active
8.	Bath Iron Works	Harding Plant-Brunswick	Ship Building & Repair	Active
9.	Bath Iron Works	Mallet Plant-Brunswick	Ship Building & Repair	Active
10.	Bath Iron Works	Docked Vessels-Bath	Ship Building & Repair	Active
11.	Portsmouth Naval Shipyard	Kittery	Military Shipbuilding & Repair	Renewal Requested
12.	Madison Paper Industries	Madison	Paper Mill	Active
13.	Boralex	Ashland	Energy	Renewal Requested
14.	Boralex	Fort Fairfield	Energy	Renewal Requested
15.	J.M. Huber Corporation	Easton	Manufacturing	Expired - Closed
16.	Maine Yankee Atomic Power	Wiscasset	Energy	Terminated
17.	Interface Fabrics Group	Guilford	Manufacturing	Active
18.	Penobscot Energy Recovery Company	Orrington	Energy	Active



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MEMORANDUM OF AGREEMENT
BETWEEN
MADISON PAPER INDUSTRIES
AND

JOHN ELIAS BALDACCI
GOVERNOR

DAWN R. GALLAGHER
COMMISSIONER

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

I. GENERAL

This Memorandum of Agreement (herein after "Agreement") establishes a procedure Madison Paper Industries (herein after MPI) to report oil spills and discharges of less than ten (10) gallons at their Madison facility.

II. APPLICABLE STATUTES

Title 38 M.R.S.A., Section 543 prohibits the discharge of oil into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, 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 the lands adjacent to, or over such waters of the State, unless licensed by the Department.

Title 38 M.R.S.A., Section 548 requires in part that 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.

Title 38 M.R.S.A., Section 550 provides that any person who causes or is responsible for a discharge in violation of Section 543, is not subject to any fines or civil penalties if that person:

1. Reports the spill within two (2) hours and promptly removes the discharge in accordance with the rules and orders of the Board of Commissioner; and
2. Reimburses the Department for any disbursement made from the fund in connection with the discharge pursuant to Section 551, subsection 5, paragraph B within thirty (30) days of demand.

Title 38 M.R.S.A., Section 564, subsection 2A, paragraph H, required the Board of Environmental Protection to adopt rules requiring owners of underground storage tanks to report leaks or evidence of leaks. The rule may not require discharges of oil above ground of ten (10) gallons or less, when these leaks or discharges do not reach groundwater or surface waters, are cleaned up within twenty four (24) hours of discovery, and a written log is maintained at the facility or owner's place of business in the State of Maine. For each discharge the log must record the date of discovery, its source, the general location of the discharge,

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688
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) 764-1507

the date, method of clean-up, and the signature of the facility owner or operator certifying the accuracy of the log.

While Section 564 is applicable to facilities used to store motor fuels or used in marketing and distribution of oil, it does provide a method of reporting oil spills similar to the terms of this agreement.

III. DESCRIPTION

MPI operates a papermill plant in Madison, Maine. At its Madison, Maine facility, MPI maintains oil spill response equipment and personnel which is sufficient to control and remove oil spills that do not exceed 10 gallons in quantity. Due to the nature and size of its manufacturing facility, MPI on occasion, suffers the discharge of small amounts of oil which are subject to reporting and removal requirements. MPI conducts activities at its manufacturing facility on a 24 hour per day, 365 day per year basis. Spills of less than 10 gallons are currently required to be reported to the Department of Environmental Protection via the Department of Public Safety using the 1-800-482-0777 number. These spills are required to be reported even though MPI maintains personnel and oil spill response equipment and structures which provide the capability to contain, control and clean up these small spills.

The Department of Environmental Protection maintains spill response personnel in four regional locations for the purpose of investigating, responding, and supervising the removal of discharges of oil and hazardous substances. The closest regional office to the MPI facility is located in Augusta, Maine, approximately 45 miles from the facility. It is not an effective use of resources to the regional response staff to respond to small spill of oil which are adequately contained, controlled and remediated.

IV. AGREEMENT

MPI agrees to:

1. Maintain adequate spill response personnel and equipment to contain spills of 10 gallons or less;
2. Remove all contained spills within 24 hours of knowledge of the spill;
3. Maintain a log book and record the following information for each spill of 10 gallons or less, which do not reach surface waters, ground waters or soil:
 - a. The date and approximate time of the discharge.
 - b. The location of the spill.

- c. A brief description of the actions taken to mitigate the spill.
- d. The likely cause of the spill.
- e. The method of re-use or disposal of the recovered material.
- f. The printed and written initials of the person recording the spill event.

Log entries shall be completed within two (2) hours of the removal of the spill, which may not exceed 26 hours from the time of discovery.

4. Make the logbook available for inspection by the Department staff upon request, and submit a copy of the logbook on or before July 1, 2004 to:

Director, Division of Response Services
Department of Environmental Protection
Bureau of Remediation and Waste Management
State House Station #17
Augusta, ME 04333-0017

5. Report oil spills within two (2) hours of knowledge of any spill that reaches surface waters, ground waters or soils and report all oil spills greater than 10 gallons regardless of the impacted medium.

The Department of Environmental Protection agrees to:

1. Accept MPI's logbook entries that comply with this agreement as sufficient to demonstrate compliance with the spill reporting and removal standards of 38 M.R.S.A., Section 548.
2. Not seek penalties for oil spills of 10 gallons or less that are removed within twenty-four (24) hours and do not reach surface waters, ground waters or soils, and are properly recorded in the logbook.

V. TERMINATION OF AGREEMENT

This agreement may be terminated upon written request of either party. This agreement shall terminate one (1) year from the date of signature. This agreement may be renewed upon agreement by the parties for additional periods of time, not to exceed one (1) year. To request a renewal of this agreement, MPI shall at least 30 days prior to termination, forward written request to:

Director, Division of Oil and Hazardous Waste Facilities Regulation
Department of Environmental Protection
Bureau of Remediation and Waste Management
State House Station # 17
Augusta, ME 04333-02017

This agreement becomes effective upon signing by the parties below:

Scott D. Whittier

Scott D. Whittier, Director
Division of Oil and Hazardous Waste Facilities Regulation

Nov. 12, 2003

Date

David C. Sait

David C. Sait, Director
Division of Response Services

11/12/03

Date

Dawn R. Gallagher

Dawn R. Gallagher, Commissioner
Department of Environmental Protection

11/25/03

Date

Edward R. Drechsel

Edward R. Drechsel
President & CEO
Madison Paper Industries

Nov 19, 2003

Date

APPENDIX F

Memoranda on Oil Discharges to Sewers & Waste Water Treatment Plants

MEMORANDUM

To: George Seel
From: John James
Date: November 18, 2005
Re: What is a sewer?

** ** ** ** **

38 MRSA §543 prohibits the discharge of oil to a "sewer". Presumably, by this language, the Legislature intended to make it illegal to spill, pump, pour or dump oil down a drain...any drain. The word "sewer" as used in section 543 is not defined, however. Thus, the question arose at your spill reporting forum on November 1st as to whether the Legislature meant to capture oil discharges to a sewer if the sewer leads to a licensed treatment plant.

As promised at that forum, I have perused the statutes for evidence of legislative intent on this matter and looked at how sewer is defined in other contexts. Here are my observations:

- When it enacted the prohibition on oil discharges under section 543, the Legislature also enacted section 541 setting forth its findings and purpose. Section 541 provides, in pertinent part:

"The Legislature further finds and declares that ...spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer, storage and other handling of such products pose threats of great danger and damage to the marine, estuarine, inland surface water and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine and inland surface water related activities; and to the beauty of the Maine coast and inland waters; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as set forth in this subchapter and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring and other handling of oil, petroleum products and their by-products and related activities.

There is nothing in this language or elsewhere in 38 MRSA §§ 541 through 560 [the statutes dealing with oil discharge prevention] stating or suggesting that the Legislature was unconcerned about oil discharges to treatment plants, or that it meant to make a distinction between discharges to treatment plants and discharges to sewers unconnected to a treatment plant.

- The word "sewers" is defined in the statutes governing municipalities as follows:

"Sewers" means and includes mains, pipes and laterals for the reception of sewage and carrying that sewage to an outfall or some part of a sewage disposal system, including pumping stations. See 30-A MRSA § 2001(19)

The term does not appear to be defined elsewhere in the Maine statutes nor in DEP rules.¹

- Steve McGlaughlin, Acting Director of the Division of Municipal Services in the Bureau of Land and Water, did not find a definition in the rules they administer. He takes "sewer" to have a generic meaning such that it could refer to: a sanitary sewer for human, commercial or industrial sewage; a storm sewer for storm water and groundwater runoff; or a combined sewage handling both sanitary sewage and storm water.
- A model sewer use ordinance developed by Steve's division for Maine municipalities defines "sewer" to mean "a pipe or conduit that carries wastewater or drainage water."
- The Webster's New World College Dictionary (4th Ed., 1999) defines "sewer" as "a pipe or drain, usually underground, used to carry off water and waste matter."
- Merriam Webster's Collegiate Dictionary (11th ed, 2003) defines "sewer" as "an artificial usually subterranean conduit to carry off sewage and sometimes surface water (as from rainfall)."

