

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

PORTLAND PIPE LINE CORPORATION;  
THE AMERICAN WATERWAYS  
OPERATORS,

Plaintiffs,

v.

CITY OF SOUTH PORTLAND, MAINE;  
PATRICIA DOUCETTE, IN HER OFFICIAL  
CAPACITY AS CODE ENFORCEMENT  
DIRECTOR OF SOUTH PORTLAND,

Defendants.

Civil Action No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs Portland Pipe Line Corporation (“PPLC”) and The American Waterways Operators (“AWO”) and, through their undersigned counsel, file this complaint against Defendants City of South Portland (“the City”) and Patricia Doucette, in her official capacity as the City’s code enforcement director. This is an action for declaratory and equitable relief challenging an ordinance adopted by the City on July 21, 2014 (“the Ordinance”). Through the Ordinance, Defendants seek to retard, and in fact have retarded, international and interstate commerce arising out of the trade in crude oil, violating multiple provisions of the U.S. and Maine Constitutions as well as federal and state statutes. By seeking to interfere in international and interstate commerce, and maritime trade, and in fact doing so, the Ordinance contravenes fundamental principles upon which our Republic was founded and seeks to regulate in areas in which local regulation is preempted.

## **PARTIES**

1. The Plaintiff parties to this suit are participants in international and interstate commerce in petroleum products.

2. The purpose and effect of the Ordinance, a complete and accurate copy of the Ordinance, as adopted by the South Portland City Council, is attached hereto as Exhibit A, is to hinder this international and interstate commerce and to discriminate against Canadian interests by prohibiting the loading of Canadian crude oil at the through-point of the harbor in South Portland. Based on antipathy for products derived from oil sands originating in Canada and a desire to curtail the exportation of such products from Canada throughout the United States, the Ordinance seeks to and does effectively preclude the importation of oil for further transportation by marine vessels at the harbor in South Portland, adversely affecting the participants at each leg of the interstate and international distribution of petroleum products from Canada, across the United States, throughout New England and beyond.

3. Plaintiff PPLC is a Maine corporation, with its principal place of business in South Portland. It is a wholly-owned subsidiary of Montreal Pipe Line Limited, a privately-held corporation located in Canada, and is engaged in the international transportation of hydrocarbons via pipeline and associated facilities located in a continuous transportation corridor running from the harbor in South Portland, Maine, through three states, across the Canadian border, to facilities located in Montreal, Quebec. The Ordinance is intended to and effectively does preclude PPLC from transporting crude oil produced in and/or transported across Canada via interstate and international commerce through PPLC's pipelines.

4. Montreal Pipe Line Limited is owned by four entities: McColl-Frontenac Petroleum, Inc., Imperial Oil Limited, Suncor Energy, Inc., and Shell Canada Limited – all

Canadian corporations. Each of these entities, directly or through affiliates, produces, transports by pipeline, and refines crude oil in Canada, including crude oil derived from oil sands, which includes bitumen. The Ordinance is intended to and effectively does preclude the importation of these entities' crude oil produced in Canada through PPLC's pipelines.

5. Plaintiff AWO is the national trade association for the nation's inland and coastal tugboat, towboat, and barge industry. The industry employs more than 33,000 American seamen and owns and operates over 4,000 tugboats and towboats and more than 27,000 barges throughout the country. AWO represents the largest segment of the U.S.-flag domestic fleet. Its 350 member companies carry more than 800 million tons of domestic cargo every year, operating vessels on the inland rivers, Atlantic Ocean, Pacific Ocean, the Gulf Coast, the Great Lakes, and in ports and harbors around the country, including the Portland Harbor, incorporating the harbor in South Portland. AWO's member companies operate numerous vessels licensed by the United States Coast Guard to engage in coastwise trade, such as the transportation of crude oil products. AWO has consistently supported federal control over harbor-related activities, noting that to move critical cargo in interstate and international commerce safely and efficiently, the maritime industry needs uniform safety and environmental standards established by one engaged and experienced federal agency, the United States Coast Guard, and that subjecting vessel operators to duplicative or conflicting federal and state standards creates confusion, adds inefficiency, and increases costs to shippers who rely on water transportation. By prohibiting the loading of crude oil at the harbor in South Portland, the Ordinance interferes and conflicts with its members' federal licenses; eliminates a market for its member vessels' services in transporting such products from the harbor; and sets a precedent for inconsistent local harbor regulation that could cripple import and export activities nationally and invite reciprocal commerce curtailment from other nations.

6. The Defendant City is a municipality located in Cumberland County, Maine, on the Portland Harbor. The Portland Harbor is the second largest oil port on the United States' East Coast, serving as a key center for shipping by both land and sea.

7. Defendant Patricia Doucette, as the City's code enforcement director, is charged under South Portland Code Sec. 27-131 with enforcing the City's ordinances, including the Ordinance.

### **VENUE AND JURISDICTION**

8. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201-02, and 42 U.S.C. § 1983. The Court has jurisdiction over the claims seeking relief under Maine law pursuant to 28 U.S.C. § 1367, because this Court has original jurisdiction over the claims raising questions under the United States Constitution and federal law, and the state claims are so closely related to the federal claims so as to form part of the same case or controversy.

9. Venue in the District of Maine is proper pursuant to 28 U.S.C. § 1391 because the events giving rise to these claims occurred in this district, and Defendants are located within or reside in the State of Maine.

### **FACTS**

10. Portland Harbor, at the western end of Casco Bay and incorporating the harbor in South Portland, has the capability of handling some of the largest and deepest draft marine tankers on the East Coast, with up to 52 feet of draft and 170,000 deadweight tons of cargo. This rare natural resource prompted the City's waterfront to become a critical interstate and international hub for the transportation of petroleum and petroleum products, including crude oil.

**PPLC's current and potential cross-border commercial activity**

11. PPLC owns and operates the U.S. portion of a transportation system that includes, without limitation, 12-inch diameter, 18-inch diameter, and 24-inch diameter pipelines and associated facilities extending from South Portland, Maine to Montreal, Quebec. Currently, approximately 48 ships offload at PPLC annually, and PPLC transports crude oil to Quebec via pipeline and associated facilities at a rate of approximately 2.4 million barrels of oil per month.

12. PPLC holds submerged land leases with the State of Maine upon which are located two piers it owns at the Harbor in South Portland. PPLC's pipeline transportation system includes, without limitation, one of the two piers (Pier 2), tanks located both at the waterfront and at a tank farm within the City, as well as the pipes, additional infrastructure, and facilities needed to transport petroleum products from tankers berthing at Pier 2 to their ultimate cross-border destination.

13. Oil is pumped using pump stations located along the route from South Portland to Montreal, spaced 25 to 40 miles apart. These six pump stations are located in South Portland, Raymond, and North Waterford, Maine; Shelburne and Lancaster, New Hampshire; and Sutton, Vermont.

14. The process of transferring oil cargo from a tank vessel to the pipeline is overseen by the Coast Guard's Captain of the Port (COTP). This process entails hydraulically connecting pipeline equipment at a flange on the ship, with the oil pumped from the ship. The tank and pipeline equipment used is tested and inspected by the Coast Guard, must adhere to Coast Guard regulations, and the transfer operations and activities are regulated and overseen by the Coast Guard.

15. The same regulatory framework applies to loading a tank vessel as applies to unloading; Coast Guard regulations apply to cargo “transfer,” *i.e.*, loading and unloading. and adjustments to operations and equipment with respect to the transfer would be overseen and regulated by the Coast Guard.

16. PPLC’s transportation system was first established with the construction of the 12-inch diameter pipeline in 1941 during World War II for national security purposes to transport crude oil by pipeline as an alternative to direct international marine shipments by crude oil tankers. The 18-inch diameter pipeline, built in 1950, transported oil until 1986, when it converted to natural gas transmission, importing gas from Canada to the United States pursuant to Executive Order 10485 (Sept. 3, 1953) and Executive Order 12038 (Feb. 3, 1978). *See* 44 FERC ¶ 61177 (Aug. 10, 1987). In 1999, the 18-inch diameter pipeline converted back to oil transportation, as authorized by a Presidential Permit issued in accordance with Executive Order 11423 (August 16, 1968), Executive Order 12847 (May 17, 1993), and Department of State (“State Department”) Delegation of Authority No. 118-1 (April 11, 1973). The 24-inch diameter pipeline was built pursuant to a Presidential Permit issued January 13, 1965. A complete and accurate copy of the 1965 and 1999 Presidential Permits are attached hereto as Exhibit B.

17. PPLC’s Presidential Permits and approvals were issued as an exercise of the President’s authority over foreign affairs and as Commander in Chief, and are consistent with, advance, and are issued as an exercise of United States foreign policy and to facilitate the cross-border trade in hydrocarbons between Canada and the United States.

18. In a Transit Pipe-lines Agreement between the United States and Canada, effective October 1, 1977, 28 UST 7449, TIAS 8720 (the “TPA”), both governments agreed to

measures designed to ensure the uninterrupted transmission of hydrocarbons, including crude oil, by pipeline through the territory of one country for delivery to the territory of the other.

19. In Article II of the TPA, the two countries expressly promised: “No public authority in the territory of either [country] shall institute any measures, other than those provided for in Article V [relating to emergencies], which are intended to, or which would have the effect of, impeding, diverting, redirecting or interfering with in any way the transmission of hydrocarbons in transit.”

20. At a subsequent summit in Quebec, the President and the Canadian Prime Minister signed Joint Canada-United States Declarations on Trade and International Security, dated March 18, 1985, agreeing to strengthen Canada-U.S. energy trade “by reducing restrictions, particularly those on petroleum imports and exports, and by maintaining and extending open access to each other’s energy markets, including oil[.]” *Joint Canada-United States Declarations on Trade and International Security*, 1 Pub. Papers 307 (March 18, 1985). The President further entered Findings confirming “the objective of liberalizing energy trade, including crude oil, between the United States and Canada. Both Governments recognized the substantial benefits that would ensue from broadened crude oil transfers and exchanges between these two historic trading partners and allies. These benefits would include the increased availability of reliable energy sources, economic efficiencies, and material enhancements to the energy security of both countries.” (Presidential Findings on United States-Canadian Crude Oil Transfers, dated June 14, 1985, 50 Fed. Reg. 25189 (June 18, 1985).)

21. In 2008, PPLC requested authorization from the State Department to reverse the flow of the 18-inch diameter international pipeline, in order to transport oil south from Canada to be loaded onto tankers in Portland Harbor, instead of transporting oil north to Canada, as had

occurred since the conversion from natural gas back to oil in 1999. The State Department responded that PPLC's 1999 Presidential Permit was sufficient, so that no further approvals or amendments were needed, and the State Department has continued thereafter to monitor PPLC's pipeline activities. A complete and accurate copy of the State Department's letter of July 18, 2008 is attached hereto as Exhibit C.

22. Recent correspondence from the State Department asks that PPLC keep the Department informed as to PPLC's pipeline operations, noting that such information "will assist the Department in carrying out its policies, as they relate to pipeline permitting, including with regard to energy, environmental, and safety considerations." A complete and accurate copy of the State Department's letter of August 13, 2013 is attached hereto as Exhibit D.

23. No crude oil is produced within the State of Maine. Currently, PPLC uses its 24-inch diameter pipeline, with a capacity of 410,000 barrels a day, to transport crude oil unloaded from oil tankers at the harbor in South Portland north to Canada in far smaller amounts than its capacity can serve. The 18-inch diameter pipeline is currently idle and being maintained to protect the integrity of the pipeline in a state that allows PPLC to return the line to service when market demands warrant. PPLC's pipelines are currently underutilized due to market conditions that favor the transportation of oil south from Canada to the United States and other international markets, instead of from the Harbor north to Canada.

24. As the historical use of PPLC's pipelines reflect, in order to react promptly to international and national market conditions in the cross-border trade of hydrocarbons, the type of and the direction in which hydrocarbons may flow through PPLC's pipelines changes, as overseen by the President implementing his foreign affairs powers given, *inter alia*, national strategic interests surrounding the cross-border flow of hydrocarbons. The Ordinance's



interference with these foreign affairs powers and with the exclusive federal authority over the flow of hydrocarbons through its pipelines adversely affects PPLC's ability to respond to market conditions and to facilitate the cross-border flow of hydrocarbons as supported by international treaty and Presidential findings.

25. By limiting the direction in which bulk oil may flow through PPLC's pipelines, the Ordinance immediately and currently reduces the current market value of PPLC's pipelines and hinders its ability to engage in interstate and international commerce. The Ordinance purposefully and effectively prohibits all use of PPLC pipelines for the transportation of oil from Canada to the United States, to the detriment of PPLC's ability to offer its transportation services to the national and international export market.

26. PPLC's shareholders actively market their crude oil to markets in the United States and other countries. The Ordinance prohibits them from transporting its product to market through the Harbor in South Portland and via PPLC's pipelines, which could handle hundreds of thousands of barrels of their products a day. By prohibiting the loading of oil onto marine vessels in South Portland, the Ordinance further forecloses the Harbor as a means of export for their product, however that product arrives, whether by pipeline, ship or rail. The inability to use the Harbor and existing commerce avenues has a depressive impact on the value of these shippers' crude oil, and the precedential impact of the Ordinance, if copied in other U.S. harbor municipalities, would have a profound impact on shippers' ability to engage in international commerce.

**Tankers' current and potential cross-border commercial activities**

27. The current transportation of tankers into the South Portland harbor is threatened by the lack of economics in transporting crude oil from south to north. Conversely, PPLC's

unused capacity is such that, if oil could be transported from Canada through PPLC's pipelines and loaded onto ships in the harbor in South Portland at an economically rational cost, the commercial activities of the AWO and its members stand to benefit from increased traffic and shipping opportunities. Allowing the import of oil, but not its export, through the Harbor restricts the ability of AWO's members from engaging in interstate and international commerce. More broadly, the precedential impact of the Ordinance, if copied in other U.S. harbor municipalities, would have a profound impact on the ability of marine vessels to engage in international commerce and undermines the uniformity of international and national vessel regulation, to the detriment of AWO member interests..

28. The United States has adopted the International Convention for the Prevention of Pollution from Ships ("MARPOL"), including Annex VI and Regulation 15 thereto ("Regulation 15"). S. Treaty Doc. No. 108-7 (2003); 152 Cong. Rec. S3400 (daily ed., 7 April 2006) and 33 U.S.C. §§ 1901-1915.

29. Regulation 15 applies to the emissions of volatile organic compounds (VOCs) in cargo transfer operations between tankers and port facilities – the purported concern of the Ordinance.

30. The first paragraph of Regulation 15 provides: "If the emissions of VOCs from a tanker are to be regulated in a port or ports or a terminal or terminals under the jurisdiction of a Party, they shall be regulated in accordance with the provisions of this regulation." The remainder of Regulation 15 obligates parties to MARPOL to notify the International Maritime Organization ("IMO"), an agency of the United Nations, before the party imposes vapor emission control requirements, and to take into account safety guidance developed by the IMO in doing so.

31. In forwarding MARPOL to the Senate for approval on May 15, 2003, the President noted that ratification of the Convention and Annex VI “will demonstrate U.S. commitment to an international solution” for air emissions from tankers, and in the Secretary of State’s Letter of Submittal of MARPOL, submitted to the Senate in 2003 during the ratification process, the Secretary of State explained that “the United States has basic and enduring national interests related to the oceans and U.S. port regions, and has consistently taken the position that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea. A workable international regime for the prevention of air pollution from ships is in the best interests of all States because it will subject international shipping to a uniform standard that is environmentally protective.”

