

Natural Resources Damage Compensation Plan for the Portland-Bangor Waste Oil site in Casco, Maine

DRAFT FOR PUBLIC COMMENT, JULY 2013

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I Introduction

This compensation plan addresses damages to natural resources arising from the discharge of hazardous substances at the Portland-Bangor Waste Oil site in Casco, Maine (PBWO Casco). The Commissioner of Environmental Protection designated the site as a State “uncontrolled hazardous substance site” by written decision dated August 21, 2008.

Under Maine’s uncontrolled sites law [38 M.R.S.A. §§ 1361-1371], each responsible party¹ is jointly and severally liable for costs incurred by the State to abate, clean up or mitigate the threats or hazards posed by the site. They also are liable for damages to the natural resources of the State. The responsible parties at the PBWO Casco site and several other Maine sites where PBWO operated include hundreds of small businesses, municipalities, school districts and individuals that generated waste oil handled at the site.

In 2007, the Maine Legislature established the Waste Motor Oil Disposal Site Remediation Program² to deal with cleanup costs and natural resources damages at four of the PBWO sites including Casco. The program as currently configured imposes a tax (or “premium” as it is called in the law) on the sale of motor oil³ and uses the revenue to cover costs and damages that the responsible parties otherwise must pay. Revenue from the premium is deposited in the Waste Motor Oil Revenue Fund established under 10 M.R.S.A. §1020, which provides, among other things, for nearly \$7 million to be transferred to the Maine Department of Environmental Protection (DEP) to pay response costs related to the PBWO disposal sites.

The revenue transfers to DEP include \$500,000 for damages to natural resources at the PBWO Casco site. This document establishes a framework for the use of the money. Natural resource damages in this case are limited to the loss of use of groundwater. As compensation for these damages, the Town of Casco will be provided the full \$500,000 for local projects to protect groundwater from pollution.

¹ The term “responsible party” as defined under 38 M.R.S.A. § 1362(2) includes any person who: (1) owned or operated the uncontrolled site from the time the hazardous substances arrived there; (2) generated hazardous substances handled at the site; or (3) transported hazardous substances to the site.

² See Public Laws 2007, chapter 464, section 6, enacting 10 M.R.S.A. § 1020-A.

³ See 10 M.R.S.A. § 1020(6-A).

II Background

A. NRDC process generally

The uncontrolled sites law allows the State to recover compensation for natural resource damages. *See* 38 M.R.S.A. § 1367. The State natural resource agencies historically have coordinated the assessment of natural resource damages at uncontrolled hazardous substance sites and the development of compensation plans to address those damages. There are no agency rules that govern the process.

The Governor has designated the commissioners of the natural resource agencies as the natural resource trustees for the State.⁴ The DEP is the lead trustee because authority to collect natural resource damage compensation stems from the pollution control laws administered by DEP. The DEP also is the trustee for groundwater damage issues. The Department of Marine Resources is the trustee for marine fish and other marine resources; the Department of Agriculture, Conservation & Forestry for state lands, parks and reserves; and the Department of Inland Fisheries & Wildlife for freshwater fish and wildlife. Any trustee can ask the lead trustee to initiate an assessment and compensation process for natural resource damages.

B. Liability for natural resource damages

The Maine Legislature created the Uncontrolled Hazardous Substance Sites Program (Uncontrolled Sites Program) in 1983. Under the program, the DEP is authorized to investigate and clean up locations where hazardous substances pose a threat to public health or the environment. The law also authorizes the department to seek compensation from responsible parties for damages to natural resources.

At the PBWO Casco site, 194 companies, schools and government agencies have been identified as potentially responsible parties (PRPs). PRPs at hazardous waste sites ordinarily would join in an administrative agreement in which they are released from liability in exchange for funding the site cleanup. In this case, the establishment of the Waste Motor Oil Disposal Site Remediation Program makes this step unnecessary. Instead, revenue from the premium on motor oil sales will be used to reimburse cleanup costs for the PRPs. When the DEP has received \$3.5 million from that revenue stream, most of the responsible parties will be released from liability by operation of statute. *See* 10 M.R.S.A. § 1020-A(9). The release will include release from liability for natural resource damages.⁵ \$500,000 of the revenue due DEP under the Waste Motor Oil Disposal Site Remediation Program has been allotted for natural resources damage compensation at the PBWO Casco site.

⁴ *See* letter dated September 5, 2012 from Governor Paul LePage to President Barack Obama.