It is interesting to note that section 543 prohibits the discharge of oil "into or upon any lake, pond, river, stream, sewer, surface water drainage, ground water or **other waters of the State**" [emphasis added], suggesting that the Legislature considers sewers to be "waters of the state." That interpretation is supported by a 1993 memorandum from Assistant Attorney General Dennis Harnish. Mr. Harnish, in advising the department as to the scope of the prohibition on the discharge of hazardous waste under 38 MRSA § 1306(3) and hazardous matter under 38 MRSA § 1317, states:

"Pursuant to 39 M.R.S.A. § 361-A (1989), "waters of the State" means "any and all surface and subsurface waters which are contained within, flow through or under, or border upon this state or any portion thereof, including the marginal and high seas,

¹ Chapter 528 of department rules, while not defining "sewer", uses the term in defining "publicly-owned treatment plant":

"The term Publicly Owned Treatment Works or POTW means a treatment works as defined [under the federal Clean Water Act]...which is owned by a municipality... This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant.

This definition suggests that the Legislature understands the term sewer to include, but not be limited to, pipes and conduits that convey wastewater to a treatment plant.

except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State." While this definition appears in another statute, not in Section 1306(3) or in Section 1317-A, all statutes referring to a single issue should be read together to effectuate legislative intent. Delano v. City of South Portland, 405 A.2d 222 (Me. 1979); Brennan v. Johnson, 391 A.2d 337 (Me. 1987). Therefore, the wastewater in and flowing toward industrial waste treatment or industrial waste pretreatment facilities would be "waters of the State," even if such systems are totally contained within a manufacturing facility since such systems invariably drain into and connect with other waters of the state.

Conclusion: The discharge of oil in any amount to a sewer, whether or not the sewer leads to an industrial waste treatment plant, is prohibited under 38 MRSA § 543. Thus, the issue for discussion is not whether the discharge is prohibited, but under what circumstances such a discharge should be reported to the department. The Legislature, through the enactment of 38 MRSA §546(4)(B), has given the Board of Environmental Protection authority to adopt rules setting forth the "procedures and methods of reporting discharges" prohibited by section 543.²

² 38 MRSA § 564(2-A)(H) somewhat limits this rulemaking authority by specifying certain reporting procedures in the case of discharges from oil storage tanks. The board's authority to adopt rules specifying reporting procedures for oil discharges to sewers from sources other than storage tanks has not been similarly limited and, with the exception of chapter 600(4) [re: oil discharges from marine oil terminals], has not been exercised.

MEMORANDUM

To: Michael Barden - MPPA

From: Steve Woodard, Ph.D., P.E. - Woodard & Curran

Date: March 18, 2003

RE: Oil Spills to Wastewater Treatment Plants

The purpose of this memo is to: (1) provide information regarding the ability of biological wastewater treatment plants (WWTPs) to contain and/or treat oil spills; and (2) explore the volume of oil that might reasonably be managed by such a treatment plant without producing a visible sheen in the receiving water.

Mechanisms of Removal

Biological WWTPs have multiple lines of defense for oil spill containment and treatment. These plants are highly effective in treating spills of petroleum products, including hydraulic oil, lubricating oil, No. 2 heating oil and diesel fuel. A typical biological WWTP that currently exists at Maine pulp and paper mills includes primary clarification, aeration and secondary clarification. This is not unlike the processes normally used in the treatment of petroleum refinery wastewater.

Primary clarifiers serve as large oil/water and solids separators. Since oil is typically lighter than water, free oil tends to rise to the surface, where it is contained by a scum baffle. Much of the oil product will typically be contained by this scum baffle and either automatically skimmed off or, in the case of larger spills, removed with a vacuum truck. The emulsified oil fraction won't be removed by simple gravity separation. However, an appreciable quantity of emulsified oil can be removed with the primary solids that settle to the bottom of the clarifier. Oils have a much higher affinity for organic carbon than water, and tend to sorb strongly to solids that contain organic carbon. Pulp and paper mills typically remove appreciable quantities of paper fiber in primary clarifiers. This paper fiber has the potential to remove a substantial amount of oil along with it. The actual removal capacity depends largely on the quantity of paper fiber in the clarifier at the time of the spill.

Any oil that passes through primary clarifier will enter the second line of defense, the aeration basin(s). Two oil removal mechanisms are at work here: (1) biodegradation, and (2) sorption. The shorter chain compounds tend to biodegrade fairly well, while sorption is the primary removal mechanism for the longer chain compounds. Similar to primary clarifiers, aeration basins contain large quantities of organic matter. The organic matter in these biological treatment systems is composed mostly of microbial cell mass. In fact, roughly 50 percent of this cell mass is composed of organic carbon, making sorption an important oil removal mechanism in biological treatment systems.

The third line of defense is secondary clarification. This provides a second chance for any remaining free oil product to float to the water surface, be contained by the scum baffle and

ultimately be skimmed off. Hydrocarbons that have sorbed to the biomass are typically removed with the secondary sludge.

Supporting Literature

Studies have been conducted to show that biological treatment, or biological treatment in conjunction with physical treatment systems, can be effective in the removal of oil from wastewater (Chin, 1994; Wong and Goldsmith, 1988; WE&T, 1998; Seo et al., 1997; Dudley et al., 1992; and Sutton et al., 1992). Based on standard wastewater treatment practices, it has been demonstrated that large quantities of petroleum products can be removed through the treatment processes, mainly by executing oil/water separation techniques such as clarification. If additional treatment is required for an increased load of petroleum products, biological treatment can greatly assist in removing these compounds.

Oil Removal Capacity

Although the specific oil removal capacity varies from plant to plant, some general guidelines can be used to predict the volume of oil that would be contained and/or treated by a biological WWTP. Appreciable quantities will be removed by the primary clarifiers. The specific volume depends on the size of the clarifiers, the height of the scum baffle above the water surface, and the quantity of organic carbon (e.g. paper fiber) present at the time of the spill. For example, a 50-ft diameter clarifier is normally capable of containing at least 3,600 gallons. A 100-ft diameter clarifier is capable of containing at least 14,000 gallons.

Removal in the aeration basins will be directly related to the quantity of biomass in the system. Microbes are typically 50 percent organic carbon, on a dry mass basis. K_{oc} values (organic carbon partition coefficients) for hydraulic and lubricating oils are typically greater than 14,000. For a 15 million gallon per day (MGD) paper mill with a 5 MG aeration basin, the expected oil removal via sorption is 1,250 gallons. If we apply a 5-fold safety factor to account for the fact that all of the organic carbon in the biomass won't be available for sorption, the quantity drops to 250 gallons. This represents a gross, conservative estimation of the removal potential via sorption only, and doesn't take into account the much greater potential for removal in the clarifiers and via biodegradation.

In conclusion, it appears that discharges less than several hundred gallons would be an unnecessarily low reporting limit for oil spills contained by a biological wastewater treatment plant at a typical Maine pulp and paper mill, especially given the multiple lines of defense employed at such a facility.

References

Chin, Kee Kean, "Evaluation of Treatment Efficiency of Processes for Petroleum Refinery Wastewater", *Water Science Technology*, Vol. 29, No. 8, pp. 47-50, 1994.

Wong, A.D. and C.D. Goldsmith, "The Impact of a Chemostat Discharge Containing Oil Degrading Bacteria on the Biological Kinetics of a Refinery Activated Sludge Process", *Water Science Technology*, Vol. 20, No. 11/12, pp. 131-136, 1988.

Water Environment & Technology, "Augmented Aerobic Digestion Eliminates Grease and Scum Disposal", Vol. 10, issue 5, May 1998.

Seo, G.T., T.S. Lee, B.H. Moon, K.S. Choi, and H.D. Lee, "Membrane Separation Activated Sludge For Residual Organic Removal in Oil Wastewater", *Water Science Technology*, Vol. 36, No. 12, pp. 275-282, 1997.

Dudley, S.K., R.B. Bustamante and W.P. Bonner, "Biological Treatability Studies of Selected Compounds of an Oil Shale Processing Wastewater," 46th Purdue Industrial Waste Conference Proceedings, Lewis Publishers, pp. 255-263, 1992.

Sutton, P.M., P.N. Mishra and P.M. Crawford, "Combining Biological and Physical Processes for Complete Treatment of Oily Wastewaters," 47th Purdue Industrial Waste Conference Proceedings, Lewis Publishers, pp. 851-862, 1992.

MEMO

To: George Seel, Director
Division of Technical Services BRWM

From: Stephen McLaughlin, 
Division of Engineering, Compliance & Technical Assistance BLWQ

Date: November 17, 2005

Subject: Non-reporting of oil spills under 50 gallons

I am writing in response to your inquiry concerning non-reporting of oil spills for quantities up to 50 gallons. You asked what the impact might be to industrial and municipal wastewater treatment facilities.