32. Consistent with its treaty adoption of MARPOL, the United States has adopted VOCs emission control regulations for tanker loading operations and requires vapor emission control systems, and pursuant to Regulation 15.6 and consistent with IMO Resolution MEPC.185(59), tankers follow VOC management plans required under Regulation 15.

33. Canada and the United States act cooperatively consistent with MARPOL regulation and the United States’ goal of acting on an international level in regulating tanker activity and emissions, VOCs and otherwise. One illustrative example is these two countries’ joint proposal to the IMO pursuant to MARPOL Annex VI, Appendix III of a North American Emission Control Area surrounding their coastlines, subsequently adopted by the IMO to reduce SO<sub>x</sub>, NO<sub>x</sub> and particulate matter emissions. In proposing this Emission Control Area, the two countries noted that they “have an obvious common interest in addressing emissions from ships operating off their coasts given their geographic proximity and the nature of their markets.”

34. AWO members comply with MARPOL and the federal regulations adopted consistent with MARPOL. The Ordinance's attempt to add another layer of regulation and to ban loading altogether impairs their ability to engage in transportation activities at the Harbor in South Portland, and the precedential impact of the Ordinance, if copied in other U.S. harbor municipalities, would have a profound impact on tankers' ability to engage in national and international commerce by eliminating the uniformity of international maritime regulation sought by the United States in its federal treaties and statutes.

**Other Cross-Border Commercial Activity Emanating From the City Waterfront**

35. The commercial activities noted above reflect just one sub-set of a broad array of commercial petroleum-handling activities at the City's waterfront. A recent economic report provided that the total commercial impact of such activities on just the City and its regional economy amounts to over \$64 million in sales, supporting 335 jobs earning over \$20 million in pay and benefits, and that the oil terminal industry serves as the anchor for the entire Port of Portland, accounting for 84% of the port's cargo vessels and 94% of its total cargo.

36. The petroleum-handling facilities and operations at the City's waterfront constitute a vital hub for the interstate and international delivery of petroleum products, providing the interstate region with a reliable supply of products necessary for heating homes and businesses, among other uses. By curtailing oil-handling activities at the City waterfront, and by permitting the importation but prohibiting the exportation of petroleum products, contrary to market conditions, the Ordinance cripples the commercial activities not only of the named plaintiffs but of all Harbor-related actors. By purposely and effectively legislating that crude oil may be imported but may not be exported, the Ordinance, as intended, precludes any such exportation commerce in the Harbor and affects petroleum-based commerce outside the City,

outside Maine, across the interstate region, and across the U.S.-Canada border, and, if copied in other U.S. harbor municipalities, would have profound adverse precedential impacts.

### **The Ordinance**

37. The purpose and effect of the Ordinance is reflected in its substantive text and history.

38. In its substantive text, the Ordinance prohibits all “bulk loading” of crude oil at the harbor in South Portland and prohibits the installation, construction, reconstruction, modification, or alteration of new or existing facilities, structures, or equipment for the purpose of bulk loading of crude oil onto any marine tank vessel in the harbor in South Portland, thus precluding the use of PPLC’s pipelines or other means for the importation of oil to be loaded at the Harbor in South Portland for further transportation in national and international commerce, and thus prohibiting all activities related to the importation of such oil by pipeline or other transportation methods for export.

39. The history of the Ordinance reflects that both the purpose and the effect of the Ordinance is to regulate interstate and international commerce so as to preclude the importation of Canadian products derived from oil sands. The Ordinance is based on purported safety concerns as to the transportation of such products via pipelines and otherwise, and on the objective of affecting U.S. foreign policy as to the importation of Canadian products derived from oil sands.

40. The first incarnation of the Ordinance emerged as a citizen initiative in 2013, and was referred to as the “Waterfront Protection Ordinance” (“WPO”). A complete and accurate copy of the WPO is attached hereto as Exhibit E.

41. Proponents of the WPO articulated that the main objective of the WPO was to prevent the transportation of Canadian oil through PPLC's pipelines due to perceived dangers from products derived from oil sands derived crude oil.

42. Illustrative reflections of the purpose of the WPO and the Ordinance as ultimately enacted include statements by the initiators of the WPO, "Protect South Portland," the organization that collected the signatures to place the WPO on the ballot. "Protect South Portland" posted fact sheets on its website prior to the 2013 vote on the WPO stating that an ordinance was needed to protect "Casco Bay from spills of toxic tar sands from tankers" and exhorted the electorate to "Vote for the Waterfront Protection Ordinance to stop out-of-state big oil companies from building a tar sands export terminal in South Portland."

43. Further illustrative reflections of the purpose and intent of the WPO and the Ordinance as ultimately enacted include statements made by proponents at a July 23, 2013 meeting of the South Portland Planning Board, in which they advocated for ordinance enactment, arguing that the transport of oil derived from tar sands "isn't consistent with sustainability" and the WPO will "help us protect the earth" and "help us protect our children and our grandchildren"; asserting that there were "catastrophic risks involved with tar sands oil," and "we cannot afford to have a spill in South Portland"; claiming that citizens had been "alerted to unacceptable risks involved in carrying tar sands through our community," that tar sands "creates lakes of toxic waste," that there is "no place to put the waste in Canada," that tar sands are "destroying the land, " and that "our whole way of life and our economy is in jeopardy"; and stating that they "ask nothing but to prevent tar sands from being pumped from Canada to South Portland."

44. Further illustrative reflections of the purpose and intent of the WPO and the Ordinance as ultimately enacted include statements made by proponents at an August 13, 2013 meeting of the South Portland Planning Board, in which they advocated for ordinance enactment arguing that tar sands will “poison our school, children, and teachers,” and will be pumped through “very old pipes that are unmapped,” and that PPLC wanted to “pump tar sands into our community.”

45. Further illustrative reflections of the purpose and intent of the WPO and the Ordinance as ultimately enacted include the statement of David Lourie, an attorney for Concerned Citizens of South Portland (the predecessor to Protect South Portland) and the original drafter of the WPO, at an August 19, 2013 meeting of the South Portland City Council, who stated that “South Portland has a unique ability to stop the flow of tar sands into the state of Maine.” Proponents further argued at the August 19, 2013 meeting that an ordinance would “protect our community from multiple threats,” including “fouling our drinking water”; stated “with a 64 year old pipeline that is used to supporting crude oil, it is only a matter of time before it leaks”; and asserted that the “Waterfront Protection Ordinance will prevent our community from becoming the North American tar sands oil shipping point.” A proponent explained that “the core intent of the Waterfront Protection Ordinance is to prevent tar sands from flowing from Canada to our community and being exported around the world,” noting “South Portland’s unique proximity to Canada,” and that “Alberta, Canada is the beginning of our connection to tar sands,” with another proponent explaining, “[w]e do not want to pollute the working waterfront with out of state interests ” and another stating that “if tar sands is so safe, let Canada export it through its own shores.” Proponents argued that that PPLC wanted “to expand operations in Alberta to include tar sands and they need the pipeline in South Portland to transport to places

like China,” and an ordinance was needed because PPLC wants to “facilitate the flow of tar sands from Canada to South Portland and out to the greater world.”

46. Shortly before the vote on the WPO, an opinion piece published in the Bangor Daily News entitled “Climate Change is here; now what will Maine do about it?” advocated for passage of the WPO because “tar sands are terrible for the climate, with significantly higher emissions of the pollution that causes global warming than conventional oil. Big Oil’s push for tar sands is a national issue that touches us right here in Maine, and we can do something about that.”

47. In addition to language prohibiting the unloading of petroleum products, the WPO included broader language freezing existing petroleum-related operations in the City.

48. Voters rejected the WPO 51% to 49% at the November 2013 elections.

49. Ordinance proponents attributed the WPO’s defeat to the broader provision noted in Paragraph 47 and immediately vowed to re-draft the ordinance to target more narrowly the importation of oil from Canada. The spokesperson for Protect South Portland stated that the organization was “more committed than ever to keeping tar sands out of South Portland.”

50. After the defeat of the WPO, the strategy to enact prohibition of the importation of oil from Canada into the United States included circumvention of the electorate via ordinance initiation not by citizen initiative as with the WPO, but rather enactment through a vote of the City Council alone. City Councilor and Mayor Gerard Jalbert stated that “[p]eople’s feelings are clear” that “[t]hey don’t want to be known as the tar sands capital of the United States.” Interviewed on Election Day, City Councilor Tom Blake stated that having a City committee draft the ordinance banning the flow of oil derived from oil sands through PPLC pipelines would



protect the City, and that he was assured that all councilors opposed tar sands coming into the City.

51. Within hours of the WPO's defeat at the ballot box, City officials introduced and held a workshop on a moratorium to prevent the transportation of "oil sands/tar sand products" onto vessels in the Harbor, applicable as of that day, and subjecting any person engaged in "the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland" to immediate fines and penalties. A complete and accurate copy of the moratorium as enacted by the City, referencing the need to "study oil sands/tar sands products and related issues and to develop any appropriate ordinance amendments to address development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland," is attached hereto as Exhibit F.

52. While the moratorium was in place, the City appointed a committee (the Draft Ordinance Committee or "DOC") charged with drafting an ordinance to stop the flow of "tar sands" oil through South Portland. That this was the DOC's charge was repeatedly and publicly acknowledged by the City. The City's public written solicitation for members for the DOC stated that "[t]he committee has a City Council charge of exploring the development of ordinance language to address development proposals involving oil sands/tar sands production." A complete and accurate copy of this City solicitation is attached hereto as Exhibit G.

53. Ordinance proponents again publicly noted the goal of blocking export venues for petroleum products derived from Canadian oil sands, and that preventing PPLC from reversing its flow would empower local resistance to "tar sands" worldwide. Media reports are replete with citations confirming the universal understanding that the Ordinance was written "to target tar sands oil from Canada." PPLC asked to be a member of the DOC; this request was rejected

by the City Council. Instead, the City appointed a three-member DOC that included a litigation attorney, Russell Pierce, who represents the environmental organization the National Resource Council of Maine (“NRCM”), which vigorously supported the WPO. Mr. Pierce thereafter engaged in multiple extended ex parte communications with the NRCM and another environmental group, the Conservation Law Foundation (“CLF”), when drafting the Ordinance.

54. During the debate regarding the WPO, opponents of the WPO had warned that the measure violated numerous federal and state constitutional and statutory provisions, which warnings were renewed before the City Council during its deliberations over the Ordinance. Mr. Pierce’s law firm newsletter described his task at the time of the appointment to the DOC as “to serve as one of three members of a special Draft Ordinance Committee to propose ordinance language for waterfront protection and land use planning in the context of a petroleum pipeline project transporting tar sands oil from western Canada to Portland Harbor.” Legal counsel for the City subsequently stated in a January 13, 2014 workshop that the charge to the DOC would provide “maximum flexibility” to the DOC to reach its objective, given that this stated intent of “banning tar sands” would likely face “legal obstacles.”

55. Tasked with the mission of crafting an anti-“tar sands” ordinance that would pass legal scrutiny while achieving the objective of banning the export of Canadian petroleum products derived from oil sands through the Harbor in South Portland, the DOC issued requests for information, including questions such as “[W]hat are the physical capacities (average and peak flow-rates) of the Portland Pipe Line Corporation’s pipelines for carrying unrefined oil products, including diluted bitumen, from Montreal to South Portland?” The City also sought responses as to the “boundaries between local, state and federal authorities/jurisdictions.”

56. Summary notes from the DOC's meetings indicate that its goals included having language that "stands up to any legal challenges," and in a March 24, 2014 workshop, Jeffrey Edelstein, the facilitator working with the DOC, candidly told the City Council that because the City could not legally ban oil derived from oil sands, the DOC was working to "thread the needle" to withstand a legal challenge while accomplishing the goal of preventing the flow of such oil through PPLC's pipeline. The Council responded positively, with one Councilor stating that she liked the DOC's methodology, as "[i]t gets us where we need to be."

57. Ultimately, in an attempt to evade legal limitations, the DOC, supported by submissions and communications from NRCM and CLF, labeled the Ordinance a "Clear Skies" ordinance, and included a very long preamble to the Ordinance reciting purported zoning and air concerns about the loading (yet not unloading) of petroleum products onto marine vessels at the harbor. The express charge of the DOC to enact an anti-"tar sands" ordinance is nowhere mentioned in the Ordinance, as noted with puzzlement by one Councilor. One public commentator in a communication dated June 3, 2014 similarly stated: "I am probably not the only one to point out what might have been an oversight in the draft ordinance: that the term 'tar sands' is conspicuously absent from the document altogether," observing that the DOC's charge "is wrapped up in the term 'tar sands' under the aegis of a moratorium that is also centered on 'tar sands' prohibition[.]" The City's legal counsel also noted in a written memorandum that the unusually long (ten-page) preamble of "findings" was not normally a part of a Maine ordinance.

58. Mr. Edelstein again candidly explained in a June 25, 2014 workshop that the committee put an air emissions spin on what it did because "one of the places where the city is permitted to act is in the regulation of air emissions," and as to the lengthy findings, Mr. Pierce stated that "we can't predict whether all of this will survive a challenge and so we felt let's put as

much belt and suspenders on here as we can.” Natalie West, the attorney representing “Protect South Portland,” explained in a July 1, 2014 email to the City legal counsel that the findings were “legal strategy.” Michael Conathan, another committee member chosen by the City, and the Director of Ocean Policy at the Center for American Progress, which had previously characterized Canadian extraction from oil sands as “polluting” and “destructive” (<http://www.americanprogress.org/issues/green/news/2010/06/23/8001/the-dirty-truth-about-tar-sands/>) assured that the DOC’s charge was to “address the potential throughput of tar sands or oil sands through the City of South Portland.”

59. When presenting the draft Ordinance publicly, Mr. Pierce gave a power point slide presentation, citing “Federal Preemption” and the “Dormant Commerce Clause.” In his presentation, Mr. Pierce stated that “federal preemption and the dormant commerce clause were part of our thinking throughout this process.”

60. Despite attempts to camouflage the purpose and intent of the Ordinance in an effort to withstand legal scrutiny, in enacting the Ordinance, City Councilors nevertheless made various statements further confirming that the purpose of the enactment of the Ordinance were health and safety concerns about pipeline transportation, and to have an extraterritorial impact to stop the global transportation and delivery of oil from Canada. For example, Mayor Jalbert noted that PPLC’s pipelines passed through the Sebago Lake watershed, where the City obtains its drinking water; Councilor Cohen stated that he did not want tar sands in South Portland; Councilor Smith stated that the committee “came up with a compromise to thread the needle. It will protect the health and safety of our residents and potentially the health and safety of global residents”; and Councilor Linscott stated: “This ordinance is a lot bigger than us.” In a recorded

interview, Mayor Jalbert explained that the Ordinance was “in essence [to] prevent the flow of Canadian tar sands crude oil through South Portland as an export[.]”

61. Further anticipating legal difficulties and consistent with the ex parte support of national environmental groups to draft the Ordinance and employ it as a national template, the City has approved the establishment of a legal defense fund to solicit to provide financial resources to defend the Ordinance. A spokesperson for Protect South Portland stated: “We may be a small city, but, boy, we’ve done a big thing[.]”

