



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Andrew Flint, Bureau of Remediation and Waste Management *ACF*
Scott Whittier, Bureau of Remediation and Waste Management
DATE: February 18, 2010
RE: Administrative Consent Agreement, Springfield Terminal Railway Company, Maine Central Railroad Company and Portland Terminal Company

Statute and Rule Reference: *Oil Discharge Prevention and Pollution Control law, 38 M.R.S.A. § 543*, states: "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."

The *Oil Spill Prevention and Pollution Control Law, 38 M.R.S.A. § 548*, states in relevant part: "Any person discharging or suffering the discharge of oil in a manner prohibited by section 543 shall immediately undertake to remove the discharge to the commissioner's satisfaction..."

The *Oil Discharge Prevention and Pollution Control law, 38 M.R.S.A. § 550* states in relevant part: "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...reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or commissioner..."

The *Oil Discharge Prevention and Pollution Control law, 38 M.R.S.A. § 551(6)*, states in relevant part: "For the use of the fund, the commissioner shall seek recovery of all disbursements from the fund...including overdrafts and interest..."

The *Water Pollution Control law, 38 M.R.S.A. § 413(1)*, states in relevant part: "No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department."

Locations: Rigby Yard in South Portland and railroad operations throughout southern, central and eastern Maine.

Description: Springfield Terminal Railroad Company, Maine Central Railway Company and the Portland Terminal Company (hereinafter collectively referred to as "STR") have entered into

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the attached Consent Agreement as proposed by Department staff in order to resolve violations of 38 M.R.S.A. §§ 543, 548, 551(6) and 413. In the summer and fall of 2007, oil discharges attributable to STR were determined to impact Calvary Pond, a stream adjacent to Calvary Pond, portions of the City of South Portland storm water drainage system, soil and ground water at Rigby Yard, soil and groundwater at Waterville Yard in Waterville, soil and ground water in Anson, and soil in Veazie, Old Town and Orono, Maine. In order to address discharges of oil attributable to STR in South Portland, the Department undertook action to remove oil discharges from in and around Calvary Pond and the municipal storm water drainage system. The Department's response to the oil discharges to Calvary Pond resulted in the Maine Coastal and Inland Surface Oil Clean-up Fund incurring expenses in the amount of two hundred eighty four thousand three hundred twenty four dollars and eighty cents (\$284,324.80).

Environmental Issues: Prohibited oil discharges in South Portland have impacted Calvary Pond, a stream adjacent to Calvary Pond, portions of the City of South Portland storm water drainage system, and soil and ground water at Rigby Yard. These oil discharges resulted in oiled vegetation, shoreline, and wildlife, including turtles and migratory waterfowl in and around Calvary Pond. Oil discharges to soil and storm drains at Rigby Yard and oil-contaminated soil and water at Rigby Yard impact groundwater and Calvary Pond and pose a threat to coastal waters, Long Creek, Barberry Creek, and the Fore River. Additional prohibited oil discharges occurred at Waterville Yard in Waterville and in Anson, Veazie, Old Town, and Orono. These discharges of oil impacted or threatened ground water and surface water resources, including the Kennebec and Penobscot Rivers.

In response to the Department's requests for corrective action, STR has undertaken the following initial corrective actions at Rigby Yard:

1. Removed and properly disposed of oil from multiple locations within the storm water drainage system, including the oil-water separator;
2. Implemented a schedule to monitor the accumulation of oil in the oil-water separator and removed oil as necessary;
3. Conducted flow tests, investigated with a remote-controlled sewer camera vehicle, excavated test pits and installed monitoring wells to assess the storm water drainage system, ground water, and soil to determine the nature and extent of oil contamination at the site and the nature and extent of migration of oil contamination from storm water and ground water to drainage structures;
4. Replaced approximately 300 feet of damaged storm water drainage pipe that allowed oil and oil-contaminated ground water to enter the storm water drainage system;
5. Removed and properly disposed of over 160 tons of oil-saturated soil; and

6. Disconnected waste oil collection devices from the storm water drainage system to prevent direct discharges of oil to the storm water drainage system.

STR has represented to the Department that, to date, STR has spent in excess of four hundred and eighty thousand dollars (\$480,000) to complete these corrective actions.

Furthermore, STR has begun to implement certain corrective actions of the proposed Administrative Consent Agreement and Clean-up Order by Consent (described below) by providing oil-absorbent "track mats" to collect small oil spills that may occur in designated locomotive areas at Rigby Yard and other locations in Maine where STR anticipates that its locomotives will be idle or parked for a period exceeding two (2) hours.

The Maine Coastal and Inland Surface Water Oil Clean-up Fund is established to abate the hazards and threats to human health and the environment posed by the storage, transportation and transfer of oil and provide for the inspection and supervision of those activities, require prompt containment and removal of pollution and provide procedures for the prompt payment of reasonable damages resulting from the release of oil. Pursuant to statute, all fees, penalties, reimbursement and interest related to the purposes of the fund must be credited to the Maine Coastal and Inland Surface Water Oil Clean-up Fund. These revenues to the Department's dedicated oil spill clean-up funds are critical to the operation of these funds, and allow resources to be directed to other oil spill clean-up and prevention activities.