The Division of Engineering, Compliance, and Technical Assistance monitors the compliance of a variety of municipal and industrial wastewater treatment facilities. I have discussed the issue of the design and capacity of these facilities with my staff.

Currently we oversee 169 publicly owned treatment works (POTWs) which discharge in three different categories;

- 144 facilities discharge to surface waters
- 12 facilities discharge to subsurface systems
- and 16 facilities discharge by land application.

The flow capacities of these 169 facilities are summarized as follows;

- 126 facilities discharge less than 1 million gallons
- 33 facilities discharge between 1 and 5 million gallons
- and 10 facilities discharge more than 5 million gallons.

There is great variability in the design of these facilities. There are facilities with primary treatment only and some that provide secondary treatment using aerated basins, oxidation ditches, rotating biological contactors, sequencing batch reactors, lagoon systems without aeration and lagoons with aeration. Outside of the basic design of the facility, each one possesses a unique combination of equipment to achieve the necessary treatment. Primary clarifiers, grit removal systems, redundant tankage, sludge digestion, sludge holding, aeration, mixing, and separate treatment trains are different at each and every facility.

Currently there are 213 non-POTW discharge licenses that we oversee, with 19 of them being major industrial facilities. Of these 19 major industrial facilities, 11 of them are pulp and paper facilities with the following flow capacities;

- 4 facilities discharge less than 20 million gallons
- 3 facilities discharge from 20 to 35 million gallons
- and 4 facilities discharge greater than 35 million gallons.

These facilities all provide secondary treatment but possess different equipment to accomplish the treatment of wastewater.

In terms of evaluating the effect that a 50 gallon spill might have on these industrial or municipal facilities, the impact could be greatly different.

Large Industrial facilities may be able to withstand a spill of 50 gallons because of the size of the facility, type of equipment, training and experience, trained staff available to respond, and the amount of biological mass that they have in the wastewater treatment system.

Most of the municipal systems do not have the system capacity, the applicable equipment, availability of trained staff, nor the amount of biological mass to withstand an oil spill of 50 gallons without experiencing a potentially significant impact to the treatment processes and subsequent effluent quality.

Plus, in the case of the industrial facility, they are bearing the cost of their own spill. With a municipal facility, they would be bearing the cleanup cost of public and private facilities if those facilities did not have to report the spills and accept responsibility for the associated cleanup costs.

Major differences in size, treatment capacity, treatment equipment, and staffing lead me to conclude that not reporting spills under 50 gallons would create an unacceptable risk for treatment facilities, with the potential for treatment process upsets and degradation to the environment.

If you have any questions concerning this issue, please feel free to contact me.

APPENDIX G

Oil Discharge Focus Group:

**Meeting Agendas & Notes
Proposals**

Comments on Draft Report

Focus Group Meeting Agendas and Notes

**SHOULD MAINE'S STATUTORY OIL DISCHARGE/SPILL REPORTING
REQUIREMENTS BE CHANGED?**

November 1, 2005

*Holiday Inn, 110 Community Drive, Augusta
Somerset Room*

1. 9:00 a.m. Introduction/meeting objectives – Stephen K. Davis, P.G., Director, Bureau of Remediation & Waste Mgmt., MDEP; and Legislative Representative Thomas Saviello of District 90
2. 9:15 a.m. Current law and regulations and their implementation – John James, Policy Specialist, BRWM & George Seel, Director, Technical Services, BRWM
3. 10:00 a.m. Break
4. 10:15 a.m. Findings of MDEP survey of other states' oil reporting requirements – Sara Brusila, Environmental Specialist, & Peter Moulton, Environ. Engineer, BRWM
5. 11:15 a.m. Options being evaluated by the Department – George Seel & David McCaskill, Environ. Engineer, BRWM
6. 12:15 p.m. Lunch (on your own)
7. 1:15 p.m. Q&A/Open discussion
8. 2:15 p.m. Break
9. 2:30 p.m. Q&A/Open discussion continued
10. 3:15 p.m. Where do we go from here – Stephen Davis
11. 3:30 p.m. Adjourn

Focus Group Meeting Notes

Should Maine's Statutory Oil Discharge/Spill Reporting Requirements Be Changed?

November 1, 2005

Holiday Inn, Augusta, Maine

The meeting was attended by 25 people representing the Maine Dept. of Environmental Protection (DEP), State Fire Marshal's Office (SFMO), Maine Dept. of Transportation, Maine Drinking Water Program, Maine Rural Water Association, Maine Pulp & Paper Association, marine oil terminals, Downeast Energy, Maine Oil Dealers Association (MODA), St. Germaine Associates, League of Women Voters, Maine Rivers, City of Bangor wastewater treatment plant, Bangor International Airport, Maine Marine Trade Association, and Maine Air National Guard. Also attending was Representative Tom Saviello, who is also an environmental manager at International Paper Company. A copy of the list of attendees is available.

Morning presentations: The morning session was devoted to presenting background information. This included an overview of current Maine laws and regulations pertaining to spill reporting by John James of the DEP, a summary of findings from DEP's survey of other states and federal spill reporting requirements by Sara Brusila of the DEP, and a summary of spill data for Maine. Also presented was an analysis of the advantages and disadvantages of Maine's current regulatory framework and a potential alternative regulatory scheme by George Seel of the MDEP based on a de minimus discharge reporting limit of 10 gallons. Summary documents of these presentations were made available to meeting attendants.

Rep. Saviello's Proposed Alternative Regulatory Proposal: Rep. Saviello presented his concept for an alternative regulatory scheme for oil spill reporting in Maine. He began with a summary of a draft bill, "An Act to Address Reporting of Certain Low Quantity Releases," dated January 14, 2002. This proposal would establish a 50 gallon de minimus reporting requirement for petroleum products (excluding gasoline) at facilities that have an SPCC plan or Spill Contingency plan in place. The proposal would eliminate spill reporting requirements entirely for discharges (excluding gasoline) that are entirely contained within the immediate spill area or that are treated in a DEP-licensed on-site waste water treatment plant. All exempt discharges would be required to be cleaned up within 24 hours and logged, with the spill log kept for at least 3 years and made available upon request by the DEP. Rep. Saviello during the discussion of his proposal indicated that the periodic submission of the log was acceptable. Any discharge within a "sensitive area" and/or that reaches "bare ground" or surface water would not be subject to the exemption and would be required to be reported. "Bare ground" was not explicitly defined by Rep. Saviello, and he indicated that this definition would need further refinement. In support of his proposal, Rep. Saviello referred to DEP's spill data from 1995 through 2004 showing that spills greater than 50 gallons constituted the majority of the clean-up costs to the State (\$6.77 million out of a total cost of \$7.28 million). Rep. Saviello also made the point that he would rather spend his

time on more significant environmental issues at his facility, rather than reporting minor spills.

General Discussion Topics: Participant questions and answers, and general discussion was interspersed with the morning presentations, and constituted the bulk of the afternoon session. The following is a summary of the general discussion topics covered:

- A. *Allocation of limited resources:* Several participants questioned whether reporting all smaller spills is the best use of the limited staff time and resources available both to the regulated community and the DEP. Some suggested that developing a different regulatory framework that would allow both the regulated community and the DEP to focus their limited resources on the larger spills. It would also allow the DEP more time to focus on preventative measures, for example doing more facility inspections up front to ensure that they have adequate secondary containment, etc.
- B. *Consolidating the Regulation of All Tank Facilities:* Lt. Col. John of the Maine Air National Guard expressed frustration with the currently regulatory framework for underground storage tank (UST) and aboveground storage tank (AST) facilities where several state agencies play a role: MEMA, DEP SFMO, OSFB. Lt. Col. John recommended that all tank regulations be consolidated into one agency.
- C. *Reduction of spill reporting requirements as an incentive for facility upgrades:* Rep. Saviello suggested that a regulatory framework that reduced reporting requirements for facilities that have SPCC plans and adequate secondary containment could be used as an incentive to encourage owner/operators who have insufficient secondary containment (e.g. gravel berms) to upgrade their facilities.
- D. *Memoranda of Understanding (MOUs):* In the morning session Mr. Seel discussed MOUs that the DEP has entered into with a number of larger companies in Maine. Under these MOUs, the company enjoys a reduction in spill reporting requirements for discharges of 10 or less gallons in exchange for agreeing to maintain adequate staff and resources to clean up spills, clean up all such spills within 24 hours, maintain a log of smaller spills and submit the logs to the DEP. Prior to entering an MOU with a company, DEP staff first review the company's resources and capabilities to handle an oil spill

Michael Herz of Maine Rivers expressed concern about the lack of opportunity for public participation in the MOU process, as would typically be available in a licensing or permitting process. He also expressed concern that spills exempt from reporting under a MOU, and only required to be logged, would not show up on the DEP's spill database that is available to the public. Several participants suggested codifying the MOU process into a permit by rule to give the process a stronger legal basis and afford the opportunity for public comment. Another suggestion was to establish a mechanism for de minimus spills to be logged directly by the responsible party into the DEP's spill database so this information would be available to the public.