62. In so enacting the Ordinance, the City rejected the position of the Alberta representative in the Canadian Embassy, who spoke against the Ordinance before the City Council, noting, among other things, that one-third of the oil imported into the United States comes from Canada; that Canada respects the environment and existing regulations are in place; and that the Ordinance reflects a misunderstanding of Canada’s oil sands product.

**Irreparable Harm Suffered by Plaintiffs**

63. The Ordinance violates the constitutional rights of Plaintiffs, and the harms they are suffering and will suffer from its enactment and enforcement are immediate, substantial, and incalculable, entitling them to declaratory and preliminary and permanent injunctive relief.

**COUNT I**  
**SUPREMACY CLAUSE – THE PIPELINE SAFETY ACT**

64. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 63 of this Complaint as if fully set forth herein.

65. The Supremacy Clause of the U.S. Constitution provides that federal law “shall be the supreme law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const., art VI.

66. The United States Department of Transportation regulates pipeline safety under the Pipeline Safety Act (“PSA”), 49 U.S.C. §§ 60101 *et seq.*, and 49 C.F.R. Part 195.

67. The purpose of the PSA is to “provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities,” 49 U.S.C. § 60102(a)(1), and 49 U.S.C. § 60104(c) provides that “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.”

68. 49 C.F.R. Part 195, app. A provides that the PSA “leaves to exclusive Federal regulation and enforcement the ‘interstate pipeline facilities,’ those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce.”

69. The PSA and associated federal regulations preempt the entire field of interstate pipe line safety for exclusively federal regulation.

70. The Ordinance attempts to regulate pipeline safety in purpose and effect and intrudes into the federally preempted field of interstate pipeline safety.

71. The Ordinance is preempted under the PSA and associated federal regulations.

**COUNT II**  
**SUPREMACY CLAUSE – FOREIGN AFFAIRS**

72. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 71 of this Complaint as if fully set forth herein.

73. Article II, Sections 2 and 3 of the United States Constitution provides broad and exclusive power to the President and federal authorities over foreign affairs. One of the main objects of the Constitution was to make the United States, so far as regards foreign relations, one people and one nation, with power over foreign affairs not shared by the States or their local components, but rather vested in the federal government exclusively, entirely free from local interference.

74. International pipelines, given their nature and impact on the national interest and relations with other countries, have long been the subject of the federal government's relations with foreign nations. Collectively, the TPA, 1985 Trade Declaration and Presidential Findings, Executive Orders, the necessity of Presidential Permits, the language of such permits, and the continuing interest in PPLC's pipelines by the State Department underscore that the decision-making as to the operation of the pipelines and associated facilities, including the direction of the flow of hydrocarbons in such pipelines, falls within the foreign policy powers of the federal government and its determination as to what is in the national interest.

75. As demonstrated by the international agreements discussed in Paragraphs 16-22, this foreign policy embraces expanded trade and facilitation of pipeline transfers between the United States and Canada.

76. A recent illustration of the President's exercise of his foreign affairs powers in the area of pipelines between Canada and the United States is reflected in the State Department's issuance of a Presidential Permit in August 2009 to build a 36-inch diameter pipeline between the oil sands region of Alberta, Canada across the international border in North Dakota to oil markets in the Midwestern United States. In describing how the approval advanced the national interest, the State Department declared that U.S. "strategic interests" advanced by the addition of capacity from Canada to the United States included

increasing the diversity of available supplies among the United States' worldwide crude oil sources in a time of considerable political tension in other major oil producing countries and regions; shortening the transportation pathway for crude oil supplies; and increasing crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer. Canada is a stable and reliable ally and trading partner of the United States, with which we have free trade agreements which augment the security of this energy supply.... Approval of the permit sends a positive economic signal, in a difficult economic period, about the future reliability and availability of a portion of United States' energy imports, and in the

immediate term, this shovel-ready project will provide construction jobs for workers in the United States.

77. More broadly, as reflected in MARPOL and various other multilateral and bilateral treaties and agreements entered into by federal authorities, the operation of vessels in U.S. waters has long been an area in which the federal government has exercised its exclusive authority over foreign affairs.

78. The foreign policy consistently followed by the federal government has been governed by the precept that the United States has basic and enduring national interests in domestic and international maritime trade and that the full range of these interests is best protected through international consensus. This international approach embraces the principle of reciprocity, and the United States has recognized the need to take one national position on these matters so as to avoid the detriment that would flow from piecemeal local regulation undermining this reciprocity principle and impeding the uninterrupted flow of international maritime traffic.

79. It is up to federal authorities, not the City of South Portland, to determine how PPLC's pipelines should be operated, what product they should carry, and whether they should be used for import or export, and it is up to federal authorities, not the City of South Portland, to determine what restrictions, if any, should be imposed on the loading and export of product onto ships through the Portland Harbor.

80. One city in Maine cannot impede federal decision-making on international relations, trade, and resource transportation and replace it with its own foreign policy.

81. The Ordinance undermines the ability of the federal government to speak with one voice and jeopardizes the President's ability effectively to negotiate future agreements at the international level.



82. The Ordinance's design and intent – to impose a policy against the development and exportation of products from Canada and to become an exemplar for other localities to do the same – intrudes into the exclusively federal field of foreign affairs and policy.

83. The Ordinance is preempted under the President's foreign affairs power.

**COUNT III**  
**SUPREMACY CLAUSE – THE PORT AND WATERWAYS SAFETY ACT**

84. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 83 of this Complaint as if fully set forth herein.

85. The Ports and Waterways Safety Act (“PWSA”), found within 33 U.S. Ch. 25 (Title I) and 46 U.S.C. Ch. 37 (Title II), regulates the operation of marine tanker vessels in U.S. harbors, including the loading and unloading of their cargo.

86. Title I of the PWSA authorizes the Secretary of Homeland Security (“Secretary”) to “take such action as is necessary to ... prevent damage to ... [any] shore area” adjacent to U.S. navigable waters, including by “establishing procedures ... for the handling, loading, unloading, storage, stowage and movement ... of ... oil.” 33 U.S.C. §§ 1225(a)(1), 1225(a)(2)(A).

87. Title II of the PWSA requires the Secretary to prescribe regulations governing “the handling or stowage of cargo,” “equipment and appliances for ... prevention and mitigation of damage to the marine environment,” and “the reduction or elimination of discharges during ... cargo handling.” 46 U.S.C. § 3703(a).

88. Title I preempts all state or local regulations that conflict with federal regulations or which the Secretary has concluded should not be the subject of federal regulations. The only state or local regulations allowed under Title I are those based on the peculiarities of local waters that call for special precautionary measures, such as water depth and narrowness idiosyncratic to a particular port or waterway.

89. With respect to Title II of the PWSA, Congress intended for the federal government to create uniform national tanker standards that foreclose the imposition of different or more stringent state requirements, and leave no room for the states to impose different or stricter requirements than those which Congress has enacted. Title II, without limitation, has left no room for state or local regulation concerning the operation of tanker vessels.

90. The Secretary has enacted voluminous regulations governing the operation of oil tankers and the handling of oil in U.S. ports, including, without limitation, 33 C.F.R. Subch. L (“Waterfront Facilities”) and Subch. O, Parts 151 (“Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste and Ballast Water”), 154 (“Facilities Transferring Oil or Hazardous Material in Bulk”), Part 155 (“Oil or Hazardous Material Pollution Prevention Regulations for Vessels”), Part 156 (“Oil and Hazardous Material Transfer Operations”), and Part 157 (“Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk”); 46 C.F.R. Subch. D (“Tank Vessels”) and Subch. O (“Certain Bulk Dangerous Cargoes”), Part 153 (“Ships Carrying Bulk Liquid, Liquefied Gas, or Compressed Gas Hazardous Materials”).

91. By prohibiting all loading of bulk crude oil at the harbor in South Portland, the Ordinance has broad extraterritorial impact, forces tanker vessels to adjust their operations outside the City in order to carry out its loading of crude oil elsewhere, and imposes a substantial burden on vessel operations both within and outside the City.

92. The Ordinance’s ban on the loading of crude oil onto marine tank vessels at the harbor in South Portland and the prohibition of any addition or alteration of new or existing facilities or equipment associated with loading of oil marine tank vessels, including vapor control

equipment for tanker loading operations, impermissibly conflict with Titles I and II of the PWSA and the regulations promulgated by the Secretary thereunder.

93. With respect to Title II, the Ordinance impermissibly regulates the operation of tanker vessels and is preempted by PWSA.

94. Alternatively and additionally, the Ordinance's ban on the loading of crude oil onto marine tank vessels at the harbor in South Portland is unrelated to any idiosyncratic characteristic of the harbor, conflicts with federal regulations concerning tanker vessel operations, and is therefore preempted by Title I of the PWSA.

95. The Ordinance is further preempted by the PWSA because it seeks to regulate in an area in which substantive federal law addresses the object, actual and/or purported, sought to be achieved by the Ordinance.

**COUNT IV**  
**MARITIME PREEMPTION**

96. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 95 of this Complaint as if fully set forth herein.

97. From the first days of the Republic, the Founding Fathers determined that the federal government has paramount authority over navigation and commerce, and that the federal government has historically exercised a preeminent and preemptive role in regulating interstate and international shipping. The authority of Congress to regulate interstate navigation without intervention from state or local authorities was cited in the Federalist Papers (The Federalist Nos. 44, 12, 64) as one of the reasons for adopting the Constitution.

98. Article III, Section 2 of the Constitution provides that federal judicial power extends to all cases of admiralty and maritime jurisdiction, and in exercising its authority in the maritime context, the Supreme Court has provided that the Constitution requires uniformity in

admiralty law, reading the language in Article III, Section 2 as referring to a system of law coextensive with and operating uniformly in the whole country.

99. In the seminal decision *Gibbons v. Ogden*, 22 U.S. 1 (1824), and recently confirmed in *U.S. v. Locke*, 529 U.S. 89 (2000), the Supreme Court has held that a state maritime law is preempted when it purports to ban federally licensed maritime activity, and it has been a fundamental principle of federal law throughout the history of our nation that a state or local regulation that completely excludes federally licensed commerce upon a state's waterways is preempted and therefore unconstitutional.

100. Local law is preempted when it works material prejudice to the characteristic features of maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations.

101. The Ordinance is preempted because it seeks to restrict severely the operation of marine vessels within the Portland Harbor, contrary to federal and international law.

102. Title 46, Chapter 121 of the United States code provides for the licensing of domestic vessels engaged in coastwise trade and precludes state and local governmental authorities from banning such trade. Federal law also similarly provides for federal licensing of foreign flag vessels engaged in trade in oil and oil products, and precludes state and local governmental authorities from banning such trade. *See* 46 U.S.C. § 9101; 46 C.F.R. Part 154, Subpart E.

103. The loading of marine vessels with crude oil is a federally licensed activity.

104. By banning the loading of marine vessels with crude oil, the City is not engaged in evenhanded local regulation to effectuate a legitimate local public interest, and the Ordinance

is unduly burdensome on maritime activities. It is impossible to comply with the Ordinance and engage in any exportation of crude oil through the Harbor in South Portland.

105. The Ordinance's ban on the loading of crude oil onto marine tank vessels interferes with federal licensing of tanker vessels, bans the entry of licensed vessels into the Harbor in South Portland to carry out federally permitted commerce and is preempted under 46 U.S.C. Ch. 121 and associated federal regulations.

106. The Ordinance is preempted under Art. III, Section 2 of the Constitution and the Constitution's embedded principal of federal maritime governance.

**COUNT V**  
**COMMERCE CLAUSE**

107. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 106 of this Complaint as if fully set forth herein

108. The Ordinance creates asymmetry in international maritime transportation that could provoke retaliation that would be felt by the nation as a whole.

109. The Ordinance balkanizes commercial regulation in that, should every harbor municipality enact an ordinance similar to the Ordinance, no crude oil could be unloaded at any harbor, and the free flow of interstate and international commerce in crude oil would cease.

110. The Ordinance seeks to and does have the practical effect of regulating conduct outside the City.

111. The Commerce Clause of the U.S. Constitution, Art. I, Section 18, Clause 3, confers upon Congress the power "[t]o regulate Commerce with foreign Nations" as well as among the several states.

112. The Ordinance violates the Commerce Clause because, in purpose and effect, it impermissibly discriminates against and/or excessively burdens foreign commerce between the United States and the Canada.

113. The Ordinance violates the Commerce Clause because, in purpose and effect, it impermissibly discriminates against and/or excessively burdens interstate commerce among the states.

114. The Ordinance violates the Commerce Clause because it imposes a direct burden on interstate and foreign commerce and directly regulates interstate and foreign commerce.

115. The Ordinance violates the Commerce Clause because it attempts to regulate in a sphere of commerce requiring a uniform national rule.

116. The Ordinance violates the Commerce Clause because any legitimate goal of the Ordinance could be advanced through means less burdensome to international and interstate commerce.

117. The Ordinance violates the Commerce Clause because in purpose and effect the Ordinance hoards a scarce resource of a deepwater harbor and a critical international and interstate transportation hub for the local benefit of importation of crude oil, while barring the use of the Harbor for exportation from the Harbor of crude oil for the benefit of out-of-state interests.

118. The Ordinance violates the Commerce Clause because its practical effect is to control conduct beyond the boundaries of the City.

119. The Ordinance violates the Commerce Clause because it intrudes on a domain of exclusive federal jurisdiction and prevents the United States from speaking with one voice in the area of international and national oil importation.

**COUNT VI**  
**DUE PROCESS, EXCESSIVE DELEGATION, AND EQUAL PROTECTION**

120. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 119 of this Complaint as if fully set forth herein.

121. The Ordinance prohibits the “bulk loading” of oil or the installation, construction, reconstruction, modification, or alteration of new or existing facilities, structures, or equipment, for the purpose of “bulk loading” of crude oil onto any marine tank vessel.

122. “Bulk loading” is not defined in the Ordinance.

123. In her review of the draft Ordinance, legal counsel for the City asked what “bulk loading” was and what activity would comprise less than “bulk loading,” and recommended that a definition should be considered to avoid ambiguity. The City ignored her recommendation.

124. The term “bulk package” is used with respect to transportation regulated under the Hazardous Materials Transportation Act, and any local regulation of the same would be preempted under that Act. *See* 49 U.S.C. §§ 5102(2), 5103(a), 5108, 5125(b); 49 C.F.R. § 172.101; 49 C.F.R. Part 172.

125. An ordinance violates the Due Process Clause of the United States Constitution if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. U.S. Const., amend. XIV, Section 1.

126. Under Maine’s Constitution, which imposes separation of governmental powers limitations stricter than its federal counterpart, legislation delegating discretionary authority to administrative agencies must contain standards sufficient to guide administrative action. Me. Const., Art. III, Sections 1 and 2.

127. The Ordinance fails to meet the constitutional clarity requirements set forth in Paragraphs 125-126.

128. The extraterritorial intent and impact of the Ordinance also violates the Due Process Clause.

129. The Ordinance prohibits the loading, but not the unloading, of oil onto marine vessels in order to hinder commerce in oil from Canada.

130. There is no rational and legitimate basis to permit unloading but not loading of oil at the harbor in South Portland, and the Ordinance is so drafted in order to discriminate against a foreign product.

131. The Ordinance violates the Equal Protection Clause of the United States Constitution, U.S. Const., amend. XIV, section 1.