Department Recommendation: The Department recommends acceptance of this Administrative Consent Agreement as proposed, stipulating a monetary penalty of one hundred seventy five thousand dollars (\$175,000.00), payable to the Maine Coastal and Inland Surface Water Oil Clean-up Fund and reimbursement of the Department's response costs plus interest in the amount of three hundred thousand dollars (\$300,000.00) and with the following requirements:

- A. Complete substantial corrective actions at Rigby Yard in South Portland, Maine, as specified in the Clean-up Order by Consent entered into by STR on December 21, 2009 in accordance with the schedule specified in the Clean-up Order by Consent. These actions provide for the remediation, long-term monitoring, and restrictions in land use via institutional controls (deed restrictions) to address potential threats to public health and to the environment that may be posed by petroleum contaminated water discharging from the storm water drainage system at the Rigby Yard and present in the soil or ground water at Rigby Yard.
- B. In order to minimize the potential for any oil discharges from locomotives reaching ground water, surface water, storm water or any unlicensed discharge point, STR will identify areas where one or more locomotives under its custody or control are regularly parked, inactive, idle, serviced or fueled. STR will designate these specific locomotive idling or parking areas, require that all locomotives intended to be idle or inactive for a period exceeding two (2) consecutive hours be

parked in these areas and provide and maintain these areas with oil-absorbent “track mats” that will provide for containment and collection of any small oil spills that may occur.

- C. In the future, STR will clean up any oil spills immediately pursuant to the requirements of 38 M.R.S.A. § 548 and immediately report all oil spills to the Department of Environmental Protection within two (2) hours of discovery.
- D. STR will continue implementation of scheduled inspections to monitor the level of oil accumulated in the oil water separator located at Rigby Yard and remove, characterize and dispose of waste oil as necessary.



STATE OF MAINE
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IN THE MATTER OF:

SPRINGFIELD TERMINAL RAILWAY CO.)
MAINE CENTRAL RAILROAD COMPANY)
PORTLAND TERMINAL COMPANY) ADMINISTRATIVE CONSENT
1700 IRON HORSE PARK) AGREEMENT
NORTH BILLERICA, MASSACHUSETTS) (38 M.R.S.A. § 347-A)
MIDDLESEX COUNTY)
OIL DISCHARGE PREVENTION AND)
POLLUTION CONTROL)

This Agreement, by and among Springfield Terminal Railway Company ("STR"), Maine Central Railroad Company ("MCRR"), Portland Terminal Company ("PTC"), the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General ("AG"), is entered into pursuant to the laws concerning the Department's Organization and Powers, 38 M.R.S.A. § 347-A(1).

THE PARTIES AGREE AS FOLLOWS:

- 1. STR is a Vermont corporation in good standing authorized to do business in Maine, with business headquarters in North Billerica, Massachusetts. David A. Fink is the President of STR. STR operates, and MCRR and PTC own, a freight railway at Rigby Yard, Waterville Yard and elsewhere in Southern and Central Maine.
2. MCRR is a corporation in good standing which is organized and exists under the laws of Maine, with business headquarters in North Billerica, Massachusetts. David A. Fink is the President of MCRR.
3. MCRR owns real property (hereinafter "Waterville Yard") described in several deeds recorded at the Kennebec County Registry of Deeds and located at 55 College Avenue in the City of Waterville, Maine.
4. PTC is a corporation in good standing which is organized and exists under the laws of Maine, with business headquarters in North Billerica, Massachusetts. David A. Fink is the President of PTC.
5. PTC owns real property (hereinafter "Rigby Yard") located at 20 Rigby Road in the City of South Portland, Maine. PTC's ownership of Rigby Yard is documented in a deed recorded on Book 9362, Page 301 at the Cumberland County Registry of Deeds.

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6. Throughout the period of time addressed by this Agreement, MCRR, STR, and PTC were subject to the following Maine environmental standards:

- a. *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 543. This section prohibits the unlicensed discharge of oil to waters and lands of the State.
- b. *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 548. This section requires any person who causes or suffers a prohibited discharge of oil to immediately undertake to clean up that discharge to the Commissioner's satisfaction. This section also authorizes the Department to undertake investigation and clean-up actions and to seek recovery of costs incurred by the Maine Coastal and Inland Surface Oil Clean-up Fund ("Fund") in accordance with 38 M.R.S.A. § 551.
- c. *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 550. This section states that any person who causes or is responsible for a prohibited discharge of oil is not subject to fines or civil penalties if that person reports within 2 hours and promptly removes the discharge to the Commissioner's satisfaction and reimburses the Fund for any disbursements within 30 days of demand.
- d. *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 551. This section requires any person who permits or suffers a prohibited discharge or other polluting condition to take place to reimburse the State for all disbursements made from the Fund pursuant to investigation and clean up of the discharge.
- e. *Water Pollution Control law*, 38 M.R.S.A. § 413. This section prohibits the discharge of a pollutant to Waters of the State without a license.