DEP staff was asked if the MOUs are enforceable, and if there has been any enforcement action related to MOUs in the past. Mark Hyland, acting Director of the DEP's Division of Response Services, confirmed that MOUs are enforceable, and the DEP has indeed conducted enforcement actions related to MOUs.

Steve Davis, Director of the Bureau of Remediation & Waste Management at the DEP, said that he would conduct an internal review of the MOU process.

- E. *Discharges to On-site Treatment Plants & Publicly Operated Treatment Works (POTWs)*: Representatives of the City of Bangor wastewater treatment plant and Bangor International Airport, explained that facilities discharging to the Bangor POTW are required to have an SPCC plan and to pretreat their discharges. The permits that the city issues to facilities discharging to the POTW specify how much, and what, can be discharged to the POTW. Andy Rudzinski, representing the City of Bangor POTW, indicated that residences, rather than manufacturing facilities, cause more problems with oil discharges to the POTW.

Mr. Seel mentioned recent discussions he had with engineers at the DEP's Bureau of Land & Water Quality who are involved with licensing and overseeing POTWs and the 24 industrial treatment plants in the State. The DEP engineers have observed a great deal of variability in POTWs' capabilities to treat oil in waste water entering the facility (versus just diluting the oil component of the waste stream). The engineers also indicated that oil spills to most POTWs are generally problematic. There is also a considerable variability in the capabilities among industrial treatment plants to handle oil spills.

- F. *Simplicity of Current Spill Reporting Requirements*: Mr. Hyland commented that the DEP's current laws and regulations are advantageous in that they are very simple for the facility owner/operator to follow, i.e. all they need to know is the DEP response number to call. This is compared to several alternative regulatory schemes discussed with different reporting requirements depending on a multitude of factors such as product, quantity spilled, location etc. Mr. Hyland also commented that reporting parties often misjudge the amount spilled. He believes that it is more appropriate for his trained personnel to make the decision as to whether further action is warranted rather than the facility owner/operator who may not be very knowledgeable about spill response or risk factors to be considered in assessing a spill.
- G. *Alternative de minimus reporting requirements*: Scott Collins of St. Germaine & Associates proposed establishing a de minimus of 1 gallon, above which full reporting requirements would apply. Spills less than one gallon would only be required to be cleaned up and logged. Mr. Collins suggested that this would be a relatively simple approach to reduce reporting requirements for smaller facilities (who might not be able to take advantage of MOUs) as well as the larger facilities.
- H. *Exemption from Punitive Penalties for Responsible Parties who Report Spills*: DEP staff pointed out that, while there is no categorical requirement to report all oil discharges, 38 MRSA § 550 exempts parties from any fines or civil penalties for the discharge if they report it within 2 hours and clean it up to DEP

satisfaction. Mr. Herz expressed concern that this provision might foster a more cavalier attitude on the part of some facility owner/operators regarding spill prevention and control, and a view that clean up costs associated with spills are just a “cost of doing business.” Mr. James pointed out that section 550 does not exempt the reporting party from criminal penalties.

- I. *DEP Position & Recommendations:* Susan Swanton of the MMTA suggested that it would be helpful if attendees know what direction the DEP was thinking of recommending, and for DEP staff to present a proposal which attendees could comment on.

Tasks for DEP staff (for next meeting of the group):

- Provide total number of wastewater treatment plants licensed by the DEP, number of industrial facilities and number of POTWs.
- Research the definition of “sewer”.
- Confirm whether the federal SPCC regulation (40 CFR Part 112) requires logging of all oil spills.
- Provide breakdown of the remediation costs for AST spills by product type
- Verify that the MOUs are reviewed by the Attorney General’s Office and that they are legally enforceable.

Next Meeting: Scheduled for Tuesday, December 6, 2005 starting at 9 AM, again at the Holiday Inn in Augusta. DEP staff will make the necessary arrangements.

Agenda
Oil Discharge/Spill Reporting Focus Group
Maine Dept. of Environmental Protection
Dec. 6, 2005
Augusta Holiday Inn, York Room

- 9:00 AM Opening comments – Stephen Davis, Director, BRWM, MDEP
- 9:15 Presentation of information requested by group – George Seel & staff, BRWM, MDEP
- Breakdown of wastewater treatment plants licensed by DEP
 - What is the definition of a “sewer”
 - Does EPA SPCC regulations require logging of spills
 - Breakdown of remediation costs by product for AST facility discharges
 - Number & cost of home heating oil discharges vs. other ASTs; efforts to prevent home heating oil discharges
 - Verify with AG’s office the Dept.’s authority to enter into MOUs and their enforceability.
- 9:45 Continuation of open discussion of proposed alternatives to current statutory requirements – Steve Davis
- 10:15 Break
- 10:30 Resume discussion
- 11:45 Wrap up; DEP report – Steve Davis
- 12:00 Adjourn

Focus Group Meeting Notes

Should Maine's Statutory Oil Discharge/Spill Reporting Requirements Be Changed?

December 6, 2005

Holiday Inn, Augusta, Maine

This meeting was a follow up to a meeting held on November 1, 2005. The December meeting was attended by 22 people representing the Maine Dept. of Environmental Protection (DEP), State Fire Marshal's Office (SFMO), Maine Dept. of Transportation (DOT), Maine Drinking Water Program, Maine Pulp & Paper Association, Maine Oil Dealers Association (MODA), League of Women Voters, Maine Rivers, City of Bangor, Bangor International Airport (BIA), Maine Marine Trade Association, and Maine Air National Guard. Representative Tom Saviello also attended. A copy of the list of attendees is available.

DEP staff presentations: DEP staff were assigned "homework" tasks at the previous meeting. The meeting commenced with DEP staff providing the previously requested information:

➤ *Municipal and industrial wastewater treatment plants, George Seel*

Mr. Seel summarized a memorandum dated November 17, 2005 from Steve McLaughlin, DEP, BLWQ, Div. of Engineering, Compliance & Technical Assistance. Mr. McLaughlin's memorandum addresses discharges of oil to wastewater treatment plants and potential ramifications if oil spills under 50 gallons were exempted from reporting requirements. The DEP licenses 169 publicly owned treatment works (POTWs) and 219 non-POTW treatment systems including 19 major industrial facilities. Most POTWs do not have the capacity, trained staff and equipment, and biological mass in the system to handle an oil spill of 50 gallons. Large industrial treatment facilities may be more able to handle an oil spill of 50 gallons without significant impacts since these facilities have greater control and knowledge of discharges to the system, likely greater biological mass in the system, and trained staff and equipment to handle spills. However, Mr. McLaughlin concludes that not reporting spills up to 50 gallons to a treatment plant creates an unacceptable risk since there is such great variability in system design and capacity to handle oil spills.

Mr. Seel concluded that oil shouldn't be discharged to municipal wastewater treatment plants, and if it is, it should be reported. He cited a recent example in Skowhegan where an oil spill to the POTW shut down the system for three days. With regard to industrial treatment plants, their capability to treat oil discharges seems to vary from facility to facility.

Mr. Seel also acknowledged a memorandum dated March 18, 2003 from Steve Woodard, PE (Woodard & Curran) to Michael Barden (MPPA). Mr. Woodard describes typical design features of a Maine paper mill treatment plant, and concludes that such systems at a typical plant in Maine could handle up to several hundred gallons and that

reporting limits less than that would be unnecessarily low. Mr. Seel noted that DEP engineers have not yet reviewed the memorandum.

Mike Herz (Maine Rivers) asked what does “capable of treating oil” mean in Mr. Woodard’s memorandum. Mr. Barden responded that it means “no sheen” as specified under the Clean Water Act, but that paper mills and POTWs are typically required to also conduct aquatic biota toxicity tests at the effluent (although such testing isn’t necessarily timed to coincide with spill events).

Ron Dyer (DEP) asked how many POTWs in Maine have industrial sources as their primary incoming waste flow. The answer was two: the Anson/Madison Sanitary District treating waste water from Madison Paper and the Town of Hartland treating wastewater from Irving Tanning.

Andy Rudzinski (Bangor POTW) stated that in addition to discharges that exceed permit conditions, POTWs are required to report incidents of “pass through/interference” (i.e. BOD spikes that are below compliance levels). “Too much oil” for a POTW is plant specific and depends upon a number of factors such as location of the spill in the system, time of year, etc. He cited a situation where Hawk Ridge, a composting facility that takes sludge from the Bangor POTW, refused the sludge for several days after the POTW received a 75 gallon oil spill. At 30 cubic yards of sludge generated daily by the POTW this can add up to a lot of sludge that must be land spread or put in a landfill.