**COUNT VII**  
**CIVIL RIGHTS ACT VIOLATION**

132. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 131 of this Complaint as if fully set forth herein.

133. The Ordinance deprives Plaintiffs of their rights secured by the United States Constitution, as set forth above, under color of state law, thereby violating 42 U.S.C. § 1983.

134. Plaintiffs are suffering and will suffer irreparable harm as a result of being deprived of their Constitutional rights and are entitled to declaratory and injunctive relief against the City and Doucette in her official capacity.

**COUNT VIII**  
**INCONSISTENCY WITH THE CITY'S COMPREHENSIVE PLAN**

135. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 134 of this Complaint as if fully set forth herein.

136. Under 30-A M.R.S. § 4352, “a zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.”



137. The City's Comprehensive Plan, enacted and amended in 2012 pursuant to 30-A M.R.S. § 4352, provides for "existing ... oil facilities to upgrade or expand on parcels that are already used for this purpose" within the Shipyard Development District. Relevant excerpts of the Comprehensive Plan are attached hereto as Exhibit H. A complete copy of the City's Comprehensive Plan can be found at [http://www.southportland.org/index.php/download\\_file/view/1318/647/](http://www.southportland.org/index.php/download_file/view/1318/647/).

138. Numerous provisions in the City's Comprehensive Plan identify oil terminals as industrial marine uses to be maintained, protected, and allowed to expand.

139. The Ordinance conflicts with the City's Comprehensive Plan, which approves of petroleum-related businesses in the waterfront area and expansion of the same, and envisions a new Marine-Industrial growth zone dedicated to assuring the continued viability of the marine terminals.

**COUNT IX**  
**STATE PREEMPTION – 38 M.R.S. § 556**

140. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 139 of this Complaint as if fully set forth herein.

141. Maine's Oil Discharge Prevention Law, also referred to as the Coastal Conveyance Act, or "CCA," provides that "Nothing in this subchapter may be construed to deny any municipality, by ordinance or bylaw, from exercising police powers under any general or special Act; provided that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety are valid unless in direct conflict with this subchapter or any rule or order of the board or commissioner adopted under authority of this subchapter." 38 M.R.S. § 556.

142. “Rules and orders of the board or commissioner” as referenced in the CCA include licenses issued by the Maine Department of Environmental Protection (“DEP”).

143. The DEP issued a license for PPLC that explicitly approves the loading as well as unloading of crude oil onto tankers. Attached hereto as Exhibit I is a complete and accurate copy of PPLC’s license showing that the DEP consciously approved the loading of crude oil at PPLC’s facilities.

144. The Ordinance is preempted by the CCA.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for relief that there be a Judgment rendered that:

- (1) declares that the Ordinance violates the Supremacy Clause of the United States Constitution;
- (2) declares that the Ordinance violates the foreign affairs provisions of the United States Constitution;
- (3) declares that the Ordinance is preempted by principles of maritime preemption;
- (4) declares that the Ordinance violates the Due Process and Equal Protection Clauses of the United States Constitution and the separation of power provisions of the Maine Constitution;
- (5) declares that the Ordinance is inconsistent with the City of South Portland’s Comprehensive Plan;
- (6) declares that the Ordinance is preempted by 38 M.R.S. § 556;
- (7) enjoins Defendants and any City officers, agents, employees, and representatives from enforcing the Ordinance or taking any steps to implement the Ordinance, including the prosecution of any administrative actions, investigations, or suits against Plaintiffs or any of their members or affiliates for alleged violations of the Ordinance;
- (8) finds that Defendants have violated Plaintiffs’ civil rights and award them the costs of suit, including reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988; and

(9) awards all other relief to which Plaintiffs may be justly entitled.

Dated: February 6, 2015

/s/ Matthew D. Manahan  
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**EXHIBIT A  
TO  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**



CITY OF SOUTH PORTLAND

GERARD A. JALBERT  
Mayor

JAMES H. GAILEY  
City Manager

SUSAN M. MOONEY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #1-14/15

THE COUNCIL of the City of South Portland hereby ordains as follows:

Section 1. Findings.

Whereas, the City of South Portland (hereinafter “the City”), as a result of its location on Portland Harbor and Casco Bay, a body of water that has been designated an “estuary of national significance” under the United States Environmental Protection Agency’s National Estuary Program, has a long history of supporting a diverse variety of marine-dependent industries including shipping and transportation, commercial and recreational fishing, recreational boating, other recreational uses and tourism; and

Whereas since 1967, the City has engaged in a deliberative and formal ongoing long-range planning process by which citizens create and periodically update a direction and framework for managing future development of the City; and

Whereas, in 2012 in order to plan for its future growth and development, the City adopted an update of the City’s Comprehensive Plan (hereinafter “the Plan”), which continues the City’s established long-range planning process, and creates a framework for managing future development; and

Whereas, Chapter Four of the Plan, entitled “Community Vision” sets forth “Our Vision for the Future of South Portland,” relevant provisions of which state (all emphasis in the original document):

- “South Portland is a community where people want to live, raise a family, to retire... South Portland is also a place that is a destination – a place where people want to visit to enjoy the waterfront or to be involved in recreational or athletic activities that utilize the City’s

District One  
MICHAEL R. POCK

District Two  
PATRICIA A. SMITH

District Three  
MELISSA E. LINSKOTT

District Four  
LINDA C. COHEN

District Five  
GERARD A. JALBERT

At Large  
MAXINE R. BEECHER

At Large  
THOMAS E. BLAKE

outstanding facilities. South Portland is a DESIRABLE COMMUNITY – it is a DESTINATION!”

- “South Portland offers its residents a variety of lifestyles and livable, walkable neighborhoods... These neighborhoods accommodate older households as well as being attractive to younger people including families with children – anyone who wants a good place to live. South Portland is a City of LIVABLE, WALKABLE NEIGHBORHOODS.”

- “South Portland provides its children with quality education for the 21st Century in up-to-date facilities utilizing the latest technology.... [T]he community’s educational focus is also on creating a City of lifelong learners through ongoing adult education and collaboration with Southern Maine Community College. We are an EDUCATION COMMUNITY.”

- “South Portland is a GREEN CITY. Trees, parks, and open spaces bring nature into the community and make it readily accessible to all residents, including those with disabilities. It is also a community that is focused on minimizing its impact on the environment.”

- “South Portland remains a WATERFRONT COMMUNITY. The waterfront is the reason the City developed as it did and remains an important element of the community. While much of the shoreline remains a working waterfront, the public’s access to the water expands. As older industrial and transportation uses of the waterfront become obsolete or are relocated or upgraded, the shoreline evolves as more of a mixed-use area preserving the opportunity for traditional marine uses while accommodating recreational, business, and even residential uses. The City and its residents continue to be connected to the waterfront.”; and

Whereas, the City intends to protect these elements of its Community Vision as set forth in the Plan, and to promote future development in harmony with the basic elements of its Community Vision – a vision that embraces a diverse mixed-use waterfront community; a green city that protects its air quality; an education community where schools and a waterfront college campus are not impacted by incompatible adjacent uses, including new or expanded sources of significant air pollution; and a city that is a desirable destination and a desirable, livable community; and

Whereas, the Plan identifies the Eastern Waterfront as an area that “continues to evolve to become a marine, mixed-use area that capitalizes on the access to the waterfront and spectacular views of the harbor and inner Casco Bay;” and

Whereas, the Plan has a fundamental land use objective of expanding public access and diversity of uses in the Eastern Waterfront while maintaining marine activities, and recognizes that mixed use and diversified development and redevelopment of the Eastern Waterfront represent a significant opportunity to “enhance

the City's image as a desirable community that is a destination for both residents and visitors while at the same time expanding the City's tax base;" and

Whereas, the Plan recognizes that in the short term, existing operations at the marine terminals are maintained with the stipulation that "[i]n the longer term, if demand for these facilities declines or the type of activity needs to change and the owners of these facilities desire to explore other uses for these facilities, the City, in conjunction with the owners, should reevaluate the best use of these waterfront sites;" and

Whereas, the City has established a Shoreland Area Overlay District, applicable to the first 250 feet from the upland edge of a coastal wetland, in order to restrict development that would adversely affect scenic and natural values, among other values; and

Whereas, a portion of the City's waterfront is designated as the Shipyard District, which has as its purpose "to promote the Shipyard area in South Portland as a robust waterfront center for office complexes, commercial uses, marine uses, and light industrial activities;" and

Whereas, bulk loading crude oil onto marine tank vessels is neither a traditional marine use nor a light industrial use; and

Whereas for over 70 years the area now designated as the Shipyard District has been used for offloading crude oil from marine tank vessels; and

Whereas, in 2009, the Portland Pipeline Corporation (PPLC) sought and obtained an air emission license from the Maine Department of Environmental Protection (Maine DEP), that required the installation of a vapor control system to convey vapors displaced by bulk loading of crude oil onto marine tank vessels to vapor combustion units; and

Whereas, in 2009, PPLC sought and obtained site plan approval from the City for new modifications of its facilities (including the addition of 2 breasting dolphins supported by 16 new pilings; installation of 8 additional pilings to support 2 new above-pier vapor transfer arms that would be part of a new vapor recovery system, consisting of 2 new vapor combustion units – i.e., "combustion stacks" – both 12 feet in diameter and 70 feet high; and at a PPLC tank farm location, construction of a new pump building to house 2 new vertical pumps, with ancillary piping modifications to the piping network); and

Whereas, although the air emission license for bulk crude oil loading activities was voluntarily surrendered in 2013, the proposed bulk crude oil loading operation would have constituted a new land use, which has never been a traditional land use within the City, and which would have significantly impacted future development of the City's waterfront, air quality, scenic ocean views, and land-use planning vision; and

Whereas, during the entire history since inception of all of the City's commercial, shipyard, or marine industrial uses and facilities, no such uses or facilities have ever included operations for the bulk loading of crude oil onto marine tank vessels or the related installation of vapor control systems to convey vapors displaced by marine tank vessel crude oil loading operations to vapor combustion units; and

Whereas, the City under its traditional land use authority and general police powers as otherwise provided by law, has the authority to impose reasonable restrictions, conditions, and limitations on development, for the benefit of the public health and welfare; and

Whereas, the City intends to protect its citizens and visitors from harmful effects caused by air pollutants; and

Whereas, air pollutants associated with storage and bulk loading of crude oil onto marine tank vessels include particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide, hazardous air pollutants (also known as HAPs), and volatile organic compounds; and

Whereas, crude oil contains several HAPs, including benzene, ethyl benzene, hexane, toluene, and xylenes, among others; and

Whereas, the bulk loading of crude oil onto marine tank vessels would likely result in an increase in emissions of HAPs and volatile organic compounds from oil storage tank facilities within the City, including the 19-tank facility on Hill Street and storage tank facilities located on Preble Street and Front Street, that would diminish the City's air quality; and

Whereas, HAPs include substances which are known to be, or may reasonably be anticipated to be, acutely or chronically toxic, carcinogenic, mutagenic, teratogenic, or neurotoxic; and through inhalation or other routes of exposure present, or may present, a threat of adverse environmental and ecological effects and serious human health effects, including cancer, reproductive dysfunction, or birth defects; and

Whereas, bulk loading of crude oil onto marine tank vessels in the Shipyard District, Commercial District, or Shoreland Area Overlay District would emit 39 tons of volatile organic compounds or more annually after implementing air pollution controls; and

Whereas, volatile organic compounds are precursors to the formation of ground level ozone, and emissions from the bulk loading of crude oil onto marine tank vessels would increase such precursor concentrations; and

Whereas, the American Lung Association State of the Air 2014 report gives Cumberland County a "C" grade for ozone air quality; and



Whereas, breathing ozone can cause adverse health effects, including increased frequency of asthma attacks, increased susceptibility to lung infection, inflammation and damage to the airways, which lead to increased school absences, greater medication use, more visits to doctors and emergency rooms, and hospital admissions; and

Whereas, children are more likely to have asthma than adults, and are at greatest risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors when ozone levels are high, which increases their exposure to ozone and other air pollutants; and

Whereas, South Portland residents, visitors, and tourists would likely be exposed to high concentrations of ground level ozone in addition to increased levels of hazardous air pollutants and volatile organic compounds associated with emissions from the bulk loading of crude oil onto marine tank vessels; and

Whereas, emissions from the bulk loading of crude oil onto marine tank vessels are likely to cause an increase in airborne concentrations of volatile organic compounds and hazardous air pollutants in other areas of the city, including schools and residential areas already located adjacent to oil storage tank facilities and their associated air quality impacts; and

Whereas, the oil storage tank facility on Hill Street is located near or adjacent to predominantly residential districts, elementary schools and preschools, the South Portland High School and athletic fields, and the South Portland Community Center, and the bulk loading of crude oil onto marine tank vessels would likely require more storage of crude oil and a resultant increase in hazardous air pollutants (HAPs) in direct proximity to school children and area residents; and

Whereas, additional oil storage tank facilities on Preble Street and Front Street, and the pier on which the new combustion stacks required for the bulk loading of crude oil onto marine tank vessels would be constructed are in close proximity to the waterfront campus of Southern Maine Community College, a large senior citizen housing facility, and residential districts; and

Whereas, new or expanded use of petroleum storage tank facilities for the purpose of bulk loading crude oil onto marine tank vessels would involve a new and significant increase in air pollution; and

Whereas, marine tank vessel loading operations are required by law to control emissions of hazardous air pollutants and volatile organic compounds; and in South Portland, such controls would likely include two 70-foot tall combustion stacks or similar structures in the Shipyard District, Commercial District, or Shoreland Area Overlay District; and

Whereas, such combustion stacks would likely be among the tallest industrial structures on the South Portland waterfront and, due to their size and character, would negatively impact waterfront scenic values and property values; and

Whereas, such combustion stacks would be located in close proximity to city parks with diverse recreational uses, including Bug Light Park, Willard Beach, Fisherman's Point, and the Greenbelt Walkway; and

Whereas, negative impacts on waterfront scenic values and air quality would occur as a result of the normal operation of vapor combustion units; and

Whereas, emissions of hazardous air pollutants and impacts on waterfront scenic values associated with bulk loading of crude oil onto marine tank vessels could continue for decades and impact several generations of South Portland residents, visitors, and tourists; and

Whereas, new and expanded land use and facilities for the bulk loading of crude oil onto marine tank vessels would adversely impact the balance of mixed-uses on the waterfront – a current balance including uses arising from four marinas, a yacht club, other recreational marine uses, other commercial fishing or light industrial uses, other adjacent expanding residential or mixed-use districts, and the recreational and scenic use of the publicly-accessible beaches, parks, and open spaces that are currently a part of the City's waterfront community; and

Whereas, developing facilities for bulk loading of crude oil onto marine tank vessels would be inconsistent with the Plan, including the fundamental objective for the Eastern Waterfront and the City's Community Vision, which provisions are a vital part of the City's policies and goals for future economic development; and

Whereas, development of facilities for the bulk loading of crude oil onto marine tank vessels would increase emissions of hazardous air pollutants in the City, and result in the construction or installation of new structures and/or equipment adversely impacting waterfront scenic values, public access to the shoreline, the balance of mixed uses and recreational activities along the waterfront, and further adversely affect South Portland residents and visitors for generations to come.