7. Pan Am Railways, Inc. ("Pan Am") is a Delaware corporation authorized to conduct business in Maine, with business headquarters in North Billerica, Massachusetts. Pan Am is a holding company for the stock of MCRR, STR, and PTC, and has been a party identified in correspondence between the Department and MCRR, STR, and PTC. For the purposes of this Agreement, all documents sent by the Department to Pan Am, including Notices of Violation, apply to the appropriate subsidiary or subsidiaries, and all

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documents received by the Department from Pan Am were sent on behalf of the appropriate subsidiary or subsidiaries.

8. A wastewater outfall at Waterville Yard is subject to Wastewater Discharge License #W0006634-5O-D-R, which was issued to MCRR. This license was most recently renewed in 2006. The wastewater discharge license issued to MCRR does not authorize the prohibited discharge of oil to groundwater, surface water drainages, or onto lands adjacent to, on, or over such waters.
9. None of the entities described in this Agreement have, or have ever had, a license or pre-treatment agreement authorizing the discharge of oil to the City of South Portland storm water system or Calvary Pond.

August 6, 2007 Prohibited Discharge of Oil to Calvary Pond

10. On August 6, 2007, the Department received a report of a discharge of oil to Calvary Pond, located in the Calvary Cemetery in the City of South Portland, Maine. Department staff responded and observed oil on Calvary Pond, an adjacent stream, a portion of the City of South Portland storm water drainage system, and a storm drain catch basin at Rigby Yard.
11. Department and City of South Portland staff investigated storm drain catch basins located upstream of Calvary Pond and discovered oil in catch basins located downstream of Rigby Yard, including a storm drain catch basin located at Rigby Yard. The storm drain catch basin observed at Rigby Yard is identified on a June 9, 2008 map prepared for STR by a contractor (see Appendix A) as Catch Basin CB-22. Catch Basin CB-22 receives storm water from the northeastern portion of Rigby Yard, some of which is routed through an oil-water separator located immediately adjacent to CB-22.
12. On and around August 6, 2007, Department staff inspected oil-handling facilities and storm water catch basins in the vicinity of Calvary Pond and Rigby Yard. Rigby Yard was the only location where a discharge of oil to the affected portion of the municipal storm water system was identified.
13. On August 7, 2007, U.S. Coast Guard staff sampled oil from Calvary Pond and the oil-water separator located at Rigby Yard. These samples were subsequently analyzed at the Coast Guard Marine Safety Laboratory using gas chromatography-mass spectrometry. The U.S. Coast Guard's laboratory results suggest that the oil samples from Calvary Pond

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and the oil-water separator located at Rigby Yard are derived from a common source of petroleum. However, the laboratory data also indicate that there are some differences between the samples from the oil-water separator, pond and stream.

14. On August 7, 2007, Department staff collected samples of oil from Calvary Pond, a stream located between a storm water outfall pipe and Calvary Pond, and the oil-water separator located at Rigby Yard. These samples were subsequently analyzed at the State of Maine Health and Environmental Testing Laboratory using gas chromatography-mass spectrometry. The Department's laboratory results strongly suggest that the oil samples from the stream located between the storm water outfall and Calvary Pond and the oil-water separator located at Rigby Yard are derived from a common source of petroleum. The laboratory data also indicate that there are differences between the samples from the oil-water separator, pond and stream.
15. Based on the investigation, observations and analysis described in Paragraphs 11 – 14, above, Department staff determined that Rigby Yard was a contributing source of the prohibited discharge of oil to Calvary Pond described in Paragraph 10.
16. The prohibited discharge of oil from Rigby Yard to the South Portland storm water drainage system, a stream and Calvary Pond described above resulted in oiled vegetation, shoreline, and wildlife, including turtles and migratory waterfowl.
17. A review of the Department's records demonstrates that STR and PTC failed to clean up the prohibited discharge of oil described in Paragraphs 10 – 14 of this Agreement to the Commissioner's satisfaction.

September 12, 2007 Prohibited Discharge of Oil to Calvary Pond

18. On September 12, 2007, the Department received a report of a discharge of oil to Calvary Pond, located in the Calvary Cemetery in the City of South Portland, Maine. The discharge of oil to Calvary Pond on September 12, 2007 is a distinct event from the discharge of oil to Calvary Pond observed on August 6, 2007, the August discharge having been the subject of removal actions under the Department's supervision prior to September 12, 2007.
19. Department and City of South Portland staff investigated storm drain catch basins located upstream of Calvary Pond and discovered oil in catch basins located downstream of, and at, Rigby Yard. The oil-impacted storm drain catch basin observed at Rigby Yard is

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identified on a June 9, 2008 map prepared for STR by a contractor (see Appendix A) as Catch Basin CB-22. Catch Basin CB-22 receives storm water from the northeastern portion of Rigby Yard, some of which is routed through an oil-water separator located immediately adjacent to CB-22.