Rep. Saviello cited three key points to consider when evaluating the potential impacts of an oil spill to a treatment system: flow rate through the system, amount spilled, and how much of the spill is retained in the primary clarifier. He also stated that a typical industrial treatment plant handles 200 gallons of oil a day just in incidental releases. He asked if POTWs are required to test for oil and grease on a routine basis. Mr. Rudzinski replied that oil/grease testing is not normally required of, or done by, POTWs.

Mr. Rudzinski stated that POTWs really need to know what, and how much, is coming into their treatment system, but users (particularly home owners) often under report or don’t report spills at all. However, Mr. Rudzinski said that heating oil companies are usually good about reporting spills that they are involved with.

➤ *EPA Requirements for Logging of Spills at AST Facilities – George Seel & Sara Brusila*

DEP staff confirmed with Don Grant of EPA’s regional office in Boston that the EPA no longer requires AST facility owners to log oil spills at their facility. However, owners presumably have to somehow keep track of reportable spills so that they can demonstrate that they have not had any spills large enough within a 12 month period that would trigger 40 CFR Part 112.4 requiring submittal of additional information to the EPA.

➤ *DEP/Facility Memoranda of Understanding (MOUs) re: Oil Spill Reporting, Steve Davis & George Seel*

After last month's meeting Steve Davis (DEP) discussed the legality and enforceability of the MOUs that the DEP has previously entered into with the Maine Attorney General's office (AG). The AG advised Mr. Davis that the MOUs are not directly enforceable but indirectly through the statutes cited in the MOU. If a facility was to act contrary to the agreement in the MOU, the DEP could take enforcement action, not as a breach of contract but as a violation of state statute.

Mike Herz expressed concern that the question of "transparency to the public" still has not been addressed. Rep. Saviello suggested that the MOU process be codified in statute with a requirement for public notice. Mr. Davis stated that it would be important to keep the MOU process simple.

Rodney Madden (BIA) indicated that he was not comfortable with the current MOU process, and that a clear, consistent set of standards should be established for MOUs. There should be a specified procedure and set of standards that would be fair to all facilities, and help ensure that there is no favoritism involved in the granting of MOUs.

Mr. Seel indicated that MOUs have been developed in a consistent manner, but conceded that there are no specific standards or public viewing of the current process.

Lt. Col. Eric Johns (Air Nat'l Guard) recommended that the MOU process be encoded in rule or statute to avoid abuse of the process. Lt. Johns stated that even if abuse is not occurring there could be a public perception that it is.

Mike Barden (MPPA) asked if the existing MOUs get reviewed once they are issued. Mark Hyland (DEP) replied that they are issued for a limited time period after which they come up for review and renewal. In fact, he had recently denied a renewal request from a facility, due to concerns raised at last month's meeting. Mr. Davis clarified that he placed a temporary moratorium on issuing new MOUs and renewing existing ones as an interim measure to allow the Department time to review the MOU process and the issues raised about the MOUs.

Rep. Saviello said that he intends to introduce legislation to encode the MOU process. His bill will be limited to oil spills only, and would include specific standards and require public notice as part of the process. The MOU process, including DEP inspections, would address the issue of the adequacy of secondary containment.

➤ *Presentation of Data re: AST Spill Remediation Costs & Home Heating Oil Spill Data, Peter Moulton (DEP)*

Mr. Moulton presented graphs and data on these topics. He stated that 288 of 1796 spills from 1995 – 2004 cost the state money in clean-up costs. Mr. Seel said that the cost of a spill depends largely on the sensitivity of the receiving area, type of product spilled and how much delay occurred between the time of spill and start of clean-up. He also clarified that the cost data being presented by Mr. Moulton addresses only damage

to groundwater resources, and excludes any costs or damage done related to other natural resources.

Mr. Moulton confirmed that there is no strong correlation between the amount of product released in a spill and the resultant clean-up cost. He also indicated that the most costly spills were those of gasoline, with #1 and #2 heating oil spills being the next costliest. Home heating oil spills at single family residences accounted for \$12 million of the clean up costs incurred from 1995 – 2004, while all other facilities accounted for only \$8 million. The most common cause of spills at commercial AST facilities was tank overfills. The most common cause for home heating oil tanks was tank corrosion, with overfills being the second most common cause of home heating oil spills.

In response to the residential tank spill cost data Lt. Col Johns suggested that the state fund replacement of home heating oil tanks. Mr. Seel responded that this would not be a cost effective measure given that there are 415,000 home in Maine that are heated with oil. Generally, remediation costs for household AST spills is not significant – about \$1,000 on average per spill. However residential tank spill costs can run much higher than that if located in a sensitive area. Therefore, Mr. Seel maintained that it is much more cost effective to fund replacement tanks only in sensitive areas. Mr. Seel went on to say that the DEP spends \$750,000 to \$1 million dollars annually to replace home heating oil tanks for low income families in sensitive areas, including islands and within source water protection areas of community wells.

General Group Discussion: The last part of the meeting was devoted to a general group discussion covering a variety of topics.

➤ *Spills to containment & treatment plants*

Rodney Madden (BIA) questioned why spills to containment are considered reportable. Mr. Seel and Mr. Davis responded that there is a wide variability in the effectiveness of containment structures to hold oil spills, and some are fairly permeable (e.g., gravel berms).

Mr. Rudzinski suggested using the MOU as a mechanism to establish minimal standards for secondary containment measures.

Similarly, Mr. Barden suggested using MOUs or adopting new legislation to set standards for containment and to specify a volume of discharge below which only logging of the spill (not reporting) would be required. The de minimus reporting quantity would be based upon what the treatment plant could handle without adverse impacts.

Mr. Herz mentioned concerns about cumulative impacts of many small spills over time. He recommended testing effluent tied to spill events and not just random background testing.

Alison Smith (League of Women Voters) asked what is the benefit of not reporting spills?

Rep. Saviello stated that discharges to POTWs would be “off the table” and not included under his proposed legislation. He is thinking about a tiered approach: a general MOU

based upon a 10 gallon de minimus reporting quantity; and for larger facilities, with treatment plants with a minimum capacity of 1 million gallons per day, a 50 gallon de minimus reporting requirement. The 50 gallon group would also be required to have an SPCC plan and a haz mat team. Logging of non reportable spills and clean up within 24 hours would be required for both levels. The proposed legislation would also require some form of public notice.

Wendy Warren (City of Bangor) suggested an across the board de minimus reporting requirement in the 2 – 3 gallon range, regardless of location of the spill. She cited difficulty in training employees and a “loss of credibility” when she has to instruct employees to report “anything.” Other attendees mentioned this concern as well.

Mr. Madden (BIA) stated that having to report all spills creates an economic loss due to loss staff time.

Sarah Walton (League of Women Voters) felt that while reporting may create an economic burden for facilities that shouldn't be the driving force here – protection of the environment should be the primary focus.

Dwight Doughty (DOT) stated that they found that it was simplest just to have employees report everything through the chain of command to the appropriate supervisor, and have the supervisor call spills in to the DEP.

Where to go from here?

It was agreed at the end of the meeting that Mr. Seel will draft a report and circulate it to the group for review prior to submitting it to the legislature. Any one wanting to submit comments or proposals needs to submit them to Mr. Seel by the first week in January in order to be considered.

Focus Group Proposals

Text of Dec. 21, 2005 e-mail from Michael Barden of the Maine Pulp & Paper Assoc. (mbarden@pulpanpaper.org) to Focus Group members

George,
thanks for forwarding these articles.

As a follow-up to our last meeting, I have included a policy model of what MPPA believes would be an appropriate path forward for oil spill reporting. It's my understanding other members of the focus group will also be submitting recommendations, and I think it would be useful if you could forward those to the entire group as well. **Please note, we are not recommending any changes for reporting of gasoline spills, spills from USTs, or spills from residential heating oil tanks.** These seemed to be the type of spills the articles were focusing on. Of course, Clean Water Act provisions would continue to apply for spills directly to surface waters, regardless of quantity.

++++
Facilities could choose from any of the 3 options:

Option 1 - do nothing - report all spills regardless of quantity

Option 2- 10 gallon reporting threshold similar to existing MOU. Would apply to oil spills (exclusive of gasoline) inside building, to secondary containment, or on bare ground. Facility would log all spills and provide copy of spill log to DEP at some frequency (quarterly, semiannually or annually). DEP conducts inspection before approving. Spill must be cleaned up within 24 hours and materials disposed/treated in accordance with all state/federal requirements. This could be renewed on some frequency, i.e., 5 years. Would only apply to that company - Any new company at the same location would not be covered. Application for MOU would be filed with DEP and local town/city office with public notice provided.

Option 3- MOU for 200 gallon (any one spill or per day basis) threshold for spills inside buildings or to secondary containment; 10gallon threshold for oil spills on the property to bare ground.

