



For a thriving New England

CLF Maine 53 Exchange Street, Suite 200
 Portland, ME 04101
 P: 207.210.6439
 F: 207.221.1240
 www.clf.org

October 21, 2021

Pamela Parker
 Water Enforcement Program
 Division of Water Quality Management
 Maine Department of Environmental Protection
 17 State House Station
 Augusta, ME 04333-0017

Submitted Electronically

RE: Sprague Operating Resources LLC Administrative Consent Agreement

Dear Ms. Parker:

Conservation Law Foundation (“CLF”) appreciates the opportunity to submit comments on the proposed Administrative Consent Agreement entered between Sprague Operating Resources LCC (“Sprague”), the Department of Environmental Protection (“Department”), and the Office of the Attorney General (“OAG”). As currently drafted, the Administrative Consent Agreement does not reflect a full and fair settlement of this matter. Therefore, CLF urges the Department to revise it to better reflect the nature of the material spilled and the environmental harm created by the spill. Revisions are also needed to prevent subsequent spills.

I. The Department Should Treat the Spill as a Petroleum Spill.

Currently, the Department is treating the spill as a discharge of a pollutant into waters of the state. The Department should be more specific. The pollutant at issue here was, in fact, petroleum products, which are defined by statute as oil. Accordingly, the Department should treat this event as an oil spill, and it should be treated with the same severity the Department has treated previous oil spills.

Maine law prohibits the discharge of oil into or upon coastal waters, beaches, and lands adjoining the seacoast of the State.¹ Oil is defined as oil, oil additives, or “*petroleum products and their by-products of any kind and in any form.*”² On December 2, 2020, Sprague personnel were offloading bales of solid recovered fuel destined for incineration at the Penobscot Energy Recovery Company’s (“PERC”) waste-to-energy facility.³ Solid recovered fuel is a form of dried, filtered, and shredded waste and its predominant component is always plastic. These

¹ 38 M.R.S. § 543.

² 38 M.R.S.A. § 542(6). *Emphasis added.*

³ Sprague Operating Resources LLC., Protection and Improvement of Waters, EIS Docket #2021-005-W. (Sept. 2021). [*Hereinafter* Administrative Consent Agreement].



specific bales of waste were composed of approximately 80% shredded plastic, 11% paper, 8% fabric, and 1% other non-putrescible materials.⁴ While offloading the shipment, two waste bales weighing a collective 2,500 pounds. were dropped and spilled into Penobscot Bay.⁵ That means that 2,000 lbs. of petroleum products, which constitute oil under the statute, were dumped into Penobscot Bay.

Broadly speaking, plastics are made by refining petroleum, like oil and natural gas.⁶ Oil and natural gas are refined to create ethane and propane. The ethane and propane are then treated with extreme heat in a process called “cracking” which breaks them down into monomers – ethane becoming ethylene and propane becoming propylene. The overwhelming majority of plastics can be traced to just these two petroleum byproducts.⁷ Ethylene is a critical feedstock to produce common plastics like Polyvinyl chloride (“PVC”), poly-ethylene terephthalate (“PET”), and polystyrene.⁸ Combined, these forms of plastics represent 65 percent of global plastic production by weight.⁹ Propylene is the platform chemical for polypropylene.¹⁰

Oil and natural gas are such a prevalent part of the plastic production process that plastics manufacturing is becoming a central component of the fossil fuel industry’s business plan. In fact, plastics now make up such a significant source of demand for oil and natural gas that the fossil fuel and petrochemical industries are pouring vast sums of money into expanding plastic production facilities.¹¹ In the U.S. alone, the petrochemical industry has invested over \$200 billion in 333 new projects and expansions since 2010.¹² Most of this capacity will be used to manufacture more plastic.¹³ Indeed, if trends in oil consumption and plastic production continued as expected, “the consumption of oil by the entire plastics sector will account for 20% of the total consumption by 2050.”¹⁴

Not only does the plastic waste legally meet the definition of oil under Maine law, but it was also imported for use as a fuel source. The plastic waste was imported for use as a fuel

⁴ Administrative Consent Agreement, at 3.

⁵ Administrative Consent Agreement, at 3.

⁶ Center for International Environmental Law, *Fueling Plastics: Fossils, Plastics & Petrochemical Feedstocks*, p. 1. (Sept. 2017). Available at <https://www.ciel.org/wp-content/uploads/2017/09/Fueling-Plastics-Fossils-Plastics-Petrochemical-Feedstocks.pdf>

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Kelly, S. (October 28, 2018). *Why Plans to Turn America’s Rust Belt into a New Plastics Belt Are Bad News for the Climate*. Desmogblog.com. Retrieved from: https://www.desmogblog.com/2018/10/28/petrochemical-industryamerica-rust-belt-plastics-fracking-climate?fbclid=IwAR3hmco5Dy1hXsP7MvC1f86_-HP4i1vQndYpwrVYglbyrmh5KstzgKxEME.

