



October 13, 2021

Pamela Parker
Water Enforcement and Boat Pumpout Program
Division of Water quality Management
Maine Department of Environmental Protection
And via email: Pamela.d.parker@maine.gov

RE: Proposed Administrative Consent Agreement
Sprague Operating Resources LLC
Protection and Improvement of Waters
EIS Docket #2021-005-W

Dear Ms. Parker:

Plastics in our bay are unacceptable in all cases but the discharge of plastic waste in the above captioned matter was preventable, should have been reported immediately, should have been attended to more thoroughly and effectively, should result in a stiff penalty that conveys the importance of avoiding discharge of plastic waste into Maine waters, and should cause officials to take steps to prevent this from happening again.

Maine DEP in its Notice of Violation dated January 15, 2021, concluded that, "By discharging a pollutant, namely 1.25 US tons of shredded plastic and linen waste, to the Waters of the State, Sprague violated 38 M.R.S. section 412(1)."

It is essential that Maine Department of Environmental Protection (DEP) impose a penalty appropriate to this violation of Maine law and require significant improvements to Sprague's February 27 proposed Terminal Operations Manual, Ship Shore Safety Inspection Form 03 and Dry Cargo Risk Assessment Form 19. To these ends, Islesboro Islands Trust recommends changes in the proposed consent agreement as outlined below.

I. Plastic is a petroleum product and contains harmful, persistent chemicals

The US Energy Information Administration at <https://www.eia.gov/tools/faqs/faq.php?id=34&t=6> notes that, "crude oil is a source of raw material (feedstock) for making plastics."

The authors of *A Detailed Review Study on Potential Effects of Microplastics and Additives of Concern on Human Health* (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7068600/>) note that “...plastics can contain two types of chemicals: (i) additives and polymeric raw materials (e.g., monomers or oligomers) originating from the plastics, and (ii) chemicals absorbed from the surrounding ambience.”

The United States Environmental Protection Agency confirms that, “plastics and synthetic materials are typically persistent in the environment while maintaining their bioavailability. Plastic objects typically fragment into progressively smaller and more numerous particles without substantial chemical degradation” ([epa.gov/trash-free-waters/plastic-pollution](https://www.epa.gov/trash-free-waters/plastic-pollution)).

In a related US EPA document, plastics are identified as having “the greatest potential to harm the environment, wildlife and humans” of all trash ([epa.gov/trash-free-waters/impacts-mismanagement-trash](https://www.epa.gov/trash-free-waters/impacts-mismanagement-trash)). Here, EPA explains that, “Chemical impacts associated with plastic aquatic trash include the accumulation and transport of persistent, bioaccumulative and toxic (PBTs) contaminants, such as PCBs and pesticides...”

Considerable evidence confirms that plastics in our waters harm Maine lobsters. See for example (<https://www.sciencedaily.com/releases/2020/07/200707083958.htm>) and (<https://www.bigelow.org/news/articles/2020-06-25.html>).

A recent report from the Pew Charitable Trusts notes that, “... high and rapidly increasing levels of macro- and microplastic pollution represent a serious global environmental problem, adversely affecting marine biodiversity, ecosystems, livelihoods, fisheries, maritime transport, recreation and tourism, and local societies and economies; costing billions of dollars annually; and posing health risks to people.” This report calls for increased restrictions and regulations on transboundary movement of plastic waste. (<https://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2021/06/10/its-time-for-global-action-to-eliminate-plastic-pollution>)

Therefore, the contents of the bales of waste plastic discharged into Penobscot Bay are irrefutably hazardous. This should have been known to Sprague, and shredded plastic waste of this kind must be regulated with zero tolerance for discharge into Maine waters.

II. Appropriate penalty

The above captioned Consent Agreement proposes a civil monetary penalty of seventeen thousand eight hundred dollars (\$17,800.00) for violating 38 M.R.S. section 412(1). We contend that this penalty fails to recognize the hazardous nature of the material discharged, fails to fully appreciate the criminal negligence of the act, fails to incorporate penalty for not reporting the discharge, and fails to require significant improvements to the Terminal Operations Manual, Ship Shore Safety Inspection Form 03 and Dry Cargo Risk Assessment Form 19.