Conditions:

- Oil SPCC plan , hazmat team (or alternatively SPCC plan must meet all regulatory requirements for response personnel training, response equipment, etc),
- on-site licensed waste water treatment plant, or discharge to local licensed POTW where influent flow to POTW makes up at least 80% of total effluent flow to the river. Licensed treatment plant capacity at least 5 million gallons/day (MGD).
- Log all spills, provide copy of log to DEP (quarterly, annually, etc)

- Clean up spills within 24 hours, and dispose/treat in accordance with all state/federal requirements.
- Must be renewed every 5 years??
- Same as Option 2 above for public notice.

Text of December 22, 2005 e-mail from Andrew Rudzinski, Pretreatment/Safety Coordinator, City of Bangor WWTP to Focus Group members

Greetings:

I will restrict my comments on this proposal to that section which involves discharge to POTWs or Publicly Owned Treatment Works. POTWs are by definition just that, owned by the public, not any one entity regardless of whether or not the entity in question funded, in part or wholly the POTW, nor if the entity contributes 50% or 80% of the influent flow to that POTW.

We must be mindful that POTWs serve the public at large.

Prior to the last meeting we were provided with a copy of a paper from Steve Woodard regarding "Oil Spills to Wastewater Treatment Plants". The gist of this paper dealt with the ability of wastewater treatment plants, not necessarily POTWs, to treat "oil" spills. At the last meeting of this group I had the opportunity to comment on the application of this work with regard to my own experience as a POTW employee. My position, and that of the Bangor WWTP, based on years of actual observations at the Bangor WWTP and on Federal, State and Local Laws, remains unchanged as follows:

- POTWs are designed and intended to treat sanitary wastes, not industrial/hazardous wastes.

- The ability of the POTW to effectively remediate (treat) hydrocarbon based spills is dependant on many factors such as, but not limited to:
 - a). Total flow to the POTW
 - b). Duration of the spill
 - c). Material spilled
 - d). Distance from the POTW of the spill
 - e). Existing conditions at the POTW (biomass on hand to treat pollutants varies and is kept at an optimum level to treat expected level of sanitary loads- which vary comparatively little to industrial flows)

- Oil spills to the sewer system are problematic in that the material will partially remain in each wet well that it passes through, requiring clean up by Haz-Mat teams (which Bangor WWTP, and perhaps many others, does not maintain) and proper disposal of materials.

- At each lift station, and at each point where sewage is agitated or vigorously mixed as in drop points, hydrocarbons are volatilized and released to the atmosphere, sometimes in hazardous concentrations - as we have experienced on numerous occasions. This in turn has serious negative implications on public and worker health and safety.

- Depending on the material spilled, it will to some degree coat all surfaces in comes in contact with such as pipes, tanks, machinery, fixed film media, and dewatering equipment, causing clean up problems, operational problems and disposal problems. Again, POTWs are designed to treat sanitary sewage.

- The natural by-product of biological treatment works is sludge. Sludge contaminated with certain levels of hydro-carbons must be treated differently than normal sludge produced at POTWs. Sludge disposal methods vary from POTW to POTW, however, beneficial re-use of sewage sludge is generally the preferred end goal. Contaminated sludge requires segregation and additional treatment before acceptance to private disposal sites, adding costs and all other associated problems. Sometimes the sludge must be disposed of to landfill due to contamination levels.

- The City of Bangor has a "Sewer Use Ordinance" in place. Any POTW that has a Pretreatment Program in Maine should have the same, as per Federal requirements listed in 40 CFR. The "Sewer Use Ordinance" of Bangor strictly prohibits the intentional discharge of all "Petroleum oils, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass-through". Also "Fats, oil or greases of animal or vegetable origin or oil and grease and other petroleum or mineral products in concentrations greater than 200 mg/l". Also "Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquids, solids or gases". The "Sewer Use Ordinance" in it's entirety is available on the City of Bangor website for further reference.

- It is the position of the Bangor WWTP that provisions of the City of Bangor "Sewer Use Ordinance" would take precedence over any other State or Federal law that is less stringent. One of the main purposes of the "Ordinance" is to establish criteria for the use of the sewers that will be most protective of the sewers, the POTW, public and worker safety and health, and the environment in Bangor. As such, and as is consistent with Pretreatment Program regulations, the most stringent standards will apply.

In conclusion, the City of Bangor WWTP has no interest in supporting any rules, laws, etc. that would allow, encourage or sanction the discharge of oils of any source to POTWs. The City of Bangor WWTP would actively oppose any such rules or laws at any level for any users.

Respectfully,

Andrew Rudzinski
Pretreatment/Safety Coordinator
City of Bangor WWTP
760 Main St.
Bangor, ME 04401
Phone: (207) 992-4477
Fax: (207) 947-3537

Focus Group Comments on Draft Report

From: Rudzinski, Andy [andy.rudzinski@bgrme.org]

Sent: Tuesday, February 07, 2006 1:44 PM

To: Seel, George J; 'Alex Wong'; Rudzinski, Andy; Braley, David; Brusila, Sara; 'Chris Hall'; 'Colleen Tucker'; Davis, Stephen K; Dixon, Stephen W; Doughty, Dwight; Dyer, Ron E; Garrett, Deborah N; Hyland, Mark; 'J. Banks'; James, John; 'Jeff McNelly'; Kavanah, Brian W; 'Lt. Col. Eric Johns'; McCaskill, David; Merchant, Gil; 'Michael Herz'; 'Mike Barden'; Moulton, Peter T; 'Naomi Schalit'; 'Nick Bennett'; Olson, Christine; 'Pattie Aho'; 'Rep. Thomas Saviello'; Madden, Rodney; 'Roger Audette'; 'Sarah Walton'; 'Sarah Wolpov'; 'Susan Swanton'; 'Tom Dobbins'; Warren, Wendy

Cc: Moore, Brad

Subject: RE: Draft legislative report

Mr. Seel:

The City of Bangor WWTP thanks the Department for the opportunity to serve on the Oil Spills Reporting stakeholders group. The Department continues to uphold their tradition of responsiveness by allowing the regulated community such a forum. Your efforts are appreciated and supported by the staff at Bangor WWTP.

Addressing section 7 of the Draft Legislative Report, page 26, the Bangor WWTP has the following comments:

ITEM: Restriction of alternate reporting methods to spills of 10 gallons or less. We support this measure given the proposed allowance to discharge to POTWs and industrial wastewater treatment plants, with the following noted: Given the reported fact that certain paper mills (page 20 footnote 7), may discharge some 200 gallons of petroleum product per day on a routine basis, does the 10 gallon limit apply to a "per incident" level; "per day"; "per machine"; "per building" or "per company"?

ITEM 1): Certified SPCC Plan in place as pre-requisite. We support this measure, however, the Department should consider the possible changing dynamics of the Federal SPCC program regarding certification and re-certification by registered engineers.

ITEM 2): Discharge (spill) limited to impervious surfaces or secondary containment. We support this measure. We note the language seems to be somewhat contradicted by that in Item 4.

ITEM 3): Discharges in "sensitive locations" not eligible. We support this measure.

ITEM 4): Discharges that escape to sewer systems, both private and public, may be allowed. Bangor WWTP has electronically submitted comments regarding discharge to POTWs on December 22, 2006. Our position has not changed in this matter, that is local Sewer Use Ordinances and control devices, where more stringent or prohibitive are the enforceable limit. POTWs should not be compelled by the enactment of this policy to allow discharges to the public sewer system where it has heretofore been prohibited or restricted.

ITEM 5): Maintenance of a discharge log. We support this measure, and note the requirement for GIS location of spills may not be needed for all facilities or locations. Perhaps this can be addressed in the MOA.

ITEM 6): Discharge log available upon request to Department staff or Municipal Officials. We support this measure.

ITEM 7). _Logs to be submitted annually_ We support this measure.

ITEM: Closing remarks- public disclosure_ We fully support the measures that appear in the passage cited.

In closing, Bangor WWTP again wishes to express gratitude for the opportunity to participate in the process. We believe that through these efforts all stakeholders will benefit and the investment in the environment will continue to be protected for future generations.

Sincerely,

Andrew Rudzinski, Pretreatment/Safety Coordinator
City of Bangor WWTP
760 Main St.
Bangor, ME 04401
992-4477

From: Nick Bennett [nbennett@nrcm.org]

Sent: Thursday, February 09, 2006 3:07 PM

To: Seel, George J

Subject: RE: Draft legislative report

Hi George. Thank you for the opportunity to comment on this draft report and for all of your hard work to put it together. Do you have a sense of when the Committee will discuss the report and whether any potential legislation will move forward this session?

The biggest concern I have with this report is in recommendation four, which seems to allow the constant discharge of oil in essentially unlimited quantities to industrial wastewater treatment plants.

To my knowledge none of the industrial treatment plants in Maine are designed to treat oil. These wastewater treatment plants are not so different from POTWs --except in their size and ability to dilute waste -- and rely on bacterial processes in secondary treatment to deal with waste, just as POTWs do.