## **Section 2. Purpose.**

This Ordinance is enacted, consistent with the City's traditional land use authority, to protect the health and welfare of its residents and visitors and to promote future development consistent with the City's Comprehensive Plan by prohibiting within the City the bulk loading of crude oil onto marine tank vessels, and also by prohibiting construction or installation of related facilities, structures, or equipment that would create significant new sources of air pollution, adversely impact or obstruct ocean views and scenic view-sheds, and impede or adversely impact the City's land use and planning goals.

**Section 3.** The text of Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended as shown below (additions are underlined; deletions are ~~struck out~~):

## Chapter 27

### ZONING

#### ARTICLE I. Administrative Provisions

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#### GENERAL PROVISIONS

##### **Sec. 27-111. Purpose.**

This zoning ordinance is designed for all the purposes of zoning embraced in Title 30-A of the Maine Revised Statutes and has been drafted as an integral part of the Comprehensive Plan for the City of South Portland, Maine. Among other things it is designed to encourage the most appropriate use of land throughout the municipality; to promote traffic safety; to provide safety from fire and other elements; to protect citizens and visitors from harmful effects caused by air pollutants; to implement Part 1 of the recommendations of the City Council-appointed *ad hoc* Draft Ordinance Committee dated July 1, 2014; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in areas with significant environmental and other constraints; to provide an adequate street system; to promote the coordinated development of unbuilt areas; to encourage the formation of community units; to provide an allotment of land area in new developments sufficient for all the requirements of community life; to conserve natural resources; and to provide for adequate public services.

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##### **Sec. 27-118. Applicability date of amendments to implement Part 1 of the recommendations of the Draft Ordinance Committee dated July 1, 2014.**

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the amendments to this ordinance evidenced by Ordinance #1-14/15, when enacted, shall govern any use involving bulk loading of crude oil onto any marine tank vessel and any facility, structure or equipment used for the purpose of bulk loading of crude oil onto any marine tank vessel for which an application has not been submitted and acted on by the Code Enforcement Officer and/or Planning Board, as applicable, prior to November 6, 2013.

Secs. 27-1198 - 27-130. Reserved.

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## ARTICLE II. Definitions

Sec. 27-201. Definitions.

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Crude oil. A naturally occurring mixture consisting predominantly of hydrocarbons and/or sulfur, nitrogen, and oxygen derivatives of hydrocarbons that is removed from the earth in a liquid state or is capable of being so removed; unrefined oil sands/tar sands oil products; diluted bitumen; and synthetic crude oil; but does not mean gasoline, diesel, biodiesel, ethanol, kerosene, No. 2 fuel oil, jet fuel, aviation gasoline, home heating oil, asphalt, distillate, waste oil, lubricants, or other refined petroleum products.

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Marine tank vessel. Any tank ship or tank barge that transports crude oil in bulk, including lighters or lightering operations for transfer of crude oil in bulk onto a marine vessel. The term does not mean any oil spill response barge or vessel, or any marine vessel used in oil spill response operations.

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## ARTICLE VII. Mixed Use/Commercial Districts

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### COMMERCIAL DISTRICT C

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Sec. 27-780. Permitted uses (C).

- (a) Retail businesses and service establishments including warehousing and wholesale distribution related thereto, but exclusive of junkyards, salvaging operations; outdoor sales and services.
- (b) Business and professional offices.
- (c) Fully enclosed places of assembly, amusement, culture and government.
- (d) Clubs, hotels and motels, and restaurants.
- (e) Transportation termini.

- (f) Storing and handling of petroleum and/or petroleum products, excluding automobile filling stations which are governed by Sec. 27-781(d), and as noted in Sec. 27-1517; provided, however, that any such storing and handling of petroleum and/or petroleum products shall not include the bulk loading of crude oil onto any marine tank vessel.
- (g) Residential uses in air space above the preceding permitted uses and at net densities not less than ten (10) or more than seventeen (17) dwelling units per acre. The minimum space and bulk regulations of a G District shall apply.
- (h) Accessory buildings and uses, including telecommunication antennas, except that such antennas may not be placed on exempt towers.
- (i) Any use permitted in Limited Business District L-B Zone.
- (j) Recreational or community activity buildings, grounds for games or sports, except those operated for a profit.
- (k) Charitable and philanthropic organizations.
- (l) Child, adult or combined day care centers.

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**Sec. 27-786. Prohibition related to implementation of Part 1 of the recommendations of the Draft Ordinance Committee dated July 1, 2014.**

Notwithstanding the provisions of Sec. 27-1517, Standards for Above Ground Storage Tanks, there shall be no installation, construction, reconstruction, modification, or alteration of new or existing facilities, structures, or equipment, including but not limited to those with the potential to emit air pollutants, for the purpose of bulk loading of crude oil onto any marine tank vessel in the Commercial District or Shoreland Area Overlay District.

**Secs. 27-787 - 27-789. Reserved.**

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**ARTICLE IX. Industrial Districts**

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**SHIPYARD DISTRICT S**

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**Sec. 27-922. Permitted uses (S).**

The following uses are permitted in the Shipyard District S:

- (a) Business and professional offices and office complexes.
- (b) Business services.
- (c) Financial services.
- (d) Hotels, motels, and inns.
- (e) Restaurants and other places for the serving of food or beverages, provided, however, such facilities may not be open between the hours of 1:00 a.m. and 6:00 a.m.
- (f) Light industrial uses.
- (g) Petroleum storage tank farms and accessory piers, pumping & distribution facilities as governed by all applicable sections of the Code.
- (h) General bottled gas distribution and bottling of non-flammable and non-toxic gases.
- (i) Marine uses.
- (j) Piers and wharves used for permitted uses of this zoning district.
- (k) Accessory buildings and uses, including child, adult or combined day care centers, and including telecommunication antennas, except that such antennas may not be placed on exempt towers, and provided that no premises shall be used for both the washing of motor vehicles and the sale or dispensing of gasoline or any flammable liquids.
- (l) Municipal parks.
- (m) Public utility buildings, including substations, pumping stations and compressor stations.
- (n) Storing and handling of petroleum and/or petroleum products subject to the provisions of ~~Ord.~~ Sec. 27-1517, excluding automobile filling stations; provided, however, that any such storing and handling of petroleum and/or petroleum products shall not include the bulk loading of crude oil onto any marine tank vessel.

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**Sec. 27-930. Prohibition related to implementation of Part 1 of the recommendations of the Draft Ordinance Committee dated July 1, 2014.**

Notwithstanding the provisions of Sec. 27-1517, Standards for Above Ground Storage Tanks, there shall be no installation, construction, reconstruction, modification, or alteration of new or existing facilities, structures, or equipment, including but not limited to those with the potential to emit air pollutants, for the purpose of bulk loading of crude oil onto any marine tank vessel in the Shipyard District or Shoreland Area Overlay District.

**Sec. 27-9310 — 27-940. Reserved.**

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## INDUSTRIAL DISTRICT I

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### Sec. 27-944. Prohibited uses (I).

No building or structure shall be erected, altered, enlarged, rebuilt, or used and no premises shall be used for any of the following specified trades, industries or uses:

- ( 1) Ammonia, bleaching powder or chlorine manufacture or refining.
- ( 2) Asphalt manufacture or refining.
- ( 3) Blast furnace.
- ( 4) Bulk loading of crude oil onto any marine tank vessel.
- ( 54) Cement, gypsum, lime, or plaster of Paris manufacture.
- ( 65) Coke manufacture.
- ( 76) Creosote manufacture.
- ( 87) Dextrine, glucose or starch manufacture.
- ( 98) Distillation of bones, coal or wood, or manufacture of any of their by-products.
- (10-9) Dye manufacture.
- (1140) Explosives or fireworks manufacture, or storage in excess of five hundred (500) pounds.
- (1244) Fat, grease, lard or tallow manufacture, refining or rendering.
- (1342) Fertilizer manufacture.
- (1443) Gas (fuel or illuminating) manufacture in excess of one thousand (1,000) cubic feet per day, or storage in excess of ten thousand (10,000) cubic feet, except that plants for the manufacture, compression and storage of acetylene gas in cylinders and plants for storage and charging of liquefied petroleum gas (defined as any material which is composed predominantly of any of the following hydrocarbons or mixtures of them: Propane, propylene, butane, and butylene) into cylinders may be operated in buildings, on structures, and in storage spaces designed, constructed, and installed in accordance with the Building Code and located not nearer than one hundred (100) feet from the nearest street line, property line, or tidewater, nor nearer than fifty (50) feet from a railroad right-of-way, without the foregoing limitations as to quantities thereof stored or manufactured.
- (1544) Gelatin, glue or size manufacture.
- (1645) Hair processing.

- (1746) Hot rolling mill.
- (1847) Hydrochloric, nitric, picric, sulfuric, or sulphurous acid manufacture.
- (1948) Incineration, cremation, or reduction of dead animals, garbage, offal, or refuse except by the City, or its agents, and except when accumulated and consumed on the same premises without the emission of odor.
- (2049) Lampblack manufacture.
- (2120) Linoleum or oilcloth manufacture.
- (2224) Match manufacture.
- (2322) Metal or ore reduction or smelting.
- (2423) Refining of petroleum or other flammable liquids or the manufacture of petroleum products or other flammable liquids.
- (2524) Pyroxylin manufacture, manufacture of articles thereof, or storage in excess of five hundred (500) pounds unless in a vault approved by the inspector of buildings.
- (2625) Rubber manufacture or treatment involving offensive odor.
- (2726) Slaughtering, except as permitted by the Director of Health.
- (2827) Stockyards.
- (2928) Tanning, curing, or storage of raw hides or skins.
- (3029) Tar distillation or manufacture.
- (3130) Turpentine or varnish manufacture.
- (3234) Any other trade, industry, or use that is injurious, noxious, or offensive to a neighborhood by reason of the emission of fumes, dust, smoke, vibration, or noise to a degree in excess of the performance standards as set forth in Article XV of this Chapter.

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## NON-RESIDENTIAL INDUSTRIAL DISTRICT INR

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### **Sec. 27-964. Prohibited uses (INR).**

No building or structure shall be erected, altered, enlarged, rebuilt, or used and no premises shall be used for any of the following specified trades, industries, or uses:

- ( 1) Ammonia, bleaching powder, or chlorine manufacture or refining.
- ( 2) Asphalt manufacture or refining.
- ( 3) Blast furnace.
- ( 4) Bulk loading of crude oil onto any marine tank vessel.



- (54) Cement, gypsum, lime, or plaster of Paris manufacture.
- (65) Coke manufacture.
- (76) Creosote manufacture.
- (87) Dextrine, glucose, or starch manufacture.
- (98) Distillation of bones, coal, or wood, or manufacture of any of their by-products.
- (10-9) Dye manufacture.
- (1140) Explosives or fireworks manufacture, or storage in excess of five hundred (500) pounds.
- (1244) Fat, grease, lard, or tallow manufacture, refining or rendering.
- (1342) Fertilizer manufacture.
- (1443) Gas (fuel or illuminating) manufacture in excess of one thousand (1,000) cubic feet per day, or storage in excess of ten thousand (10,000) cubic feet, except that plants for the manufacture, compression, and storage of acetylene gas in cylinders and plants for storage and charging of liquefied petroleum gas (defined as any material which is composed predominantly of any of the following hydrocarbons or mixtures of them: Propane, propylene, butane, and butylene) into cylinders may be operated in buildings, on structures, and in storage spaces designed, constructed, and installed in accordance with the Building Code and located not nearer than one hundred (100) feet from the nearest street line, property line, or tidewater, nor nearer than fifty (50) feet from a railroad right-of-way, without the foregoing limitations as to quantities thereof stored or manufactured.
- (1544) Gelatin, glue or size manufacture.
- (1645) Hair processing.
- (1746) Hot rolling mill.
- (1847) Hydrochloric, nitric, picric, sulfuric, or sulphurous acid manufacture.
- (1948) Incineration, cremation, or reduction of dead animals, garbage, offal, or refuse except by the City, or its agents, and except when accumulated and consumed on the same premises without the emission of odor.
- (2049) Lampblack manufacture.
- (2120) Linoleum or oilcloth manufacture.
- (2224) Match manufacture.
- (2322) Metal or ore reduction or smelting.
- (2423) Refining of petroleum or other flammable liquids or the manufacture of petroleum products or other flammable liquids.
- (2524) Pyroxylin manufacture, manufacture of articles thereof, or storage in excess of five hundred (500) pounds unless in a vault approved by the Building Inspector.
- (2625) Rubber manufacture or treatment involving offensive odor.
- (2726) Slaughtering, except as permitted by the Director of Health.
- (2827) Stockyards.
- (2928) Tanning, curing, or storage of raw hides or skins.
- (3029) Tar distillation or manufacture.
- (3130) Turpentine or varnish manufacture.
- (3234) Any other trade, industry, or use that is injurious, noxious, or offensive to a neighborhood by reason of the emission of fumes, dust, smoke, vibration, or noise to a degree in excess of the performance standards as set forth in Article XV of this Chapter.

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Fiscal Note: Less than \$1,000

Dated: July 7, 2014

**EXHIBIT B**  
**TO**  
**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**



United States Department of State

Washington, D.C. 20520

PERMIT

AUTHORIZING PORTLAND PIPE LINE CORPORATION  
TO CONVERT AN EXISTING PIPELINE CROSSING THE INTERNATIONAL  
BOUNDARY LINE BETWEEN THE UNITED STATES AND CANADA  
FROM NATURAL GAS SERVICE TO CRUDE OIL SERVICE

By the authority vested in me as Under Secretary of State for Economic, Business and Agricultural Affairs of the United States (pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993 (hereinafter "the Order") and Department of State Delegation of Authority No. 118-1 of April 11, 1973) and subject to the conditions, provisions, and requirements hereinafter set forth, permission is hereby granted to Portland Pipe Line Corporation, a corporation formed under the laws of the State of Maine, with its principal place of business in South Portland, Maine (hereinafter "the permittee") to convert an existing pipeline crossing the international boundary at a point near North Troy, Vermont from natural gas service to crude oil service, and operate and maintain said pipeline for the transport of crude oil between the United States and Canada. This permit shall be issued subject to the notification and consultation requirements of sections 1(b), (c), (d) and (f) of the Order.

The term "facilities" as used in this permit means the pipeline and any land, structures, installations or equipment appurtenant thereto.

The term "United States facilities" as used in this permit means those parts of the facilities located in the United States.

As stated in permittee's application of March 12, 1999, for a permit pursuant to Executive Order 11423, as amended by Executive Order 12847, the United States facilities of the pipeline project will consist of the following major components:

- The pipeline is an 18-inch pipeline which runs between South Portland, Maine and the international boundary at a point near North Troy, Vermont. This pipeline was operated in crude oil transportation from 1951 to 1986. Since 1987, the pipeline was operated in interstate natural gas transmission under a lease from the applicant. That lease expired on April 30, 1999. The 18-inch pipeline runs parallel to an existing 24-inch line used for the transportation of crude oil.

- 2 -

- The permittee shall maintain measurement facilities as are required by the Commissioner of Customs to be installed and operated in accordance with American Petroleum Institute standards and shall be subject to the approval of the Commissioner of Customs. The conditions of such measurement shall be as directed by the Commissioner of Customs.

This permit is subject to the following conditions:

Article 1. The United States facilities and operations herein described shall be subject to all the conditions, provisions, and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State of the United States or the Secretary's delegate or may be amended by the Secretary of State of the United States or the Secretary's delegate at will or upon proper application therefor. The permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State of the United States or the Secretary's delegate.

