

September 23, 2009

George Seel
Director, Division of Technical Services
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Comments on 2009 Draft Remediation Guidelines for Petroleum Cleanup

Dear George:

Following the September 1 seminar on the new proposed guidelines, please find our comments. We appreciate the significant effort that the Department has put into developing the guidelines, and the opportunity to comment on them.

1. Section 1: Applicability

a. VRAP Sites/Transportation-Related Spills. Footnote 1 to Section 1.2.1 indicates, in essence, that the guidelines do not prohibit the VRAP program from requiring remediation to a more stringent level than the proposed guidelines. Section 1.2.3 also indicates that the new guidelines would not apply to spills resulting from transportation accidents. Given the confidence that the Department has in the new guidelines, which have been designed to be protective of human health and the environment, it is not clear why different clean-up standards would apply depending upon which division of the Department was leading or overseeing the cleanup, when the underlying risk factors are the same. For purposes of consistency, certainty, and cost effectiveness, it would be preferable to have the same set of guidelines applied to all petroleum cleanups, regardless of source or whether the VRAP program was involved in the remediation project.

b. Timing. Section 1.4 (“Implementation & Transition from GRO/DRO to VPH/EPH Based Remediation Guidelines”) and Section 1.2.2 are duplicative but also confusing in describing the timing of implementation of the new guidelines. Section 1.4 could be eliminated, and Section 1.2.2 more completely written to describe exactly when and how the new guidelines will be implemented. To provide maximum flexibility, the Department could state that the new guidelines will apply to new or historical oil discharges discovered and reported after the guidelines are formally adopted, but will consider applying the new guidelines in other situations (ongoing investigations) if the party leading the clean up, or the responsible party, requests that the new guidelines apply.

DOUGLAS S. CARR
PHILIP C. HUNT
JOHN S. UPTON
PEGGY L. MCGEEHEE
MELISSA HANLEY MURPHY
JOHN A. CIRALDO
JOHN A. HOBSON
JAMES N. KATSIARICAS
TIMOTHY F. BENOIT
J. GORDON SCANNELL, JR.
FRED W. BOPP, III
MARK P. SNOW
WILLIAM J. SHEILS
DAVID B. MCCONNETT
PAUL D. HETROPAKOS
HOPE CREAL JACOBSEN
RANDY J. CRESWELL
JENNIFER H. PINCUS
DAWN M. HARMON
CHRISTOPHER M. DARGIE
ANTHONY J. MANHART
STEPHANIE A. WILLIAMS
PETER J. McDONNELL
KEITH J. DUNLAP
SARA N. MOPPIN

OF COUNSEL
THOMAS SCHULTEN
OWEN W. WELLS
ANDREW A. CADOT
JULIANNE C. RAY

2. Section 4: Drinking Water/Ground Water Protection and Remediation Guidelines

a. Replace term “unconditional use.” In both Section 4.1.7, and Section 5.1.3, when discussing triggers for remediating ground water, the term “unconditional use” is used to describe potential land areas that may be developed residentially (stating in Section 4.1.7 that areas of high probability of future residential development “currently zoned...to expressly allow residential development as an unconditional use.”) It may be helpful to clarify whether “residential development” means any residential development (single family dwelling) or entire subdivisions. In addition, we suggest employing the term “permitted use,” as that phrase is commonly used in land use ordinances to describe allowed uses within certain types of municipal zones, and would be clearer than “unconditional use,” which is not to our knowledge used in the municipal context and will therefore potentially be confusing.

b. Clarification of Exception. Section 4.2 (entitled “Exceptions”) lists out the exceptions to the provision that discusses the remediation of groundwater, and provides: “This section does not apply to a site where only 4.1.6 or 4.1.7 above applies...[and the discharge location meets the criteria of a...non-attainment area].” We suggest it should read “where either 4.1.6 or 4.1.7, or both, applies...”, to clarify that if the site is a significant sand and gravel aquifer, **and/or** a high probability of future residential development, but the area is a non-attainment area, the ground water remediation provisions would not apply.

c. Eliminate Incorporation of Definition of “Urban Ground Water Non-Attainment Area.” Section 4.2 restates almost exactly the definition of “urban ground water non-attainment area” found in the “Glossary of Terms,” Section 10.14, but uses slightly different terms which may be confusing. As Section 4.2 is describing the “exceptions” to the “applicability” and not the definitions of terms, it would be clearer to state only the first sentence, with our comments above, and truncate the section to eliminate the repetitive definition of urban ground water non-attainment area. (Delete all text in this section after the first sentence.) The word “definition” should then replace “criteria” in the first sentence of Section 4.2.

d. Section 4.3.2.6. As an initial matter, we suggest the term “active” be placed before the use of the term “private or public water supply well” to make this provision consistent with other references to drinking water wells within the guidelines. Section 4.3.2.5 discusses certain circumstances when the Department might require further investigation, based on being at or above certain action levels over a certain period of time. Section 4.3.2.6 suggests further investigation may be required, regardless of concentration of oil parameters (including below action levels.) It is not clear when each of these provisions would apply.

3. Section 10: Glossary of Terms

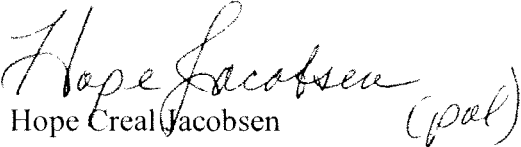
a. Section 10.14.2. This section should make clear that areas with dense commercial or residential development with public sewer also meet the definition of a non-attainment area. Section 10.14.2 should read: “Dense commercial or residential developments where most lots

George Seel
September 23, 2009
Page 3

are ½ acre or less **with public sewer** or subsurface waste water disposal, with public drinking waters service...” (Bold language is the suggested additional language.)

Thank you very much for your consideration of our comments. Please let us know if we can provide anything further.

Very truly yours,


Hope Creal Jacobsen (pal)