Although Dr. Curran's memo mentions that primary clarifiers can remove oil together with the typical pulp and paper waste that is retained by scum baffles, he cites no evidence for this. He describes no use of specially designed absorbent materials to remove oil from water surfaces, such as those used during marine spills. I do not believe that wet pulp and paper waste will be as effective an absorbent material as he claims it to be. Also, what is the fate of the oil in the scum removed from primary clarifiers? Is it landfilled, recirculated for treatment, incinerated? None of this is clear and there are few data to support the premise that Maine's industrial treatment plants can successfully treat petroleum and oil products. Therefore, allowing the discharge of oil in essentially unlimited quantities to industrial treatment plants is not justified on technical grounds.

We are also concerned that this recommendation violates the law. In his November 18, 2005 memo, John James concluded the following:

Conclusion: The discharge of oil in any amount to a sewer, whether or not the sewer leads to an industrial waste treatment plant, is prohibited under 38 MRSA § 543. Thus, the issue for discussion is not whether the discharge is prohibited, but under what circumstances such a discharge should be reported to the department. The Legislature, through the enactment of 38 MRSA §546(4)(B), has given the Board of Environmental Protection authority to adopt rules setting forth the "procedures and methods of reporting discharges" prohibited by section 543.

Given this, we believe recommendation four violates statute.

Thanks again for the opportunity to comment, and feel free to contact me with any questions.

Sincerely,

Nick Bennett
Staff Scientist
Natural Resources Council of Maine
622-3101 x 216
nbennett@nrcm.org

From: Johns, D Eric, Lt Col, 101ST, EMB, 698-7407 [Eric.Johns@mebngr.ang.af.mil]

Sent: Friday, February 10, 2006 1:40 PM

To: Seel, George J; Alex Wong; Andy Rudzinski; Braley, David; Brusila, Sara; Chris Hall; Colleen Tucker; Davis, Stephen K; Dixon, Stephen W; Doughty, Dwight; Dyer, Ron E; Garrett, Deborah N; Hyland, Mark; J. Banks; James, John; Jeff McNelly; Kavanah, Brian W; Johns, D Eric, Lt Col, 101ST, EMB, 698-7407; McCaskill, David; Merchant, Gil; Michael Herz; Mike Barden; Moulton, Peter T; Naomi Schalit; Nick Bennett; Olson, Christine; Pattie Aho; Rep. Thomas Saviello; Rodney Madden; Roger Audette; Sarah Walton; Sarah Wolpow; Susan Swanton; Tom Dobbins; Wendy Warren
Cc: Littell, David P

Subject: RE: Draft legislative report

The Maine Air National Guard (MEANG) appreciates the opportunity afforded it by the Maine Department of Environmental Protection (MDEP) and Maine State Legislature to participate and comment on proposed changes in spill reporting requirements.

The MEANG fully concurs there needs to be a public and transparent process for entering into agreements with the MDEP regarding any deviations from statutes and administrative rules. The MEANG believes this implementation could occur through the rule making process and would be an active participant. Further, the so-called 10 gallon reporting criteria should apply for kerosene based fuels, heating oils, diesel, and other similar heavier products. It seems that gasoline spills pose a greater threat and should always be reported. The MEANG also would support reporting spills to bare soil, water courses (or any kind), or publicly owned treatment works. Keeping a log is reasonable and the MEANG would support logging all spills within 30 days if MDEP would make a web site available for this data collection.

Properly implemented, the benefits would be to provide insight into causes of spills statewide resulting in prevention by others. In reviewing spill reports over the past few months, we've modified business practices in some cases because we like to learn from others before it happens to us. We believe the lack of ease of interacting with MDEP (data sharing) regarding spill reporting at industrial sites has been problematic. Making at least a portion of the spills available on-line in December 2005 was a huge leap forward and we applaud this effort. Last year the MDEP published an 18 minute film available on DVD and VHS tape addressing spill prevention at home owner heating tanks which again indicates recognition that this is where the biggest problem lies (as opposed to at industrial facilities).

The MEANG has one UST and many AST's. MEANG would like to see the state do a better job of consolidating its rules and regulations with regard to petroleum product storage tanks and associated rules. Currently at least four different agencies have some sort of "public safety" (broadest sense of the word) jurisdiction over petroleum handling and storage.

On a technical level, this report voices concern over the potential of non-measurable amounts of petroleum by-products escaping through privately owned waste water treatment facilities. If this low level of discharge is of concern, the MDEP might wish to evaluate supporting laws against used oil being applied to the underside of automobiles to prevent rust and enhancing the state vehicle inspection program to include checking for oil and fuel leaks.

Lastly, the MEANG takes issue with only one aspect of the report. The MEANG encourages the MDEP to carefully review the draft and avoid editorializing or accusing the regulated community of unprovable attitudes. This occurs several times, but is particularly blatant in the following passage:

"Why is the Department not recommending larger volume reporting exemptions of 50 or 200 gallons as requested by the paper industry? First and foremost, we believe it will

result in the development of a culture within the regulated community and its employees that will encourage, rather than prevent oil discharges (e.g. "if we don't have to report it, then it must be OK to spill 200 gallons"). Then there is the question of how large a discharge would actually be exempt from current reporting procedures and DEP clean-up oversight given human errors in estimating their volume? With a possible margin of error of 100% or more, 50 and 200 gallon petroleum discharges are often in reality 100 and 400 gallon discharges, or greater. Certainly the same is true of a 10 gallon exemption; however the gallonage of the error is likely to be far less. A 100% error is 20 gallons. The argument made in favor of large de minimus oil discharge limits on the basis that the treatment plants of large industrial facilities in Maine can successfully treat such spills on a daily basis is unconvincing. Again, it encourages a culture of "if the spill goes down the sewer, everything is OK", versus encouraging discharge prevention and the subsequent energy conservation. "

The idea the regulated community would encourage an oil discharge is irresponsible and stating so in this report, less than fully professional. The MEANG specifically and, we believe, the regulated community and its employees as a whole, deeply care for Maine's environment and are concerned about every drop spilled potentially reaching Maine's surface and ground water. No spill is insignificant - and certainly not encouraged - in terms of avoidance or cleaning up. Every spill gets our full attention. However, small spills inside containment or on pavement and cleaned up immediately pose little or no environmental impact. Certainly the impact is less than experienced on parking lots at schools, state agencies, federal facilities, churches, shopping malls, etc where stains from unattended drips and leaks are highly prevalent. Staying on point, editorializing in this technical report is inappropriate - especially when it is implying a thought and not stating a fact.

Respectfully Submitted,

Eric

D. Eric Johns, LTC

Environmental Engineer
207-990-7407/Fax 7102 DSN 698-7407
101 ARW/EMB
Maine Air National Guard
99 Glenn Ave. Suite 494
Bangor IAP, ME 04401-3054

From: mike barden [mbarden@pulpandpaper.org]

Sent: Friday, February 10, 2006 4:47 PM

To: Seel, George J; Alex Wong; Andy Rudzinski; Braley, David; Brusila, Sara; Chris Hall; Colleen Tucker; Davis, Stephen K; Dixon, Stephen W; Doughty, Dwight; Dyer, Ron E; Garrett, Deborah N; Hyland, Mark; J. Banks; James, John; Jeff McNelly; Kavanah, Brian W; Lt. Col. Eric Johns; McCaskill, David; Merchant, Gil; Michael Herz; Moulton, Peter T; Naomi Schalit; Nick Bennett; Olson, Christine; Pattie Aho; Rep. Thomas Saviello; Rodney Madden; Roger Audette; Sarah Walton; Sarah Wolpow; Susan Swanton; Tom Dobbins; Wendy Warren

Subject: Re: Draft legislative report

George,

While we would have liked more time to comment on the draft, we do appreciate having an opportunity to provide input prior to issuance of the final report. That said, MPPA has several concerns with the February 2 draft.

The Executive Summary should correctly state the process that led to formation of the focus group. During deliberations on the SPCC sunset bill last session, Rep. Thomas Saviello suggested the bill be amended to include a reporting threshold for oil spills for facilities with federally approved SPCC plans. Rather than proceed with debate on such an amendment, DEP Bureau Director Steve Davis offered to convene a stakeholder group to further explore the State's oil spill reporting. The Committee agreed with that approach and Committee Co-chairs Cowger and Koffman subsequently sent a letter to the DEP requesting formation of a stakeholder with a report back to the Committee on its findings and recommendations by February 2006.