Earlier comments from DEP regarding the need for revisions to the Terminal Operations Manual and Risk Assessment Form, and Sprague acknowledgement of the need for such revisions, demonstrate failure by Sprague on December 2, 2020 to be aware of the risk that handling the plastic waste posed - the very definition of criminal negligence.

Seeking guidance on what should be considered an appropriate penalty in this case, 17 M.R.S. section 2264-A refers to 38 M.R.S., section 349 for penalties to be imposed in cases where more than 500 pounds of waste have been disposed in violation of Maine law. There, Maine law indicates “a civil penalty, payable to the State, of not less than \$100 and not more than \$10,000 for each day of violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation.”

The discharge occurred on December 2, 2020. Sprague and DEP agreed to curtail further cleanup on January 5, 2021, notwithstanding the fact that pieces of the spilled shredded plastic remained visible on the Sears Island shore. Therefore, the plastic trash spilled by Sprague into Penobscot Bay was, at minimum, in violation of 38 M.R.S. section 412(1) for 34 days. Using the penalty limit for regular waste (\$10,000/day x 34 days) but not using the penalty for hazardous waste, when a claim that the material discharged was, in fact, hazardous could easily be made given the science cited earlier, a penalty of at least three hundred and forty thousand dollars (\$340,000.00) seems much more appropriate to the deleterious nature of this spill than \$17,800.

A penalty of \$340,000.00 closely aligns with the \$310,225.00 Pan American Railways fine for illegal discharges of oil into the Kennebec River between 2015 and 2018. In lieu of having all of the \$340,000 penalty go to the State, we suggest that twenty-five thousand dollars (\$25,000.00) be allocated as a supplemental environmental project to Friends of Sears Island for organizational capacity development in light of their immediate and substantial assistance in managing cleanup along the Sears Island shore and the likelihood of their eyes-on-the-ground should another spill occur.

III. Terminal Operations Manual (TOM), Safety Inspection Form and Dry Cargo Risk Assessment Form

Section I above details the tremendous threat to wildlife and humans from release of Solid Recovered Fuel containing shredded plastic into Maine waters. Sprague’s TOM fails to approach its assessment of the likelihood and consequences of discharging SRF into Maine waters with this consideration. That handling SRF containing shredded plastics threatens our marine environment should explicitly inform all of the other components of the TOM. TOM 3.06.2 Severity Assessment should acknowledge that SRF product is hazardous and that cleanup of any spilled SRF product is so immensely difficult as to be virtually impossible to fully remedy, as was clearly demonstrated by the spill in December 2020 that remains not completely cleaned up.

Therefore, the Risk Assessment Form 19 should indicate that any release of SRF containing shredded plastics by nature triggers a complex response that experience indicates cannot be fully cleaned-up, would require the highest level of external resources, and ultimately results in an unacceptable level of risk. Explicit reference to SRF containing plastics in the Terminal Operations Manual and the Risk Assessment Form could prevent future discharge into Maine waters by better management of the material as a hazardous waste.

Sprague Operating Resources must be sanctioned for spilling shredded plastic waste into Penobscot Bay and for not immediately reporting the plastics discharge; protocols and penalties must be imposed that discourage importing shredded plastic trash in this form and that ensure thorough, rapid and effective clean-up of any such waste spill in future.

IV. Summary of comments:

- Shredded plastic waste is a petroleum product containing harmful, persistent chemicals that becomes increasingly bioavailable in the environment.
- An appropriate three hundred and forty thousand dollar (\$340,000.00) penalty for violating 38 M.R.S. section 412(1) for at least 34 days is supported by comparable levels of penalty found in Maine law and in line with at least one other petroleum-related penalty imposed by DEP.
- Sprague's Terminal Operations Manual (TOM), Safety Inspection Form and Dry Cargo Risk Assessment Form must explicitly acknowledge that shredded plastic waste is (a) hazardous, (b) cannot in all likelihood ever be fully retrieved once disposed into Maine waters, and (c) represents an unacceptable level of risk when transported wrapped in breakable film rather than in sealed containers.

Thank you for this opportunity to comment.

Sincerely,



Stephen Miller
Executive Director