¹² *Id.*

¹³ *Id.*

¹⁴ World Economic Forum, *The New Plastics Economy: Rethinking the Future of Plastics*, p. 7 (Jan. 2016). Available at https://www3.weforum.org/docs/WEF_The_New_Plastics_Economy.pdf



For a thriving New England

CLF Maine 53 Exchange Street, Suite 200
 Portland, ME 04101
 P: 207.210.6439
 F: 207.221.1240
 www.clf.org

source at PERC's waste-to-energy facility in Orrington, Maine.¹⁵ PERC previously imported a much smaller amount of solid recovered fuel in 2019.¹⁶ Over the course of a six-month period, PERC burned roughly 500 tons of the imported plastic waste.¹⁷ After this trial course the company apparently decided that importing plastic waste from Europe was a good fuel source for a waste incinerator in northern Maine that is supposed to be burning municipal solid waste (which is a whole another story).¹⁸ The two bales which Sprague spilled into the Penobscot Bay were part of a larger shipment of 8,000 bales,¹⁹ which were all destined for incineration at PERC.

Moreover, this would not be the first instance of the Department classifying petroleum derived products as oil when enforcing against unlawful spills. On July 30, 2020, the Department and the OAG finalized an administrative consent agreement with SHOEM, Corp. regarding a spill of Fog Seal CRS-2H on the ground at a work site in Mercer, Maine.²⁰ Fog Seal CRS-2H is an industrial asphalt designed to maintain existing roads, seal minor cracks, and improve surface appearance.²¹ The SHOEM administrative consent agreement classified the spill as an oil spill because, like plastic, asphalt is a byproduct of oil. During the oil refining process, oil is separated into its base components, which includes asphalt. The asphalt is then separated out and further refined for industrial and commercial use.

The SHOEM agreement serves as precedent for the Department to classify petroleum derived products as oil spills. The Department should follow that precedent here and classify the Sprague spill as an oil spill. Doing so would send a clear message on how this material will be regulated moving forward and ensure that imported plastic waste will be handled and managed with the upmost care to avoid future spills.

II. The Civil Monetary Fine is Insufficient.

As part of the Administrative Consent Agreement, the Department is proposing a \$17,800 civil monetary fine.²² This is insufficient. The Department should assess a higher fine given the scope and severity of the environmental harm, as well as Sprague's failure to immediately notify the Department of the spill.

¹⁵ Administrative Consent Agreement, at 3.

¹⁶ Abigail Curtis, (Dec. 10, 2020). *Trash Being Shipped to Orrington Incinerator from Ireland Washes Up on Shores of Sears Island*. Bangor Daily News. Retrieved from: <https://bangordailynews.com/2020/12/10/news/midcoast/trash-being-shipped-to-an-orrington-incinerator-from-ireland-washes-up-on-shores-of-sears-island/>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ SHOEM Corp., Administrative Consent Agreement.

²¹ Martin Asphalt Company, CRS-2h Product Data Sheet.

²² Administrative Consent Agreement, at 18.



The Department calculates civil penalties through an evaluation of the environmental aspects of the case, the circumstances in which the violation occurred, and the deterrent effect the penalty may have.²³ Included in this, the Department considers “how the violation was discovered,” “the speed in which the violator responded to correct their violation,” and “the quality of the violator’s response.”²⁴ The Department also considers “the size of the area affected by the violation, the damage done to the environment, and the potential for remediation.”²⁵ When considering these factors it is clear that a more significant penalty is deserved.

First and foremost, Sprague took no affirmative action to alert the Department of the spill. The spill occurred on December 2, 2020.²⁶ On December 8, 2020, the Department received a complaint about a significant amount of plastic waste near Sears Island. The Department knew that solid recovered fuel was unloaded at the Mack Point Terminal. Connecting the dots, the Department immediately contacted Sprague who failed to acknowledge that a spill had occurred.²⁷ It was only the next day, after Department staff went to investigate the complaint in person, that Sprague finally admitted the spill.²⁸ Sprague only reported the spill on December 9, 2020,²⁹ after the Department identified them as a potentially responsible party. Sprague’s failure to alert the Department for over a week warrants a higher fine. If a concerned resident did not file a complaint, Sprague’s actions make it questionable whether the spill would have ever been reported to the Department.

Second, the spill created significant environmental harm which is impossible to fully remediate. While Sprague eventually recovered one bale of the plastic waste, the other bale broke open after hitting the pier. This bale immediately fell into the water and sank. This bale is estimated to contain 1,250 pounds of solid recovered fuel. Some plastic was recovered through shoreline clean-up efforts, but a significant majority will never be recovered. It is well documented that “plastic disperses readily throughout the marine and freshwater environments.”³⁰ Once plastic enters these environments it creates a significant hazard for wildlife. Seabirds, sea turtles, seals, and other marine mammals can be killed after ingesting

²³ Maine Department of Environmental Protection, Administrative Consent Agreement Fact Sheet. (Oct. 2019). Available at <https://www.maine.gov/dep/publications/is-conag.html>.

²⁴ *Id.*

²⁵

²⁶ *Id.* at 3.

²⁷ *Id.* at 4.

²⁸ *Id.* at 5.

²⁹ *Id.* at 5.