Other corrections/additions to the Executive Summary should include: 1) A statement on how oil spill calls made to DEP after business hours are handled. 2) We were not aware that DEP has issued an MOU with a 50 gallon reporting threshold (10 gallons to soil) and this should be explained further. There was no disclosure or discussion of such an agreement at the focus group meetings. 3) At the first meeting, I did report that I had reviewed oil spill reporting requirements from some Southeastern with large pulp and paper mill presence, but this was limited to a simple review of relevant statutes and regulations. Only Georgia statutes appeared to follow federal reporting requirements, whereas other state provisions were unclear or non-existent and requests for further information were never returned. Accordingly, this paragraph doesn't add much value and should be deleted. 4) Page 4 states that "... AST discharges are the fastest growing source of oil pollution sites..." Does this include residential home heating oil tanks, and gasoline spills. This should be clarified, since the reference to the 1800 spill figure does not include marine terminals and residences. The Table 1 handout from the 1st meeting could be inserted here for further clarification as well. 5) Representative Saviello was not representing the paper industry at the meetings, so the language on page 5 should simply indicate that Rep Saviello and MPPA offered specific proposals and briefly state the proposals. If readers want more details these are provided in the body of the

report. DEP should attempt to limit the Executive Summary to no more than 3 pages.

The Section 5 Summary discussion should include the charts that were provided at the focus group discussions in addition to the Tables. The bar chart breaking down all AST spills that cost state money (source: DecemberASTGraphs.xls FacilTypeandProd) importantly shows cost of state expenditures for home heating oil tanks and a breakdown by product type. Importantly, hydraulic oils that constitute the majority of spills at pulp and paper mills represent the least cost (assuming that such oils are lumped in the "other petroleum" category). Do the cost figures under the Industrial facility source category (Table 4, p.18) include funds expended to clean-up the Pembroke tank farm that Domtar's Woodland Mill (formerly Georgia-Pacific) acquired from Gulf Oil sometime after 1995. These costs were likely in the six-figure range and could significantly inflate the Industrial source category. It would be more appropriate to include these costs under the "Bulk Plant" source, if they are not already included under that source category.

The lengthy discussion on waste water treatment plant capabilities (pp 22-24) does not accurately capture current operations at a typical pulp and paper mill. First, large complex paper machines of the vintage at most Maine mills commonly leak hydraulic fluid on a daily basis due to ongoing vibrations and design limitations. Seals are replaced when mills undergo maintenance shutdowns at regular intervals throughout the year. These leaks are typically sewered to the waste water treatment plant where, as Dr. Woodard indicated, physical and biological processes remove and treat the hydrocarbons. Waste water discharge licenses issued by the State include a compliance limit for oil/grease that is set at 15 ppm. Furthermore, the Department's Surface Water Toxics rule (Ch 530) requires all municipal and industrial facilities to conduct on-going effluent monitoring that includes all the dissolved phase constituents that were mentioned in the draft report, i.e., BTEX, PCBs, etc. Whole Effluent Toxicity (WET) testing is also required. This test exposes organisms (trout, water flea) to various concentrations of treated effluent and measures growth, survival or reproductive impacts from the exposure. DEP has more than 10 years of data under this program, and there is no indications of discharges of petroleum hydrocarbon constituents that are being released from pulp and paper treatment plants. Moreover, EPA and DEP have established ambient water quality standards (Ch 584) for these constituents and to my knowledge no exceedences of these risk based standards have been identified as on-going problems at industrial facilities. Likewise, the footnote (p. 23) referencing effluent chemical concentrations following a 3000 gallon spill in 1999 at the IP Jay mill has little value without comparisons to the relevant ambient water quality standards.

The statement on p. 27 that not having to report oil spills will encourage a "...culture within the regulated community.." is pure speculation and reflects a

complete lack of understanding of business models in operation today. For MPPA member companies, as well as other Maine industrial facilities and entities, the adoption and implementation of international certification programs (ISO-14001) and other Environmental Management Systems is common practice. These programs seek to minimize environmental impacts from day-to-day facility operations and have detailed documentation and employee training programs that are designed to achieve those goals. In fact, as was pointed out by several participants at the meetings, requiring reporting of small spills (and any spills that go to secondary containment) is counterproductive and creates a credibility gap with employees.

Again, thank you for providing an opportunity to comment. Please don't hesitate to call if you have any questions.

Maine



Rivers

Nine Union Street
Hallowell, Maine 04347
Fax & Tel: (207) 623-2157
www.mainerivers.org

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*"Our mission is to protect,
restore & enhance
Maine's river systems"*

Comments by Maine Rivers on the Draft Review of Maine's Oil Discharge Reporting Statutes & Regulations

February 9, 2006

George Seel, Director
Division of Technical Services
Bureau of Remediation and Waste Management
Maine Department of Environmental Protection
State House Station 17
Augusta, Maine 04333

Dear Mr. Seel:

We greatly appreciate having had the opportunity to participate in the Focus Group that has resulted in this Draft Review, and we commend the DEP staff for their excellent work in this process. As a citizen organization dedicated to protecting and restoring Maine's rivers, we are concerned that the state's statutes and regulations guarantee the health of those valuable resources. Our participation in the DEP's Focus Group on oil spill reporting was for the purpose of ensuring that adequate documentation of oil discharges occur so that prevention of such incidents is facilitated, and that the system is transparent and thus allows complete public access to the entire regulatory process, from the issuance of facility permits to the enforcement of regulations.

The recommendations contained in the 2/6/06 Draft Review are a major step toward the creation of a more transparent system. However, it is apparent that the historic use of Memoranda of Understanding (henceforth, "MOUs") as a part of the regulatory process has not produced such transparency. There has been little, if any, public access to either the MOUs or the logs of incidents filed with the DEP. In addition, the statement in Section 3 of the Review, "**No enforcement actions have been necessary to date,**" suggests that DEP has documented that facilities with MOUs have, in fact, reported incidents and that the agency has performed adequate review of logs of these incidents to assure that compliance has occurring throughout the years that the system has been in force.

Unfortunately, no information regarding the successful use of these agreements was presented at the Focus Group meetings, nor have we seen any DEP review of the MOUs that would justify the assertion that no enforcement actions have been necessary to date. Before accepting the proposed use of MOUs as the best mechanism for dealing with smaller incidents, we would like to review the record that substantiates the effectiveness of such agreements in documenting, reducing or eliminating their occurrence. Such documentation should include the following information:

1. Date each MOU established and its duration.
2. Experience:

- a. Number, size, product, cause of each spill reported during lifetime of each MOU;
 - b. Time & adequacy of cleanup & waste disposal for each incident;
 - c. Documentation of who reviewed and signed off for each logged incident at each facility;
3. Logs:
 - a. How & when submitted each year;
 - b. Logs reviewed by whom at DEP;
 - c. DEP database of incidents.

We strongly support the codification of the overall process recommended in the draft document which should ensure public access to all information involved in the regulatory process. We do, however have several comments regarding the Recommendations (Section 7):

1. In 3), "Sensitive locations" appears to exclude sensitive aquatic habitats for fish or wildlife. Although "mapped significant sand and gravel aquifers" are included, mapped sensitive natural areas are not, and should be.

2. In 4), "Discharges to industrial wastewater treatment plants not in compliance with the standards and conditions of their waste discharge license are not eligible for the proposed exemption." Does this mean that some licenses permit discharge of petroleum products? It is our understanding that all discharges of petroleum products are in violation of statute, which is an opinion verified by John James' 11/18/05 letter; please clarify.

3. Examination of Tables 1-4 of the Review raises questions regarding whether or not data presented in the "less than 10gallon spills" column for each of them includes all of the incidents logged under the historic 18 MOUs. It would appear that if these tables exclude data from such incidents, their results, and any conclusions based on them, could be extremely inaccurate.

The MOU procedure is designed to encourage the reporting and clean-up of small incidents by facilities in exchange for exemption from civil penalties. Under this proposed system, the DEP will not be notified nor will they be required to respond to such spills although the facility will be required to log each incident and to submit logs for annual examination.

Our concern with this system is that it is entirely voluntary and contains no mechanism to determine whether spills are being logged and adequately cleaned up. In addition, the absence of any data regarding DEP's monitoring of incident-reporting and clean-up adequacy under existing or past MOUs is not reassuring and makes it impossible to evaluate the process. Worse, the recommended procedure includes no proposed DEP evaluation process but simply indicates that incident information will be entered into a database, which is not an approach that strongly encourages compliance by the regulated community. Furthermore, the frequent underestimation by industry of spill size, cited with abundant examples in the DEP staff review, leads us to even greater concern about the adequacy of such a voluntary approach.

If the DEP plans to use the MOU procedure as its principal mechanism for regulating small spills at commercial facilities in Maine, it must also propose a companion oversight procedure which will permit systematic evaluation of the effectiveness of this proposed regulatory procedure. While the issue being discussed is "small spills," any spill arguably constitutes a violation of state and federal law, and the cumulative impact of numerous small spills on the environment may not be negligible. Thus, we support the

development of procedures and reporting mechanisms that treat these spills with the gravity they deserve, and will not allow them simply to be consigned to administrative oblivion in an unreviewed reporting log.

Thank you for this opportunity to participate in the development of this document and to comment on it.

Sincerely,

Michael Herz, Ph.D.
Member, Board of Directors