⁵ *See* 10 M.R.S.A. § 1020-A(9), directing the State to execute a release in favor of eligible responsible parties at the PBWO sites in Casco, Ellsworth and Presque Isle upon receipt of \$3.5 million in revenues from the surcharge on motor oil purchases. The release must “forever discharge and release all eligible persons from all claims, suits, actions, liabilities, causes of action, demands, costs, damages and expenses of any nature whatsoever, including, without limitation, past response costs, future response costs, oversight costs, natural resource damages and the cost of assessment, whether known or unknown, arising out of, directly or indirectly, a release, threatened release or presence of hazardous substances at or from the sites prior to [June 3, 2011].”

III Natural resource damage assessment

A. Site history

From 1969 to 1980, Dickie Dare Incorporated d/b/a Portland-Bangor Waste Oil operated a waste oil collection and storage facility on Tenny Hill Road in Casco (Figure 1, page 5). The oil, some of which was contaminated with lead and solvents, was collected from hundreds of entities and stored in large, aboveground storage tanks and drums. PBWO decommissioned the Casco operation in 1980 and sold the property in 1986. In 1987, the new owner constructed a home on the site.

The site is in an area served by individual water supply wells. It is bordered by two residential properties, a working woodlot and a lumber mill operated by Hancock Lumber. The soil and underlying groundwater are contaminated with solvents, waste oil and polychlorinated biphenyls (PCBs). In 2002 and 2003, the DEP removed 6800 tons of contaminated soil from the site to eliminate the threat of direct human contact with the contamination and to reduce the ongoing release of contamination to groundwater.

B. Site investigation

From 2001 to 2003, the DEP conducted site investigations to identify the extent of contamination and determine potential risks to human health and the environment. No residential wells in the vicinity currently are contaminated above the Maximum Exposure Guidelines (MEGs) developed by the Maine Center for Disease Control and Prevention. However, contaminants were found at levels exceeding the MEGs in a plume of groundwater that extends to monitoring wells about 2,000 feet beyond the property boundary: The contaminant plume apparently is drawn by a high production well at Hancock Lumber (Figure 2, page 6).

The site is situated in the Crooked River watershed near the top of Tenney Hill. Drainage is eastward, away from Tenney Hill Road and towards the Decker Brook valley. The overburden is sand over sandy till and the bedrock is fractured granite.

The DEP estimates that 58,000,000 gallons of contaminated water lie below the site and that natural degradation of the chlorinated solvents will take more than 100 years. The DEP has further determined that it is not feasible to clean up the contaminated groundwater. The department will instead work to institute deed restrictions and local ordinances that prevent drinking water extraction in the area and thereby minimize the potential for human exposure to the contamination.⁶

No groundwater quality test results are available from the period before PBWO began its operations. Area residents, however, remember their well water as tasting good. The only known contaminant sources in this remote area, other than the PBWO operation, are residential subsurface septic systems and possibly road salt from winter maintenance of the Tenney Hill Road, which passes directly over the top of the hill. Based on this limited information, the DEP finds that the aquifer below the site likely was of high

⁶ See *Uncontrolled Hazardous Substance Decision Document for Portland Bangor Waste Oil, Casco*, prepared by Kathy Howatt and signed by David Wright, Director of the DEP Division of Remediation, on January 14, 2009.

quality before the PBWO facility was placed in operation and that the aquifer was compromised by discharges from the operation of the facility.

Groundwater monitoring and pore water sampling indicate that a portion of the contaminant plume discharges to a seasonal stream and associated wooded wetland. Trace levels of solvents were found in an area of wetland sediments measuring about 120 x 40 feet but was not found in other areas of the wetland or in the stream itself. Based on these findings, the DEP concluded that the contaminant levels were insufficient to create a potential ecological impact and therefore did not conduct further ecological assessments.

C. Conclusions

Groundwater is the only damaged natural resource at the PBWO Casco site. Prior to the discharge of contaminated waste oil at the site, the area groundwater was suitable for drinking. This is no longer the case in a significant portion of the Tenny Hill neighborhood.

Given that natural resource damages are limited to the groundwater aquifer and given that residents of the Town of Casco rely on groundwater wells for drinking water, funding to compensate for the damage to the aquifer should be used to support measures that protect local or improve groundwater quality in the area. This will ensure that there is a connection between the damage suffered and the remedy.

IV Compensation plan

\$500,000 of the \$6,919,681.57 to be transferred to the DEP from the Waste Motor Oil Revenue Fund is compensation for natural resources damages associated with operations at the PBWO Casco site. The DEP will disburse the entire amount to the Town for funding projects that protect groundwater quality and drinking water resources generally.