20. On September 12, 2007, Department staff sampled oil from Calvary Pond, a stream located between Calvary Pond and a storm water outfall pipe where storm water from Rigby Yard and other adjacent properties outlets, and the oil-water separator located at Rigby Yard. These samples were subsequently analyzed at the State of Maine Health and Environmental Testing Laboratory using gas chromatography-mass spectrometry. The Department's laboratory results suggest that the oil sample from the South Portland storm water drainage system and the oil sample from the stream located between the storm water outfall and Calvary Pond are derived from a common source of petroleum. However, the laboratory data also indicate that there are differences between the samples from the oil-water separator and samples from the pond and stream.
21. Department staff inspected Rigby Yard and adjacent oil-handling facilities. Rigby Yard was the only location where oil discharges to the storm water system were observed.
22. On September 13, 2007, a dye-tracer test was performed to determine if wastewater from a licensed aboveground oil storage and treatment facility located adjacent to Rigby Yard discharged to the South Portland sanitary sewage treatment facility or the storm water drainage system. The results of this investigation confirmed that wastewater from this facility discharges to the South Portland sanitary sewage treatment facility and does not discharge to the municipal storm water drainage system.
23. On October 2, 2007, a Department contractor conducted an inspection of the storm water drainage system upstream of Calvary Pond via a remotely operated video camera. This inspection was initiated to search for oil that might be stranded in the sections of the storm drain system that discharge to Calvary Pond. The results of this inspection demonstrate that there was no stranded or pooled oil in the surveyed sections of the municipal storm water drainage system. However, the survey documented areas of the municipal storm water system that had oil stains on the walls of the pipes and documented a section of piping at Rigby Yard with emulsified oil floating on the surface of the water in the pipe. The section of piping with emulsified oil documented at Rigby Yard is located downstream of the oil water separator located at Rigby Yard.

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24. Based on the observations described in Paragraphs 19 – 23, above, Department staff determined that Rigby Yard was a contributing source of the prohibited discharge of oil to Calvary Pond described in Paragraph 18.
25. The prohibited discharge of oil from Rigby Yard to the South Portland storm water system and Calvary Pond described in Paragraph 18 resulted in oiled vegetation, shoreline, and wildlife.
26. A review of the Department’s records demonstrates that STR and PTC failed to immediately undertake to clean up the prohibited discharge of oil described in Paragraphs 18 – 23 of this Agreement to the Commissioner’s satisfaction.

October 12, 2007 Prohibited Discharge of Oil to Calvary Pond

28. On October 12, 2007, the Department received a report of a prohibited discharge of oil to Calvary Pond. The discharge of oil to Calvary Pond on October 12, 2007, is a distinct event from the discharges of oil to Calvary Pond observed on August 6, 2007 and September 12, 2007, the August and September discharges having been the subject of removal actions under the Department’s supervision prior to October 12, 2007.
29. Subsequent to the October 12, 2007 discharge of oil to Calvary Pond, Department staff investigated storm drain catch basins located upstream of Calvary Pond and discovered oil in catch basins located adjacent to and downstream of Rigby Yard, as well as in a storm drain catch basin located at Rigby Yard. The oil-impacted storm drain catch basin observed at Rigby Yard is identified on a June 9, 2008 map prepared for STR by a contractor (see Appendix A) as Catch Basin CB-22. Catch Basin CB-22 receives storm water from the northeastern portion of Rigby Yard, some of which is routed through an oil-water separator located immediately adjacent to CB-22.
30. On October 13, 2007, Department staff inspected Catch Basin CB-22 at Rigby Yard and observed that an oil sheen had recently bypassed the oil-water separator located immediately upstream of CB-22 and had discharged to the portion of the South Portland storm water drainage system that outfalls to a stream tributary to Calvary Pond.
31. Based on the observations described in Paragraphs 29 – 30, above, Department staff determined that Rigby Yard was a contributing source of the prohibited discharge of oil to Calvary Pond described in Paragraph 28.

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32. A review of the Department's records demonstrates that STR and PTC failed to clean up the prohibited discharge of oil described in Paragraphs 28 – 30 of this Agreement to the Commissioner's satisfaction.

Prohibited Discharges of Oil to Rigby Yard

33. On August 10, 2007, Department staff inspected Rigby Yard and discovered evidence of multiple prohibited discharges of oil at the subject property, including discharges to soil, storm drains, and impounded surface water located in the railroad turntable structure. Discharges of oil at Rigby Yard were numerous and extensive, and concentrated in the following areas:

- a. Approximately 5,700 square feet of heavily oil-stained soil and areas of free phase oil were observed on tracks and adjacent areas located north and west of the office building, including areas where locomotives are switched;
- b. In excess of 40,000 square feet of oil-stained soil was observed on and around former fueling areas, the turntable, and tracks located east of the office building; and
- c. Numerous discharges of oil were observed in and around engineered catchment pans and on and in storm drains at Rigby Yard. These structures are routed to the on-site oil water separator, which discharges to the South Portland storm water drainage system and subsequently outfalls to Calvary Pond.

35. On October 26, 2008, Department staff were notified by a third party of a discharge of oil at Rigby Yard. On Monday October 27, 2008, Department staff inspected Rigby Yard and discovered visual and olfactory evidence of a prohibited discharge of oil to the turntable pit located adjacent to the Engine House. The oil discharge described above impacted impounded surface water in the turntable pit and a storm drain system. STR staff stated that during heavy rain events, it is the practice of STR staff to limit or prevent the flow of the storm water drainage system at the Site through the oil-water separator, and thus divert the flow of storm water elsewhere on the Site. STR staff stated that the oil and oily-water discovered in the turntable pit on October 27, 2008, was likely the result of action taken by STR staff to limit or prevent the flow of the storm water drainage

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system at the Site through the oil-water separator during the heavy rain event of October 26, 2008.