Article 2. The operation and maintenance of the facilities shall be in all material respects as described in permittee's application filed in March of 1999, which was supplemented in June of 1999, for a permit pursuant to Executive Order 11423, as amended by Executive Order 12847.

Article 3. The construction, connection, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 4. Permittee shall comply with all applicable Federal and State laws and regulations regarding the construction, operation, and maintenance of the United States facilities and with all applicable industrial codes. The permittee shall obtain requisite permits from Canadian authorities, as well as the relevant state and local governmental entities and relevant federal agencies.

- 3 -

Article 5. Upon the termination, revocation, or surrender of this permit, the United States facilities in the immediate vicinity of the international boundary line shall be removed by, and at the expense of, the permittee within such time as the Secretary of State of the United States or the Secretary's delegate may specify; and upon the failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State of the United States or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 6. If, in the future, it should appear to the Secretary of Transportation that any facilities or operations permitted hereunder cause unreasonable obstructions to the free navigation of any of the navigable waters of the United States, the permittee may be required, upon notice from the Secretary of Transportation, to remove or alter such of the facilities as are owned by it so as to render navigation through such waters free and unobstructed.

Article 7. This permit is subject to the limitations, terms, and conditions contained in any orders issued by any competent agency of the United States Government or of the States of Maine, New Hampshire, and Vermont with respect to the United States facilities. This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in accordance with such limitations, terms, and conditions.

Article 8. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State of the United States or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good conditions as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

- 4 -

Article 9. In the event of transfer of ownership of the United States facilities or any part thereof, this permit shall continue in effect temporarily for a reasonable time pending submission of a proper identification by the transferee for a new and permanent permit, provided that notice of such transfer is given promptly in writing to the Department of State accompanied by a statement by the transferee under oath that the United States facilities and the operation and maintenance thereof authorized by this permit will remain substantially the same as before the transfer pending issuance to the transferee of a new and permanent permit.

Article 10. (1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

(2) The permittee shall save harmless and indemnify the United States from any and all claims or adjudged liability arising out of the construction, operation, or maintenance of the facilities, including but not limited to environmental contamination from the release or threatened release or discharge of hazardous substances and hazardous waste.

Article 11. The permittee shall acquire such right-of-way grants, easements, permits, and other authorizations as may become necessary and appropriate.

Article 12. The permittee shall file with the appropriate agencies of the Government of the United States such statements or reports under oath with respect to the United States facilities, and/or permittee's activities and operations in connection therewith, as are now or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

Article 13. The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation and maintenance of the United States facilities.

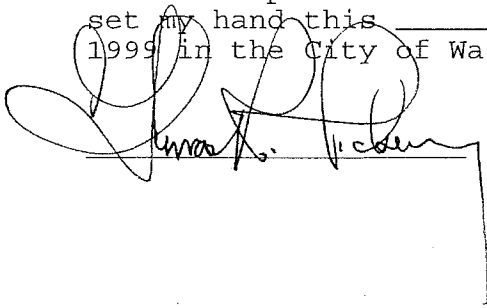
Article 14. The permittee shall notify the Department of State and the Maine Historical Preservation Commission, the New Hampshire Department of Cultural Resources, and the Vermont Department of Housing and Community Affairs if before or during construction historic or archeological properties are located and, if construction has already started, will cease construction immediately. The permittee acknowledges that historic and archeological properties are protected under 49 U.S.C., Section 303 (formerly 4(f)) and the permittee shall prepare a Section 4(f) statement if the United States facilities will have an effect on any historic or archeological properties.

- 5 -

Article 15. The permittee shall comply with all agreed actions and obligations undertaken to be performed by it in the Application and Environmental Assessment dated March 1999. Construction of the facilities shall be performed in conformity with the proposal contained in the Application and Environmental Assessment dated March 1999.

Article 16. The permittee shall send notice to the Department of State of the United States at such time as the conversion authorized by this permit is made at the international boundary line between the United States facilities and the facilities located in Canada.

IN WITNESS WHEREOF, I, Thomas Pickering, Under Secretary of State for political Affairs of the United States, have hereunto set my hand this 29<sup>th</sup> day of July, 1999 in the City of Washington, District of Columbia.



A handwritten signature in black ink, appearing to read "Thomas Pickering", is written over a horizontal line. The signature is stylized and cursive. A vertical line extends downwards from the right end of the horizontal line.



PRESIDENTIAL PERMIT

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AUTHORIZING THE PORTLAND PIPE LINE CORPORATION  
TO CONNECT, CONSTRUCT, OPERATE AND MAINTAIN A PIPELINE  
AT THE INTERNATIONAL BOUNDARY LINE BETWEEN THE  
UNITED STATES AND CANADA

By virtue of the authority vested in me as President of the United States of America, and subject to the acceptance of the conditions, provisions and requirements hereinafter set forth, permission is hereby granted to the Portland Pipe Line Corporation, a Maine corporation having its main office at 335 Forest Avenue, Portland, Maine (hereinafter referred to as "permittee"), to construct, operate and maintain a pipeline for crude oil and other fluid hydrocarbons from the vicinity of North Troy, Vermont, to the international boundary line between the United States and Canada, and to connect such facilities with like facilities in the Township of Potton, Province of Quebec, Canada.

The term "facilities" as used herein means the pipeline and all land, structures, installations, and equipment appurtenant thereto.

The term "United States facilities" as used herein means that part of the facilities in the United States.

The facilities, of which the United States facilities covered by and subject to this permit are a part, are described as follows:

A pipeline manufactured to American Petroleum Institute specifications 5 LX, with an outside diameter of 24", a wall thickness of .281", minimum yield strength of 52,000 pounds per square inch, and a coating of coal tar enamel and asbestos felt, said line to continue for at least 40 feet on each side of the international boundary, to contain at the international boundary a motor operated valve to permit closing of the line in the event of emergency, and to be buried to a depth of three feet below the ground, with access thereto maintained free and clear of obstruction for a distance of 100 feet on each side of the international boundary.

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-2-

The above-described facilities shall be situated as follows: On land owned in fee simple by permittee, approximately 1.9 miles northwest of the town of North Troy, in the Township of Jay and the County of Orleans, Vermont, to land owned in fee simple by the Montreal Pipe Line Company Limited, a Canadian corporation of which permittee is a wholly-owned subsidiary, on Cadastral Lot 169 in the Township of Potton, County of Brome, in the Province of Quebec. The connection between the United States facilities and the facilities located in Canada shall lie: from a base point, the International Boundary Commission's Concrete Reference Monument No. 589 at Latitude N.  $45^{\circ}01'$  Longitude W.  $72^{\circ}27'$ , easterly a distance of about 324 feet.

All as more fully shown in plans included in the Appendix to the application of permittee for this permit, which application is made part of this permit.

The effectiveness of this permit to authorize connection of the United States facilities at the international boundary line with the facilities located in Canada is subject to the issuance by the appropriate authorities in Canada to the Montreal Pipe Line Company, Limited, a Canadian corporation of which permittee is a wholly-owned subsidiary, of the necessary authorization for the construction, operation and maintenance of the facilities located in Canada and for their connection with the United States facilities at the international boundary line.

This permit is subject to such conditions as the President of the United States may see fit, expedient or necessary hereafter to impose; is subject to the acquisition by permittee of any servitude of passage or right-of-way required by or valid under the laws of the State of Vermont, from any and all persons owning or asserting valid interest of any nature or kind whatsoever in and to the land in the United States in the vicinity of the United States facilities; and is subject to the following further conditions:

Article 1. The United States facilities and operations herein described shall be subject to all the conditions, provisions and requirements of this permit or any amendment thereof. This permit may be terminated at the will of the President of the United States or may be amended by the President of the United States at will or upon proper application therefor. Permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes shall have been approved by the Government of the United States.

/ Article 2.

Article 2. The construction, operation, maintenance and connection of the United States facilities shall be subject to the inspection and approval by representatives of any federal, state or municipal agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. Upon the termination, revocation, or surrender of this permit, the United States facilities in the vicinity of the international boundary line shall be removed by and at the expense of the permittee within such time as the Government of the United States may specify, and upon the failure of the permittee to remove such portion of the United States facilities as ordered, the Government of the United States may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 4. The permittee's transportation of crude oil or other fluid hydrocarbons through the United States facilities shall be in all respects subject to the power of Congress under its authority to regulate commerce as applied to the business of this permittee.

Article 5. This permit is subject to the limitations, terms and conditions contained in any orders issued by any competent agency of the United States Government or the International Boundary Commission with respect to the United States facilities or the crude oil or other fluid hydrocarbons transported thereby, and shall continue in force and effect only so long as permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms and conditions.

Article 6. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given, the United States shall have the right to enter upon and take possession of any of the United States facilities, or parts thereof and to take such measures as it deems necessary with respect to all contracts of the permittee covering the transportation or sale of crude oil or other fluid hydrocarbons by means of said United States facilities; to retain possession, management and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event

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that the United States shall exercise such right, it shall pay to permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 7. Neither this permit nor the United States facilities nor any part thereof covered by this permit, shall be voluntarily transferred in any manner. In the event of an involuntary transfer of the United States facilities by operation of law (including transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) the permit shall continue in effect temporarily for a reasonable time pending the submission by the transferee of an application for a permanent permit and decision thereon, provided that notice of such involuntary transfer is given promptly in writing to the Department of State of the United States accompanied by a statement by the transferee under oath that the United States facilities and the operation and maintenance thereof authorized by this permit will remain substantially the same as before the involuntary transfer.

Article 8.

(1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation, in the transportation of crude oil or other fluid hydrocarbons.

(2) The permittee shall take reasonable precautions to prevent and suppress fires, explosions or leakage and to avert any conditions on the land traversed or waters affected by the United States facilities which might endanger the safety of these facilities or surrounding areas.

(3) The permittee shall save harmless the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

Article 9. The permittee shall file with the appropriate agencies of the Government of the United States such statements or reports under oath with respect to the United States facilities, the crude oil or other fluid hydrocarbons transported thereby, and/or permittee's activities and operations in connection therewith, as are now or may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

/ Article 10.

Article 10. The permittee shall send notice to the Department of State of the United States at such time when the connection authorized by this permit is made at the international boundary line between the United States facilities and the facilities located in Canada.

IN WITNESS WHEREOF, I, Lyndon B. Johnson, President of the United States of America, have hereunto set my hand this *13<sup>th</sup>* day of *January 1965*, in the City of Washington, District of Columbia.

A handwritten signature in black ink, appearing to read "Lyndon B. Johnson". The signature is written in a cursive style with a prominent initial "L" and a long, sweeping underline.

**EXHIBIT C**  
**TO**  
**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**



**United States Department of State**

*Washington, D.C. 20520*

July 18, 2008

David H. Coburn, Esq.  
Sara Beth Watson, Esq.  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

REF: Your Letter Dated July 15, 2008  
Status of Presidential permit for Portland Pipeline Corporation

Dear Mr. Coburn and Ms. Watson,

Your letter dated July 15, 2008, requested State Department authorization for Portland Pipeline Corporation ("PPLC") to reverse the flow of an existing 18-inch pipeline, which crosses the international boundary between the United States and Canada at a point near North Troy, Vermont. The pipeline currently transports crude oil northbound from South Portland, Maine, to Montreal East, Quebec. Your letter stated that PPLC seeks to reverse the pipeline flow to transport western Canadian crude southbound from Montreal East, Quebec, to be loaded onto tankers in South Portland, Maine. In addition, your letter explained in detail certain work that will need to take place in order to implement flow reversal.

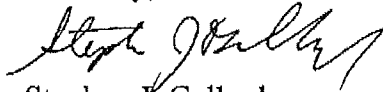
As you know, the Department previously issued a Presidential permit to PPLC for this pipeline in 1999 to convert it from natural gas service and to permit the "transport of crude oil between the United States and Canada."

The Department of State has reviewed the materials you have provided and the terms of the previously-issued permit and has determined that the reversal of pipeline flow and the work necessary to implement that reversal, as described in your letter (herein incorporated as an addendum to this document), do not constitute a substantial change from the scope of authorization set forth in the Presidential permit issued to PPLC in 1999. As such, PPLC is not required to seek a new or amended Presidential permit in connection with this project. We reserve the right to rescind this decision,

however, should PPLC deviate significantly from the scope and manner of work outlined in your July 15, 2008 letter.

Please let us know if you have any further questions.

Sincerely,



Stephen J. Gallogly

Director

Office of International Energy and  
Commodities Policy



**EXHIBIT D**  
**TO**  
**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**



United States Department of State

Washington, D.C. 20520

David H. Coburn, Esq.  
Steptoe & Johnson  
1330 Connecticut Avenue, NW  
Washington, DC 20036-1795

August 13, 2013

Dear Mr. Coburn:

We are writing with regard to the two oil pipelines owned and operated by the Portland Pipe Line Corporation that cross the U.S. border at points near North Troy, Vermont. As you are aware, the President has delegated permitting authority with regard to liquid pipeline border crossing facilities to the Department of State (see, e.g., Executive Order 13337). The Portland Pipe Line Corporation pipelines are the subject of Presidential Permits issued by the Department of State (“the Department”) on July 29, 1999, and by President Johnson on January 13, 1965.

On July 18, 2008 the Department made a determination that the reversal of pipeline flow and the work necessary to implement that reversal, as described in your letter of July 15, 2008, may not constitute a substantial change from the scope of authorization set forth in the Presidential Permit issued in 1999.

It is the Department’s understanding that Portland Pipe Line Corporation has no current plans to change the operation of either pipeline. The Department instructs the permit holder, before the Portland Pipe Line Corporation executes any plans to change the operation of either pipeline in any manner different than its current use and operation, to provide information to the Department for its review and consideration in advance.

For clarity, such changes in operation could include, but are not limited to, a change in the direction of flow or in the type of crude oil carried by the pipelines. We ask that you provide such information irrespective of whether, in your assessment or consistent with existing interpretations and the Department’s 2008 determination, a change in operations would involve a substantial change from the

-2-

scope of authorization set forth in the applicable Presidential Permits, and irrespective of whether a change in operations would involve new construction. Open communication will assist the Department in carrying out its policies and satisfying its responsibilities as they relate to pipeline permitting, including with regard to energy, environmental, and safety considerations.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'R. Cekuta', with a long horizontal flourish underneath.