Town officials are well-positioned to identify potential risks to local drinking water resources, and to administer funds as appropriate to prevent adverse impacts to those resources. The money could, for example, be used to:

- Upgrade home heating oil tanks or other petroleum storage facilities;
- Upgrade septic systems;
- Provide technical assistance or equipment upgrades to hazardous waste generators; or
- Conserve land to protect significant groundwater resources.

The DEP will monitor disbursement of the funds by the Town to ensure the money is used appropriately, including up to a maximum of 10%, for Casco's costs to administer the program. Upon request, the DEP, in consultation as appropriate with the Drinking Water Program at the Maine Department of Health & Human Services, will assist Casco in exploring cost effective uses of the funds.

FIGURE 1: SITE LOCATION MAP FOR THE PBWO-CASCO SITE

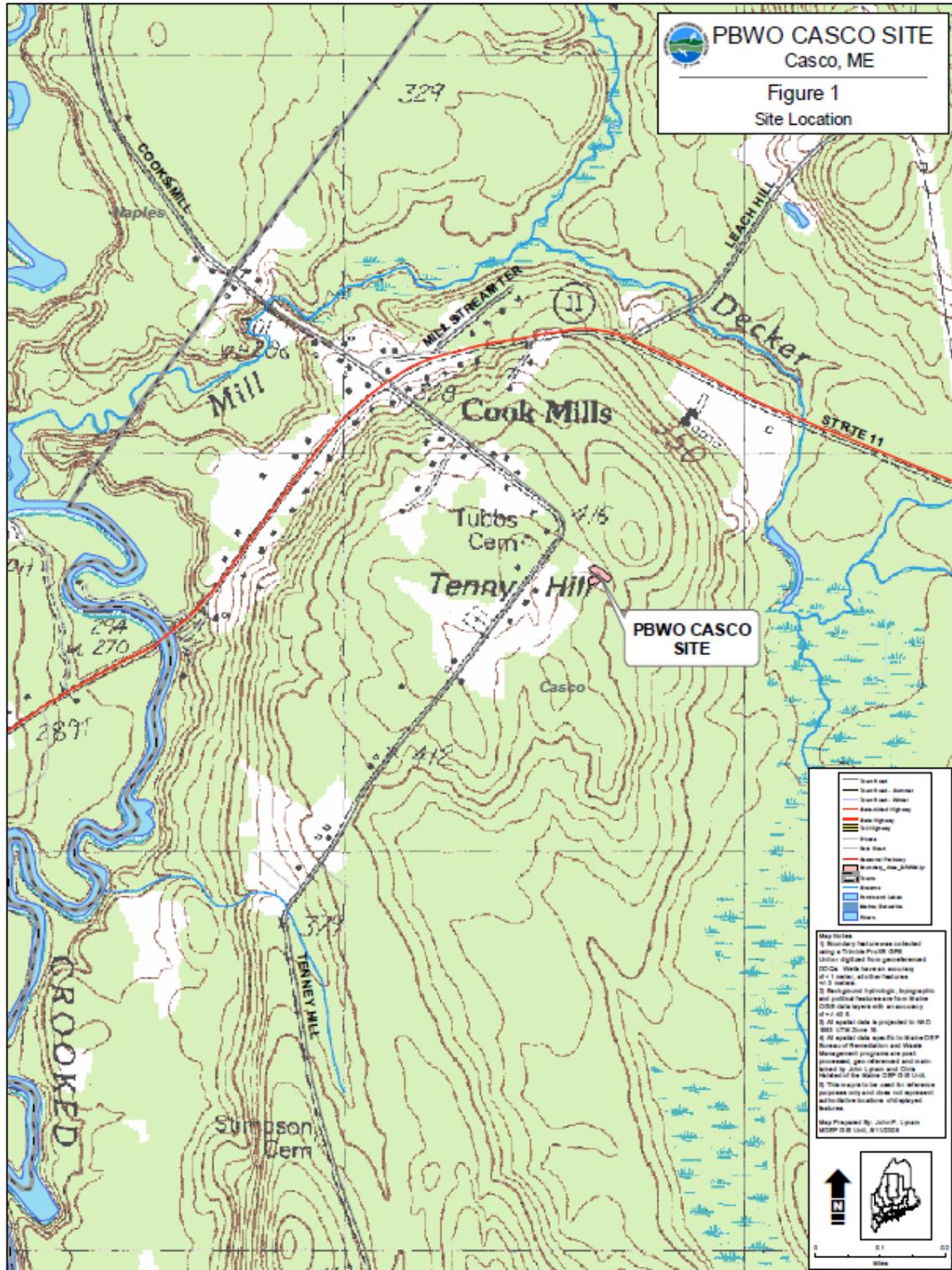


FIGURE 2: GROUNDWATER PLUME, PBWO-CASCO