36. On May 6 and May 7, 2008, STR and Department staff observed an oil sheen in catch basins included in the portion of the Rigby Yard storm water system identified on a June 9, 2008 map prepared for STR by a contractor (see Appendix A) as flowing from Catch Basin CB-189 to Catch Basin CB-105. On May 6, July 23 and July 30, 2008, an oil sheen was observed to be actively discharging from this portion of the Rigby Yard storm water drainage system to a portion of the South Portland storm drainage system that outfalls to Calvary Pond.
37. During subsequent investigative activities on July 23, 2008, STR staff and contractors removed accumulated oil from the water surface in Rigby Yard Catch Basin CB-115. CB-115 is located immediately upstream of CB-105 and downstream of a portion of the Rigby Yard storm drain system draining from CB-189 to CB-105, described above (see Appendix A). As of approximately 12:14 PM on July, 23, 2008, no residual oil remained in CB-115. On July 30, 2008, STR and Department staff returned to Rigby Yard and observed that a thick oil emulsion had accumulated upstream of an absorbent boom placed in catch basin CB-115 during the time period between July 23 and July 30, 2008. This observation supports a finding that oil discharges to the storm drain system at Rigby Yard occur upstream of CB-115 and impacted a portion of the South Portland storm water system that outfalls to Calvary Pond.
38. On July 30, 2008, Department staff sampled oil and water from CB-115 and sent samples for laboratory analysis. The results of the laboratory analysis document that water on the surface of CB-115 contained 3,000,000 micrograms per liter (“ug/L”) diesel-range organic compounds (“DRO”). This observation supports a finding that oil and oil-contaminated water discharge from this portion of the Rigby Yard storm drain system and impact a portion of the South Portland storm water system that outfalls to Calvary Pond.
39. Beginning July 31, 2008, STR and its contractors undertook an investigation of the section of the Rigby Yard storm drain system located between CB-121 to CB-116. On December 8, 2008, based upon the results of this investigation, STR and PTC undertook to replace the storm drain pipe located between CB-118 and CB-121 in order to limit the inflow of oil and oil-contaminated water to the storm drain system. During this mitigation effort, STR’s contractors encountered oil-contaminated soil and groundwater in the subsurface. This soil was removed and properly disposed of off site.

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- 40. Oil discharges to soil and storm drains at Rigby Yard and oil-contaminated soil and water at Rigby Yard pose a threat to coastal waters, groundwater, Long Creek, Calvary Pond, Barberry Creek, and the Fore River.
- 41. A review of the Department's records demonstrates that STR and PTC failed to immediately undertake to clean up the prohibited discharge of oil described in Paragraphs 33 – 40 of this Agreement to the Commissioner's satisfaction.

Prohibited Discharges of Oil to Waterville Yard (Spill # A-465-2007)

- 42. On August 1 and August 10, 2007, Department staff inspected Waterville Yard and discovered evidence of multiple prohibited discharges of oil, including oil discharges to soil and storm drains. Oil discharges to soil and storm drains at Waterville Yard and oil-contaminated soil and water at Waterville Yard pose a threat to groundwater and the Kennebec River.
- 43. After determining that the oil discharges described in Paragraph 42, above, had not been removed, on August 20, 2007, Department staff issued a written request that STR submit for the Department's review and approval a plan for removing oil-contaminated soil from Waterville Yard by no later than September 15, 2007. The requested clean up action was subsequently completed by STR and MCRR.
- 44. A review of the Department's records demonstrates that STR and MCRR failed to report the discovery of the prohibited discharges of oil described in Paragraph 42 and failed to immediately undertake to remove those discharges prior to the Department's inspection of August 1, 2007. STR and MCRR have since initiated clean-up actions at Waterville Yard.

Prohibited Discharges of Oil to Railroad Tracks adjacent to 46 River Road, Anson, Maine (Spill # A-64-2006)

- 45. On January 23, 2006, a resident of 46 River Road, Anson, Maine, reported to the Department the discovery of prohibited discharges of oil to railroad tracks and the 46 River Road property. STR and MCRR operate a freight railroad on the railroad tracks at this location. Photographs of the site demonstrate that prior discharges of oil had occurred at this site.

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46. A review of the Department’s records demonstrates that STR and MCRR failed to immediately undertake to clean up these discharges to the Commissioner’s satisfaction, and failed to report to the Department the discovery of prohibited oil discharges at this site.

Prohibited Discharges of Oil to U.S Route 2 in Veazie, Orono, and Old Town, Maine (Spill # B-611-2007)

47. On November 11, 2007, the Department received an anonymous report of a prohibited discharge of oil along the railroad tracks adjacent to U.S. Route 2 in the Town of Orono, Maine. Investigation by Department staff on November 12, 2007, documented a discharge of oil extending along approximately eight (8) miles of railroad track from the vicinity of School Street in the Town of Veazie north to a rail yard operated by Pan Am and MCRR in Old Town, Maine.
48. On November 12, 2007, upon knowledge of the release, STR staff reported this discharge of oil to the Department. STR staff subsequently cleaned up the discharge to the Commissioner’s satisfaction.