Robert F. Cekuta  
Principal Deputy Assistant Secretary  
Bureau of Energy Resources

**EXHIBIT E**  
**TO**  
**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INITIATED ORDINANCE

# Waterfront Protection Ordinance

The People of South Portland do ordain and enact the following ordinance which shall be incorporated in the municipal code as follows:

**Section 1: Findings:**

Whereas, South Portland is a waterfront community that borders on Portland Harbor and Casco Bay; and

Whereas, the City has adopted a Comprehensive Plan to guide the City's future growth and development; and

Whereas, a portion of the City's waterfront is designated in the zoning ordinance as an industrial district named Shipyard District (S), which has as its purpose "to promote the Shipyard area in South Portland as a robust waterfront center for office complexes, commercial uses, marine uses, and light industrial activities"; and

Whereas, the adopted Comprehensive Plan identifies the Shipyard area as an area where, in the short term, the impacts of industrial uses on adjacent residential areas should be minimized, and envisions a transition to more of a mixed-use area preserving the opportunity for traditional marine uses while accommodating recreational, business, and even residential uses; and

Whereas, the City has established a Shoreland Area Overlay District, applicable to the first 250 feet from upland edge of a coastal wetland, in order to prohibit development that would adversely affect water quality, biological ecosystems or scenic and natural values; and

Whereas, there are residential uses including a high rise condominium development and a 123 unit senior citizen facility, as well as recreational and scenic resources, adjacent to land designated as Shipyard District (S); and

Whereas, there are currently four marinas and a yacht club located in and adjacent to the Shipyard District and recreational uses of the waterfront area continue to expand; and

Whereas, fifty nine cruise ships carrying over 95,000 passengers and crew visited Portland Harbor in 2012, and many of those passengers visited South Portland, providing significant economic benefits to the area; and

Whereas, shoreland areas in the Shipyard District border Casco Bay, which has been designated as an "Estuary of National Significance," by the U.S. Environmental Protection Agency, supporting some 850 species of marine life; from microscopic plants to migrating pilot whales, and 150 species of waterbirds; and

Whereas, South Portland is a gateway to and from the Gulf of Maine, an area described by the Gulf of Maine Research Institute as a "global treasure," rich with aquatic life, remarkable natural beauty, and deeply rooted maritime traditions that has extraordinary combination of miles of scenic shoreline, abundant recreational opportunities and world-premier fishing grounds; and

Whereas, Bug Light and Spring Point Light, two of the City's most important historical landmarks and tourist attractions, are located in and near the Shipyard District; and

Whereas, the South Portland Campus of Southern Maine Community College is located on a campus the college describes as "one of the most picturesque points on the Maine coast"; a few hundred feet from the Shipyard District; and

Whereas, the City is committed to create a sustainable South Portland that includes economic development and job creation through energy conservation and sustainable technologies, has passed a landmark sustainability resolution, No.1-10/11 and signed the U.S.Mayors' Climate Protection Agreement; and

Whereas, the City's Comprehensive Plan incorporates the Ferry Village Neighborhood Plan and the Willard Neighborhood Plan, development plans for neighborhoods proximate to the Shipyard District, which plans call for "development in the Shipyard District S to be compatible with the neighborhood"; and

Whereas, the City desires to encourage traditional marine uses and to prevent the intensification or expansion of existing incompatible industrial uses in the Shipyard District; and

Whereas, industrial development in the Shipyard District is limited to light industrial development and construction of equipment or facilities to load oil on tanker ships is not a light industrial use.

**Section 2: Purpose:**

This Ordinance is enacted to protect and ensure the welfare of the people of the City of South Portland, including protection of property rights, aesthetic values, and economic interests, to promote scenic views and scenic vistas on the waterfront; to protect the environment; and to promote comprehensive land use planning and compatible land uses in and near the Shipyard District and portions of the Commercial District.

**Section 3: Amendment to Existing Section (new language is underlined):**

Section 27-922(g) and (n) of Chapter 27 are hereby amended as follows:

Permitted Uses. The following uses are permitted in the Shipyard District S....

(g) Petroleum storage tank farms and accessory piers, pumping and distribution facilities for the unloading of petroleum products from ships docking in South Portland, as governed by all applicable sections of the Code....

(n) Facilities for storing and handling of petroleum and/or petroleum products that have been unloaded from ships docking in South Portland, subject to the provisions of Ord. Section 27-1517, excluding automobile filling stations.

**Section 4: Section Added to Code:**

Section 27-922.5 is hereby added to the Municipal Code to read:

- (a) Notwithstanding any other provision of this Code, there shall be no enlargement or expansion of existing petroleum storage tank farms and accessory piers, pumping and distribution facilities, or facilities for the storing and handling of petroleum and/or petroleum products in the Shipyard District or within the Shoreland Area of any Commercial District(C).
- (b) No new or expanded facility shall be constructed on an existing pier located in or extending seaward of the Shipyard District.
- (c) "Expansion" as used in this section includes, but is not limited to, construction, reconstruction or alteration of any existing facility to change the function or capacity of such facilities; construction of any new combustion units, stacks, vapor recovery systems, equipment, structure, or machinery for

transportation or storage of petroleum, including any pumping, distribution or other facility for loading tankers or other ships instead of unloading ships.

(d) This prohibition is not subject to waiver or variance under any provision of this Code unless necessary to comply with the Americans for Disabilities Act (ADA), fire codes, or pollution control regulations imposed on existing facilities with respect to their existing use as provided in Section 27-302(e)(1).

**Section 5: Applicability:**

The regulations applicable to the Commercial District (C), the Shipyard District (S), and the Shoreland Area within said zoning districts established hereby shall apply to the areas within said zoning districts as they existed on May 1, 2013, and shall not be affected by any change in district or designation thereafter unless approved by the voters of the City as an amendment to this Ordinance.

**Section 6: Violations:**

Violation of this Ordinance shall be subject to a minimum penalty of \$1,000 per day for each violation, or such greater amount as may be authorized from time to time for the enforcement of land use ordinances under state statute. The City's remedies by penalty are declared not to be plain, complete, or adequate in the case of continuing or repeated violation of this Ordinance. The City shall seek, and any court of competent jurisdiction shall grant injunctive relief as well as applicable penalties, costs and reasonable attorneys' fees to the City in the event of any repeat or continuing violation.

**Section 7: Retroactivity:**

Notwithstanding 1 M.R.S.A. §302, this Ordinance shall apply to any proceeding pending at the time of its enactment, unless such proceeding was commenced before May 1, 2013. Any permit or approval issued or rendered by the City after May 1, 2013 purporting to authorize any use or structure prohibited or regulated hereby shall be rendered null and void upon enactment of this Ordinance.

**Section 8: Inconsistent Ordinances:**

Pursuant to Charter Article XI, and notwithstanding Zoning Ordinance Sec. 27-115, or any other ordinance of the City of South Portland, this Ordinance is not required to be reviewed by the South Portland Planning board prior to enactment, and shall control over any other procedural or substantive provisions of any conflicting ordinance of the City of South Portland.

**Section 9: Consistency with Comprehensive Plan:**

This ordinance amends the Shipyard District Zone S in the South Portland zoning ordinance to be consistent with the Comprehensive Plan of the City of South Portland, as adopted October 15, 2012.

**Section 10: Severability**

The provisions of this Ordinance are severable. If any provision of this Ordinance is found to be invalid for any reason whatsoever by any court of competent jurisdiction such invalidity shall not affect any other provision of this Ordinance.

\*\*\*\*\*

**EXHIBIT F**  
**TO**  
**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**





CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

JAMES H. GAILEY  
City Manager

SUSAN M. MOONEY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #2-13/14

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended by the enactment of a new Article XVI as follows (deletions are ~~struck through~~; additions are underlined):

District One  
MICHAEL R. POCK

District Two  
PATRICIA A. SMITH

District Three  
MELISSA E. LINSKOTT

District Four  
LINDA C. COHEN

District Five  
GERARD A. JALBERT

At Large  
ALAN R. LIVINGSTON

At Large  
THOMAS E. BLAKE

CHAPTER 27

ZONING

• • •

**ARTICLE XVI. MORATORIUM ON DEVELOPMENT PROPOSALS INVOLVING THE LOADING OF OIL SANDS/TAR SANDS PRODUCTS ONTO MARINE TANK VESSELS DOCKING IN SOUTH PORTLAND**

**Sec. 27-1601. Moratorium declared.**

**WHEREAS**, the City of South Portland intends to protect the natural resources on which the City depends, including, but not limited to: its land resources; its air quality; source of drinking water at Sebago Lake; and its marine and aquatic resources, including Portland Harbor, Casco Bay, and the rivers and tributaries passing through and adjacent to South Portland; and

**WHEREAS**, in 2007, by Resolve #3-07/08, the City Council authorized the then-Mayor to sign the U.S. Conference of Mayors Climate Protection Agreement that, in part, commits the City to strive to meet or beat the Kyoto Protocol targets for reducing global warming pollution by taking actions in its own operations and community; and

**WHEREAS**, in 2010, by Resolve #1-10/11, the City Council adopted a sustainability resolve to demonstrate the City's commitment to incorporate and embed sustainability principles into the City's operations; and

WHEREAS, oil sands (a/k/a tar sands) are the combination of clay, sand, water and bitumen; and

WHEREAS, bitumen is a semi-solid or solid petroleum deposit that is thick like molasses and, unlike most conventional crude oils, must be heated or diluted with lighter hydrocarbons to flow through a pipeline; and

WHEREAS, diluent is any lighter viscosity petroleum product that is used to dilute bitumen for transportation in pipelines; and

WHEREAS, diluents themselves may be toxic volatile chemicals, such as the known carcinogen benzene; and

WHEREAS, diluted bitumen (a/k/a dilbit) is bitumen combined with any diluent for transport; and

WHEREAS, synthetic crude is a mixture of hydrocarbons, similar to crude oil, derived by upgrading bitumen from oil sands/tar sands into an intermediate product that it is in transportable form but that has not yet been further upgraded into finished products; and

WHEREAS, synbit is bitumen combined with synthetic crude, and dilsynbit is synbit combined with a diluent; and

WHEREAS, the term “oil sands/tar sands products” is used in this Article to describe petroleum products derived from oil sands/tar sands that are still in an unrefined state, including bitumen, diluted bitumen, synthetic crude, synbit and dilsynbit; and

WHEREAS, the term “marine tank vessel” is used in this Article to mean a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue and the term does not include a vessel carrying oil in drums, barrels or other packages, or a vessel carrying oil as fuel or stores for that vessel, or an oil spill response barge or vessel; and

WHEREAS, oil sands/tar sands are mined and processed to extract the oil-rich bitumen, which is then refined into an extra heavy crude oil; and

WHEREAS, nationwide, in the last three-and-one-half years, there have been two major pipeline ruptures and an unspecified number of minor ruptures of pipelines carrying oil sands/tar sands products; and

WHEREAS, the July 25, 2010 pipeline rupture in Marshall, Michigan spilled an estimated 843,444 gallons (20,082 barrels (bbl)) of dilbit and contaminated 35 miles of the Kalamazoo River and Morrow Lake, which spill has not yet been fully cleaned-up; and

**WHEREAS**, the total Marshall, Michigan spill clean-up cost reached \$809 million in 2012 and is increasing, more than any non-ocean spill on record; and

**WHEREAS**, the March 29, 2013 pipeline rupture in Mayflower, Arkansas spilled more than an estimated 157,500 gallons (3,750 barrels (bbl)) of dilbit and the clean-up is still underway, which spill resulted in the evacuation of approximately 22 homes and the clean-up of approximately 28,000 barrels of oily water; and

**WHEREAS**, the two above-referenced spills occurred on pipelines that had carried non-oil sands/tar sands crude oil for years and that had not been specifically designed to carry oil sands/tar sands products; and

**WHEREAS**, oil sands/tar sands products alone weigh more than water, but it is diluted with diluent to decrease the viscosity in order to allow it to flow through a pipeline while also decreasing its weight compared to water; and

**WHEREAS**, while the parent bitumen can be denser than water (meaning it would sink), after diluent addition, the density decreases to less than water (meaning that it would float); and

**WHEREAS**, the environmental conditions present during a spill such as turbidity, water salinity, and mixing with sediments can all affect the potential for the oil sands/tar sands products to float or sink; and

**WHEREAS**, responders to the dilbit spill into the Kalamazoo River reported the presence of floating oil, submerged oil and sunken oil, making damage greater and clean-up more expensive than it would have been with other lighter crude oils; and

**WHEREAS**, responders to the Kalamazoo River and Mayflower, Arkansas spills reported air toxics at levels of concern to public health officials and there is a concern that this same issue may be present in South Portland in the event of a spill in South Portland; and

**WHEREAS**, techniques for cleaning-up oil sands/tar sands products in marine and aquatic environments are still not fully developed and are experimental or difficult; and

**WHEREAS**, federal and state guidelines for tracking the chemical composition of pipeline transported fuels so that local governments, citizens, and first responders can better understand, and plan for, the risks associated with the specific type of fuel flowing through or to their communities, do not currently exist; and

**WHEREAS**, the Portland-Montreal pipeline crosses the Sebago Lake watershed (South Portland's source of drinking water) and terminates at Portland Harbor and Casco Bay, important resources to the economic and recreational well-being of the City, its residents and property owners; and

**WHEREAS**, in 2009, Portland Pipe Line Corporation (PPLC) sought and obtained site plan approval from the City's Planning Board to reverse the flow of the existing 18-inch Portland-Montreal pipeline to bring crude oil south from Montreal for loading onto marine tank vessels and to install a vapor control system to convey vapors displaced by marine tank vessel loading operations to vapor combustion units, which site plan approval has since lapsed; and

**WHEREAS**, in 2009, PPLC sought and obtained an air emission license from the Maine Department of Environmental Protection (DEP) to reverse the flow of the existing 18-inch Portland-Montreal pipeline to bring crude oil south from Montreal for loading onto marine tank vessels and to install a vapor control system to convey vapors displaced by marine tank vessel loading operations to vapor combustion units, which air emission license has since been surrendered by PPLC; and

**WHEREAS**, the Portland-Montreal pipeline could, in the future, be considered for transporting oil sands/tar sands products to Portland Harbor; and

**WHEREAS**, the transportation of and loading of oil sands/tar sands products onto marine tank vessels docking in South Portland poses risks to South Portland's natural resources and citizens, specifically Casco Bay and Sebago Lake upon which the City depends; and

**WHEREAS**, the possible effect of the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland has implications for the health, safety and welfare of the City and its citizens; and

**WHEREAS**, the South Portland Comprehensive Plan may not adequately address the concerns listed above; and

**WHEREAS**, the South Portland Code of Ordinances does not adequately address the concerns listed above; and

**WHEREAS**, the City needs time to study its own ordinances to determine the implications of future development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland and to develop reasonable ordinances to address the concerns cited above; and

**WHEREAS**, the City needs time to study oil sands/tar sands products so it can best plan for potential incident responses if an accident involving oil sands/tar sands products occurs in South Portland; and

**WHEREAS**, the City needs time to review and study the natural resources at risk in general and in the case of a worst-case spill, the potential behavior and fate of oil sands/tar sands products when spilled in marine or freshwater environments and response options for a spill, including the equipment, expertise and technology needed to

respond to a spill that has an impact on groundwater and/or marine or freshwater environments; and

**WHEREAS**, the City needs time to review and study the potential effects on and costs to the City in the case of a spill, including a worst-case spill, and the best response options; and

**WHEREAS**, the City needs time to review federal studies, including any reports by the National Academy of Sciences, scientific studies on spills of oil sands/tar sands products in Mayflower, Arkansas and Marshall, Michigan and any reviews related to the Keystone XL pipeline, as well as any Maine DEP studies on oil sands/tar sands; and

**WHEREAS**, the City needs time to review and study the potential effects on the City of the vapor discharges in the case of a spill as well as in the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland; and

**WHEREAS**, the City, under its home rule authority, its police power generally and as otherwise provided by law, has the authority to impose reasonable restrictions, conditions, and limitations on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland; and

**WHEREAS**, the City Council, with such professional advice and assistance as it deems necessary and appropriate, shall study the Code of Ordinances to determine the land use, environmental and other regulatory implications of future proposed development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland and consider what regulations might be appropriate for such activity; and