³⁰ See, e.g., David Azoulay et al., *Plastic & Health: The Hidden Costs of a Plastic Planet* (Feb. 2019), available at <https://www.ciel.org/wp-content/uploads/2019/02/Plastic-and-Health-The-Hidden-Costs-of-a-Plastic-PlanetFebruary-2019.pdf>



plastic. Overtime, the plastics break down into microplastics, which are now ubiquitous in the environment and pose a serious risk to humans and other living organisms.³¹

Together, the inadequacy of Sprague’s response in alerting the Department along with the size, scope, and environmental harm of the spill warrants a more significant fine. Additionally, it is important to note that this was only a portion of a much larger shipment. Therefore, the risk of a larger spill was very real, and it appears, unfortunately, that PERC will continue to burn this plastic mess, making it very likely that Sprague will continue to be responsible for offloading shipments of this material. Given that likelihood, a higher fine is also warranted to deter any future negligence which may result in future spills.

III. The proposed Administrative Consent Agreement Does Not Minimize the Risk of Additional Spills.

The Administrative Consent Agreement does not minimize the potential for additional spills during overboard transfer to and from the vessel and pier. As currently drafted, the Department is only requiring Sprague to amend its Terminal Operating Manual. However, the revisions simply establish a new procedure for establishing the level of risk associated with transporting different types of dry cargo. Should Sprague determine that the level of risk is either “substantial” or “intolerable” it must take additional measures to mitigate the risk. These new protocols give Sprague too much authority when determining the level of risk associated with the transfer. Essentially, the Department is asking a company that illustrated its unwillingness to report a spill to self-regulate itself.

As drafted, it is unclear whether the Department will undertake any review of how Sprague is carrying out the risk assessment required by the Dry Cargo Pollution Prevention and Response Plan and Form 19. CLF urges the Department to take a more active role in overseeing the implementation of these changes to the Terminal Operations Manual. Specifically, the Department should require Sprague to submit a random sample of all Dry Cargo Risk Assessments to the Department annually. This would allow the Department to monitor how Sprague is determining (1) the frequency to which a release may occur, (2) the estimated severity of a potential release, (3) the overall risk associated with the transportation of the cargo, and (4) the actions Sprague has taken to minimize risk for cargo operations deemed to have a substantial risk or intolerable risk. These documents should be made publicly available. This oversight will allow the Department to continue to work with Sprague to address potentially risky conditions and types of cargo in order to minimize the risk of future spills.

³¹ J. Perelman, (Apr. 4, 2016). *Pesky Plastic: The True Harm of Microplastics in the Ocean*. National Geographic. Retrieved from: <https://blog.nationalgeographic.org/2016/04/04/pesky-plastic-the-true-harm-of-microplastics-in-the-oceans/>.



For a thriving New England

CLF Maine 53 Exchange Street, Suite 200
 Portland, ME 04101
 P: 207.210.6439
 F: 207.221.1240
 www.clf.org

Given that the Department only identified Sprague as the responsibly party through its knowledge of incoming shipments of solid recovered fuel, the Department should also require Sprague to report all shipments of solid recovered fuel. This report should include the quantity, origin, and ultimate destination of the material. The reports should be made publicly available to ensure that the public is aware of all incoming shipments as well as assisting the Department when identifying any future spills.

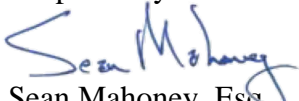
Finally, the Department should also require all shipments of solid recovered fuel to be in containers. The spilled bales were “wrapped in a thin plastic film for transit.”³² This inadequate containment contributed significantly to both the spill and the immediate disbursement of all the material from one of the bales. Moving forward, Sprague, and all terminal operators should not be allowed to handle this material unless it is in a secure container. Utilizing a secure container may have allowed for the total recovery of the first lost bale and would have significantly neutralized any environmental harm.

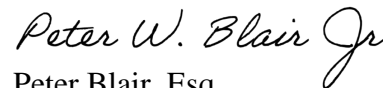
These additional requirements are both reasonable and necessary. Sprague’s failure to report the spill and decision to attempt to unload the material despite the inadequate containment and poor weather conditions justify more oversight from the Department. Requiring public reporting will make the company more accountable as it implements the changes to the Terminal Operation Manual. Additionally, should another spill occur, public reporting of all shipments of solid recovered fuel will enable the public to better respond to the spill.

IV. Conclusion

As currently drafted the proposed Administrative Consent Agreement does not go far enough to hold Sprague accountable for its past actions nor to ensure that another spill will not occur. Given the nature of the material spilled, the Department should classify the spill as an oil spill to send a clear message about the manner which terminal operators much handle plastic waste. The Department should also revise the Administrative Consent Agreement to increase the penalty and require more active monitoring of Sprague’s handling of cargo. Thank you for your consideration of these comments.

Respectfully submitted,


 Sean Mahoney, Esq.
 Executive Vice President
 Conservation Law Foundation


 Peter Blair, Esq.
 Staff Attorney
 Conservation Law Foundation

³² Administrative Consent Agreement, at 3.