Reimbursement of the Department’s Clean up Costs

49. On December 3, 2007, January 8, 2008, and February 11, 2008 the Department issued STR requests seeking reimbursement of investigation and clean up costs incurred during the Department’s response to the three (3) prohibited discharges of oil described in Paragraphs 10 – 32, above.
50. On March 12, 2008, the Department issued a Notice of Violation to STR (via Pan Am) for failing to reimburse the Fund.
51. As of September 18, 2009, the Fund has incurred expenses in the amount of two hundred eighty four thousand three hundred twenty four dollars and eighty cents (\$284,324.80).
52. As of September 18, 2009, STR and PTC have not reimbursed the Fund.

Violations of Maine Statute

53. By discharging oil as described in Paragraphs 10 – 48 of this Agreement, MCRR, STR and PTC violated 38 M.R.S.A. § 543.

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MAINE CENTRAL RAILROAD COMPANY)	
PORTLAND TERMINAL COMPANY)	ADMINISTRATIVE CONSENT
1700 IRON HORSE PARK)	AGREEMENT
NORTH BILLERICA, MASSACHUSETTS)	(38 M.R.S.A. § 347-A)
MIDDLESEX COUNTY)	
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54. By failing to immediately undertake to clean up prohibited discharges of oil described in Paragraphs 10 – 48 to the Commissioner’s satisfaction, MCRR, STR and PTC violated 38 M.R.S.A. § 548.
55. By discharging oil to the City of South Portland storm water system, and subsequently Calvary Pond, as described in Paragraphs 10 – 32 of this Agreement, without a waste discharge license or pretreatment agreement, STR and PTC violated 38 M.R.S.A. § 413(1).
56. By failing to reimburse the Fund, including interest computed at 15% a year from the date of expenditure, as described in Paragraphs 49 – 52 of this Agreement, STR and PTC are in violation of 38 M.R.S.A. § 551(6).
57. On August 15, 2007, September 11, 2007, October 5, 2007, October 18, 2007, March 12, 2008, and May 16, 2008, the Department issued Notices of Violation to STR (via Pan Am), MCRR and PTC for the violations described in this Agreement. STR, MCRR and PTC agree that they have been notified of the violations described in this Agreement in conformance with 38 M.R.S.A. § 347-A(1)(B).
58. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (“Board”), which is part of the Department.
59. This Agreement shall become effective only if it is approved by the Board and Office of the Attorney General.
60. To resolve the violations identified in Paragraphs 53 – 56 of this Consent Agreement, MCRR, STR and PTC agree to:
 - A. Complete the corrective actions specified in the Clean-up Order by Consent entered into by STR, PTC and the Department on December 15, 2009 (attached as Appendix B) in accordance with the schedule specified in the Clean-up Order by Consent.
 - B. STR, MCRR and PTC will immediately identify all outdoor, uncovered areas in Maine where STR, MCRR or PTC anticipates that one or more locomotives under the custody or control of STR, MCRR or PTC are regularly parked, inactive or

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idle for a period exceeding two (2) consecutive hours or where locomotives are serviced or fueled. At these areas of potential oil discharge, STR, MCRR, and PTC must provide and maintain oil-absorbent "track mats" that will provide for containment and collection of spilled oil in order to minimize the potential for any oil discharges from locomotives reaching ground water, surface water, storm water or any unlicensed discharge point.

- C. Within thirty (30) days of signature to this agreement, MCRR, STR and PTC agree to submit for the Department's review and comment a written standard operating procedure describing a plan for inspection, maintenance, replacement, and disposal of oil-absorbent track mats used to mitigate oil discharges at the locations described in Paragraph 60(B), above, where locomotive idling or parking is anticipated to exceed two (2) consecutive hours. This procedure must include the following requirements:
- (1) STR and PTC will maintain a written record of monthly track mat inspections and any track mat maintenance and replacement. These records must be maintained at Rigby Yard for a minimum of three (3) years and made readily available for the Department's inspection.
 - (2) STR and PTC will designate specific locomotive idling or parking areas at Rigby Yard, overlay these areas with by track mats, and require that all locomotives at Rigby Yard intended to be idle or inactive for a period exceeding two (2) consecutive hours be parked over track mats.
 - (3) After an initial period of six (6) months of inspecting and maintaining track mats in accordance with the standard operating procedure described above, STR and PTC may submit for the Department's review and approval a written request to modify the standard operating procedure. The Department may approve, deny, or approve the request with conditions.
- D. In the future, clean up any oil spills immediately pursuant to the requirements of 38 M.R.S.A. § 548 and immediately report all oil spills to the Department of Environmental Protection within two (2) hours of discovery. This may be done by either:
- (1) Calling 1-800-482-0777 (24 hours); or

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(2) Entering into a Memorandum of Agreement (“MOA”) between the Department, STR, MCRR and PTC for the reporting of certain oil spills using an alternate procedure.

In either reporting scenario provided in Paragraph 60(D)(1) or (2), MCRR, STR and PTC must take action to control and clean up a spill before Department staff is notified or arrives on site, and properly dispose of oil and associated waste. The Department will make the decision on how much clean up is needed.

- E. Continue to monitor by inspection the level of oil accumulated in the oil water separator located at Rigby Yard and remove, characterize and dispose of waste oil as necessary. Records of this activity must be maintained at Rigby Yard for a minimum of three (3) years and made readily available for the Department’s inspection, as required in STR and PTC’s Storm Water Pollution Prevention Plan (“SWPPP”) for Rigby Yard.

- F. Pay to the Treasurer, State of Maine c/o the Maine Coastal and Inland Surface Oil Clean-up Fund the sum of one hundred sixty five thousand dollars (\$175,000.00) as a civil monetary penalty and reimburse the Department’s investigation and clean up costs, including interest, in the amount of three hundred thousand dollars (\$300,000.00). The total amount due of \$475,000.00 will be paid pursuant to the following schedule:

- 1. On or before January 20, 2010, pay the amount of \$67,500.00;
- 2. On or before June 20, 2010, pay the amount of \$67,500.00;
- 3. On or before January 20, 2011, pay the amount of \$67,500.00;
- 4. On or before June 20, 2011, pay the amount of \$67,500.00;
- 5. On or before January 20, 2012, pay the amount of \$67,500.00;
- 6. On or before June 20, 2012, pay the amount of \$67,500.00; and
- 4. On or before January 20, 2013, pay the amount of \$70,000.00.

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MIDDLESEX COUNTY)	
OIL DISCHARGE PREVENTION AND)	
POLLUTION CONTROL)	

Pay to the *Treasurer, State of Maine*, upon demand by the Department, the amount of two hundred dollars (\$200.00) per day for each payment not made in accordance with the time specified in this Agreement.

If any payment is more than ten (10) days late, the full outstanding balance of the unpaid penalty is immediately due and payable upon demand by the Department.

61. The Department and the Maine Office of the Attorney General grant a release of their cause of action against MCRR, STR and PTC for the prohibited and unlicensed discharges of oil, failing to promptly clean-up the discharges of oil, and for failing to reimburse the Fund as described in Paragraphs 53 – 56 of this Agreement on the express condition that all actions listed in Paragraph 60 above are completed in accordance with the express terms and conditions of this Agreement, except that no release is granted for injury to, destruction of, loss of, or loss of use of natural resources, or for any contamination of air, surface waters, ground waters, sediment or soils as a result of the operation of the subject facility or related activities. Nothing in this Agreement shall prevent the Department from requiring additional corrective action if the Department reasonably determines that such action is necessary to protect public health, safety or the environment. Nothing in this Agreement shall prevent the Department from seeking recovery of its costs pursuant to Maine law. The release shall not become effective until all requirements of this Agreement are satisfied.
62. Non-compliance with this Agreement voids the release set forth in Paragraph 61 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
63. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, including but not limited to, permitting or licensing requirements.
64. By entering into this Agreement, none of the parties waives its right to assert that persons other than the Respondents identified are responsible for any liability or environmental problems that may be associated with the Site or offsite impacts to ground water or surface water, to seek indemnity or contribution from such persons, to assert any claim, or to impose any other defense against such persons which may be available under the law.

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AGREEMENT
(38 M.R.S.A. § 347-A)

65. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement of fifteen (15) pages.

SPRINGFIELD TERMINAL RAILWAY COMPANY

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

DATE 12/22/09

MAINE CENTRAL RAILROAD COMPANY

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

DATE 12/22/09

PORTLAND TERMINAL COMPANY

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

DATE 12/22/09

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
Susan M. Lessard, CHAIR

DATE _____

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____
Nancy Macirowski, Assistant Attorney General

DATE _____

SPRINGFIELD TERMINAL RAILWAY CO.)
MAINE CENTRAL RAILROAD COMPANY)
PORTLAND TERMINAL COMPANY) ADMINISTRATIVE CONSENT
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MIDDLESEX COUNTY)
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APPENDIX A

JUNE 9, 2008 MAP OF THE NORTHERN PORTION
OF RIGBY YARD STORM WATER DRAINAGE SYSTEM

20 RIGBY ROAD, SOUTH PORTLAND, MAINE

Prepared by Environmental Resources Management, Boston

SPRINGFIELD TERMINAL RAILWAY CO.)
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PORTLAND TERMINAL COMPANY) ADMINISTRATIVE CONSENT
1700 IRON HORSE PARK) AGREEMENT
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APPENDIX B

CLEAN-UP ORDER BY CONSENT
PURSUANT TO 38 M.R.S.A. § 568

SPRINGFIELD TERMINAL RAILWAY COMPANY
PORTLAND TERMINAL COMPANY
20 RIGBY ROAD, SOUTH PORTLAND, MAINE



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

IN THE MATTER OF:

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

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

I. RESPONDENTS

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

II. SITE DESCRIPTION

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

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

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143

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

III. LEGAL AUTHORITIES

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

B. The *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 543, states in relevant part:

The discharge of oil into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into or upon any lake, pond, river, stream, sewer, surface water drainage, ground water or other waters of the State or any public or private water supply or onto lands adjacent to, on, or over such waters of the State is prohibited.
38 M.R.S.A. § 543

C. The *Oil Discharge Prevention and Pollution Control law*, 38 M.R.S.A. § 548, states in relevant part:

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

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

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

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

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State need not plead or prove negligence. The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, any person, vessel, licensee, agent or servant, including a carrier destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place is liable to the State for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D, E, H and I, or other damage incurred by the State, including damage or injury to, destruction of, loss of, or loss of use of natural resources and the reasonable costs of assessing natural resources damage. In any suit to enforce claims of the State under this section, to establish liability, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge. 38 M.R.S.A. § 552(2)

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

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

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

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

IV. STATEMENT OF PURPOSE

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

V. FINDINGS OF FACT

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

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

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

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VI. CONCLUSIONS

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

VII. CONSENT TO ENTRY OF ORDER

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

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

VIII. AGREEMENT

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

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- (2) STR and PTC will designate specific locomotive idling or parking areas at Rigby Yard, overlay these areas with by track mats, and require that all locomotives at Rigby Yard intended to be idle or inactive for a period exceeding two (2) consecutive hours be parked over track mats.
- (3) After an initial period of six (6) months of inspecting and maintaining track mats in accordance with the standard operating procedure described above, STR and PTC may submit for the Department's review and approval a written request to modify the standard operating procedure. The Department may approve, deny, or approve the request with conditions.

E. Monitor the level of any oil that accumulates in the oil water separator located at Rigby Yard daily by inspection and remove, characterize and properly dispose of waste oil as necessary. Records of this activity must be maintained at Rigby Yard for a minimum of three (3) years and made readily available for the Department's inspection, as required in STR's Storm Water Pollution Prevention Plan ("SWPPP") for Rigby Yard.

F. The results of the initial site characterization described in Paragraph V(H) document areas where free-phase petroleum potentially occurs in the subsurface. STR and PTC agree to complete additional characterization of these areas by submitting to the Department a plan and schedule for the installation of additional monitoring wells at the Site and assessing the ground water and soil borings for petroleum contamination. This action is to be completed, and a status report summarizing actions taken will be submitted to the Department, by no later than December 31, 2009.

G. In order to assess the effectiveness of the remedial activities described in the COC in achieving the clean up goals described in Paragraph IV, until STR and PTC's responsibilities under this COC have been satisfied and this COC is terminated, STR shall:

- (1) Monthly during dry weather (low flow, non-storm events), sample water in the storm water drainage system at drainage system catch basins identified on a map prepared for STR by ERM and dated June 9, 2008 as "CB-22" and "CB-115";

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

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

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I. In the event that the Department requests a Remediation Plan and Schedule and upon the Department's approval of the Remediation Plan with or without conditions, within thirty (30) days of the Department's approval of the Remediation Plan and Schedule, STR and PTC will initiate the plan for removal and/or treatment of free product and petroleum saturated soil and sediment at the Site.

J. PTC will emplace institutional controls (deed restrictions) as approved by the Department, with or without conditions, that conforms with the requirements of the *Maine Uniform Environmental Covenants Act*, 38 MRSA §§ 3001-3013, and that would require notification of the Department in the event of a property transfer. The deed restrictions must prohibit residential development, the use of groundwater, and discharges to groundwater that may cause changes in groundwater movement at the subject property, unless approved by the Department. Further, these institutional controls will include a soil management plan stipulating the following:

- (1) Screening of all petroleum-impacted soils discovered at Rigby Yard for petroleum saturation via the "shake test" method described in the Department's petroleum remediation guidance documents;
- (2) Notification of the Department in the event that any oil-saturated soil is discovered at Rigby Yard; and
- (3) Prompt characterization, removal and off-site disposal of any oil-saturated soil discovered at Rigby Yard.

K. Unless instructed otherwise by the Department, STR and PTC will forward all deliverables (e.g., reports, schedules) and correspondence to:

Andrew Flint, Environmental Specialist
Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333-0017

L. Delay in Performance and Force Majeure:

STR, PTC and the Department agree that timely completion of the work required by this COC is important. STR and PTC shall use their best efforts and shall undertake all reasonable measures to ensure that the requirements set forth in this

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

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

N. Termination and Satisfaction:

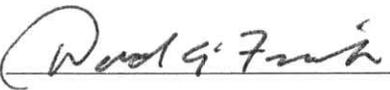
Upon completion of the activities set forth in this COC, STR and PTC shall promptly notify the Department, and may request that the Department assess the effectiveness of the activities. If the Department finds that the activities have been performed in accordance with the approved plans and that remediation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

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

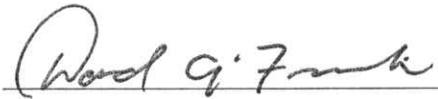
IT IS SO AGREED:

SPRINGFIELD TERMINAL RAILWAY COMPANY

BY: 
David A. Fink, PRESIDENT

DATE 12/21/09

PORTLAND TERMINAL COMPANY

BY: 
David A. Fink, PRESIDENT

DATE 12/21/09

STATE OF MAINE, DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
David P. Littell, Commissioner

DATE 21 DEC 09

SEEN AND AGREED TO:

By: 
Nancy Macirowski, Assistant Attorney General

DATE 12/22/09