**WHEREAS**, the existing Code of Ordinances and other applicable laws, if any, are not adequate to prevent serious public harm possibly to be caused by future proposed development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland; and

**WHEREAS**, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of future proposed development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland; and

**WHEREAS**, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the City first considers this moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland;

**NOW, THEREFORE**, the City of South Portland, acting through its elected City Council, does hereby ordain that the following Article be, and hereby is, enacted, and, in

furtherance thereof, the City does hereby declare a moratorium on development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland. This Article shall take effect in accordance with the provisions of the City Charter, but shall be applicable as of November 6, 2013, as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Article, unless extended, repealed, or modified by the City Council, for the express purpose of drafting an amendment or amendments to the South Portland Code of Ordinances to protect the public from health and safety risks including, but not limited to, the potential adverse environmental, public health and public safety effects of an oil sands/tar sands product discharge and air emissions related to both an oil sands/tar sands product discharge and the loading of oil sands/tar sands products onto marine tank vessels if not properly regulated; and

**BE IT FURTHER ORDAINED**, that this Article shall apply to any new development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland after the November 6, 2013 applicability date of this Article; and

**BE IT FURTHER ORDAINED**, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Article, when enacted, shall govern any new development proposal involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland for which an application for a license, building permit, certificate of occupancy, special exception review, site plan review and/or any other required approval has not been submitted and acted on by the Code Enforcement Officer, Planning Board or other City official or administrative board or agency prior to November 6, 2013, the applicability date of this Article; and

**BE IT FURTHER ORDAINED**, that no person or organization shall start or engage in the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland on or after the November 6, 2013 applicability date of this Article without complying with whatever ordinance amendment or amendments the City Council may enact as a result of this Article; and

**BE IT FURTHER ORDAINED**, that during the time this moratorium is in effect, no officer, official, employee, office, administrative board or agency of the City shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, certificate of occupancy, special exception review, site plan review and/or any other permits, licenses or approvals related to the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland; and

**BE IT FURTHER ORDAINED**, that those provisions of the Code of Ordinances that are inconsistent or conflicting with the provisions of this Article, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

**BE IT FURTHER ORDAINED**, that if the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland is established in violation of this Article, each day of any continuing violation shall constitute a separate violation of this Article, and the City shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

**BE IT FURTHER ORDAINED**, that should any section or provision of this Article be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

**Sec. 27-1602. Applicability date.**

The applicability date of this Article is November 6, 2013, the date it first appeared on a City Council agenda.

Dated: November 18, 2013

**EXHIBIT G  
TO  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**



## City of South Portland Application for Consideration for A Draft Ordinance Committee

The Council of the City of South Portland is seeking to find three individuals, preferably residents of the City of South Portland, with experience in land use law and/or drafting land use ordinance language to serve on an ad-hoc committee. The committee has a City Council charge of exploring the development of ordinance language to address development proposals involving oil sands/tar sands products. The duration of this project is expected to last three months but could extent up to six months. The committee may meet two to four times per month depending on the amount of time needed to complete the assignment.

Applications must be filed by 4:30 p.m., Wednesday, January 8, 2014. Please keep answers concise and informative. You are introducing yourself to the South Portland City Council and sharing why you are interested in being considered for appointment. You may use this form or another sheet of paper for your answers.

**NOTICE:** To the extent required by law, the City will treat the completed application form as a "public record." Please keep this in mind when completing the application form and submitting any attachments (including resumes) with the application to the City. Please do not include confidential information, such as medical information or disability accommodation requests on this form. Under Maine's Freedom of Access ("Right-to-Know") law, 1 M.R.S.A. § 402(3)(O), "personal contact information" (*i.e.*, home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number) of appointed officials is **NOT** a "public record" and can't be disclosed except when that information is public pursuant to other law. However, non-personal contact information submitted to the City will be treated as a "public record" to the extent required by law. Please contact the City Clerk with any questions about completing this form.

---

Name \_\_\_\_\_

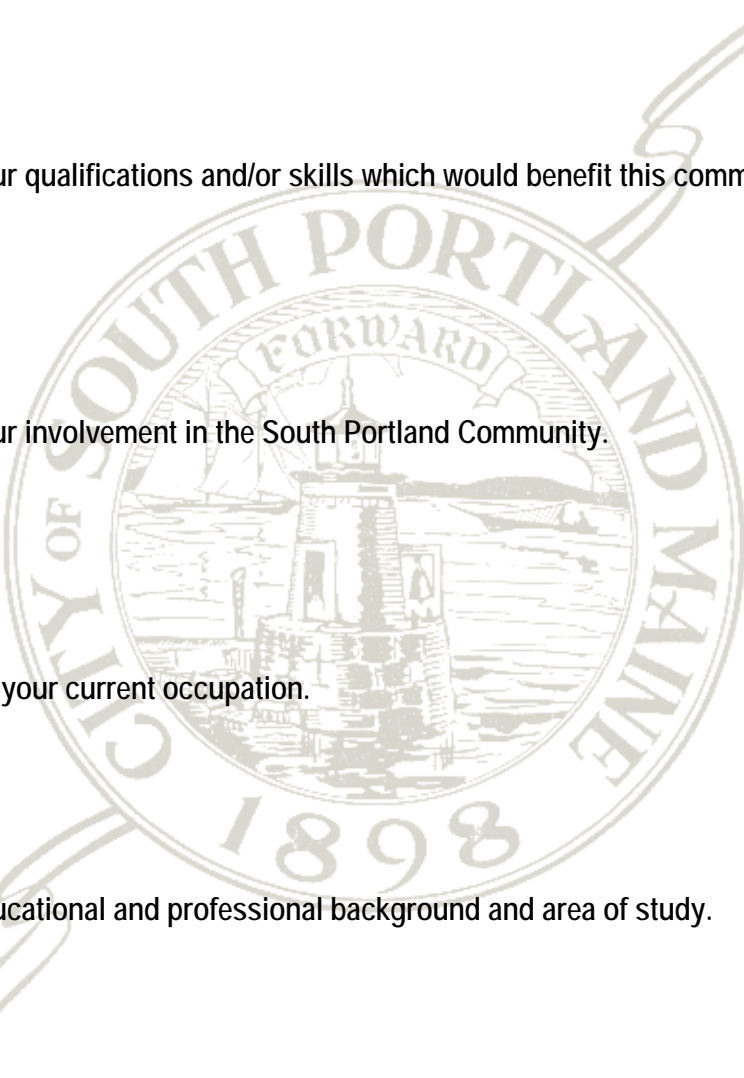
Address \_\_\_\_\_

Primary Phone \_\_\_\_\_ Work Phone \_\_\_\_\_  
(Optional)

Email: \_\_\_\_\_

---

1. Briefly describe why you wish to serve on this committee.

- 
2. Describe your qualifications and/or skills which would benefit this committee.
  3. Describe your involvement in the South Portland Community.
  4. Please state your current occupation.
  5. List your educational and professional background and area of study.
  6. Appointment to this committee will require attendance to a weekly Thursday evening meeting and may continue for up to six months. How many hours per month are you willing to commit as a volunteer?
  7. How did you learn about this committee recruitment?

Please submit completed applications to:

Susan Mooney, City Clerk  
City of South Portland  
25 Cottage Road  
South Portland, Maine 04106

Or email: [smooney@southportland.org](mailto:smooney@southportland.org)

**EXHIBIT H**  
**TO**  
**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

## EXHIBIT H

### Excerpts from the South Portland Comprehensive Plan

1. *Section 5(B), page 5-2, local economy, local objectives:* “To maintain an ongoing economic development program that works to retain and grow existing South Portland businesses while attracting new businesses to locate in the City.” (Emphasis added.)
2. *Section 5(B), page 5-2, local economy, local objectives:* “To establish South Portland’s image as the first choice for business expansion or relocation based on the City’s development-minded atmosphere.”
3. *Section 6(B)(4), page 6-20, key land use policy areas, eastern waterfront, land use:* “**Marine Industrial Areas** – This includes the Gulf-Cumberland terminal and Portland Pipe Line terminals 1 and 2 including the developed tanks. In the short term, the City’s marine terminals and related marine industrial areas are maintained and improved while minimizing their impact on adjacent residential neighborhoods. A variety of marine and marine-related uses are allowed. In the longer term, if demand for these facilities declines or the type of activity needs to change and the owners of these facilities desire to explore other uses for these facilities, the City, in conjunction with the owners, should reevaluate the best use of these waterfront sites (see additional discussion in the Working Waterfront section).” (Emphasis added.)
4. *Section 6(B)(4), page 6-21, key land use policy areas, eastern waterfront, land use:* “**Shipyards Development District** – . . . Within this area, the City’s development regulations should continue to allow existing marine and oil facilities to upgrade or expand on parcels that are already used for this purpose. The regulations also should encourage creative development/redevelopment of the vacant or underutilized land within this district by establishing flexible, performance-based standards that allow a wide range of potential uses.” (Emphasis added.)
5. *Section 6(B)(4), page 6-24, Figure 6.5, Land Use Designations, Eastern Waterfront, depicts the new Marine Industrial District.*
6. *Section 6(B)(6), page 6-33, The Working Waterfront:* “South Portland developed around its waterfront and that waterfront continues to be a major feature in the City both from an economic perspective and a scenic/recreational perspective. The waterfront is home to a number of activities that are truly “water-dependent” – uses that require a location on the water as an operational necessity. These include the Portland Pipe Line facilities on the waterfront and the other oil terminals, the Portland Street pier that provides access for local fishermen, the City’s boat launch, boat repair facilities, and a number of marinas. In addition, it includes the Portland Pipe Line tank farm off Hill Street even though it is not located directly on the waterfront. At the same time, there is market-driven pressure for other “non-water-dependent” uses to locate on the waterfront including restaurants and residential uses.” (Emphasis added.)

7. *Section 6(B)(6)(B), page 6-34, The Working Waterfront, Land Use:* “To assure the continued availability of these areas for future marine uses, the City land use regulations should designate the working waterfront areas that are currently zoned Commercial as **Marine Industrial** areas in which a variety of marine and marine-related uses are allowed but residential uses and nonresidential uses that do not need a waterfront location are not permitted (see Figure 6.8). This should include the Portland Pipe Line tank farm off Hill Street. In the longer term, if demand for these facilities declines or the type of activity needs to change and the owners of these facilities desire to explore other uses for these facilities, the City, in conjunction with the owners, should reevaluate the best use of these waterfront sites.” (Emphasis added.)
8. *Section 6(B)(6), page 6-35, Figure 6.8, Land Use Designations, The Working Waterfront, depicts the new Marine Industrial District.*
9. *Section 6(D)(1), page 6-50, Future Land Use Plan (FLUP), Growth Areas:* “Growth Areas – These are areas where the City wants growth and development to occur. The anticipation is that most residential and non-residential development over the next ten years will occur in these growth areas. Growth Areas include the limited areas with undeveloped land that are appropriate for development as well as developed areas where redevelopment or significant intensification of use is desired. For example, this includes the shipyard area and areas of the Main Street corridor where more intensive use is desired.” (Emphasis added.)
10. *Section 6(D)(2)(C), page 6-51, FLUP, Land Use Designations, includes Marine Industrial Areas as Growth Areas.*
11. *Section 6(D)(6), page 6-53, Figure 6.10, FLUP, depicts oil terminals as part Marine Industrial Areas designated as a Growth Area.*
12. *Section 8(C), page 8-6, Implementation Strategy, identifies rezoning of eastern waterfront and rezoning for marine industrial uses, pursuant to Sections D.1, D.2, and the FLUP, as short term activities (within 2-3 years).*

**EXHIBIT I  
TO  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**



*Applicant Copy  
Attn. Tom HARDISON*



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

PORTLAND PIPE LINE CORPORATION	) OIL DISCHARGE
SO. PORTLAND, CUMBERLAND COUNTRY, MAINE	) PREVENTION AND
OIL TERMINAL FACILITY	) POLLUTION CONTROL ACT
	)
LICENSE #'S O-000305-91-F-R, O-000306-91-F-R	) RENEWAL LICENSE

Pursuant to the provisions of 38 M.R.S.A. Section 545 et. seq., and 06-096 CMR, Chapter 600, Oil Discharge Prevention and Pollution Control Regulations (March 24, 2001), the Department of Environmental Protection (hereafter called "the Department") has considered the application of PORTLAND PIPE LINE CORPORATION (hereinafter "PPLC"), with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- A. Application: PPLC applied for the renewal of its existing oil terminal facility license on June 1, 2010. PPLC's existing license expires on August 10, 2010.
- B. History: This location has been licensed by the Department as a marine oil terminal since July 11, 1979 for the storage and transport via pipe line of crude oil.
- C. Summary of Proposal: PPLC is proposing to renew its oil terminal facility license, which consists of twenty three (23) above ground storage tanks and two (2) marine terminal piers (piers 1 & 2). The facility has a total oil storage capacity of three million, eight hundred and twenty eight thousand (3,828,000) barrels, which is equal to one hundred and sixty million, seven hundred seventy six thousand (160, 776, 000) gallons of oil. PPLC transfers oil between its marine terminal piers in South Portland and holds oil in storage in the above ground tanks located in South Portland pending transport via underground pipe lines to its terminal located in Montreal Canada.

PPLC is proposing a change in its operations in the renewal application. PPLC is proposing to reverse one of its underground pipe lines to transport oil from its terminal in Montreal Canada to its terminal in South Portland, Maine. The oil would be stored in the above ground tanks prior to being loaded on vessels at the

PORTLAND PIPE LINE CORPORATION	2 OIL DISCHARGE
SO. PORTLAND, CUMBERLAND COUNTRY,	) PREVENTION AND
MAINE	) POLLUTION CONTROL ACT
OIL TERMINAL FACILITY	)
LICENSE #'S O-000305-91-F-R, O-000306-91-F-R	) RENEWAL LICENSE

South Portland pier for transport to refineries and terminals outside the state of Maine.

The marine oil terminal piers, tank storage areas, and ancillary facilities are located on separate parcels of property in South Portland. Pier 1 and tanks #1 and # 2 are located off Portland Street; Pier 2 is located off Cushing Court and Marina Drive; Tanks 27 and 28 are located off Preble Street; and PPLCs' General Office and tank farm are located at 30 Hill Street. See Exhibits 13 a-1 and 13 b-1 for facility locations.

## 2. STATUTORY CRITERIA

The Department finds the following facts under the statutory criteria of 38 M.R.S.A., 545 Section (1) and (2) which provide for the findings in relevant part.

- A. A License shall be issued subject to such terms and conditions as the Department may determine to be necessary to carry out the purpose of the oil terminal licensing provisions of the statutes, and
- B. As a condition, precedent to the issuance or renewal of a license, the Department shall require satisfactory evidence that the applicant has or is in the process of implementing state and federal plans and regulations for control of pollution related to oil, and the abatement thereof when a discharge occurs.

## 3. REGULATORY CRITERIA

The Department finds that according to Maine's Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminals, Transportation Pipelines and Vessels, 06-096 CMR 600, Section 12, no oil terminal facility may transfer or cause to be transferred or consent to the transfer of any oil unless that oil terminal facility holds a valid license issued by the Commissioner pursuant to 38 M.R.S.A. Sections 544 and 545 and Chapter 600, and the facility is abiding by all the conditions listed on that license.

## 4. INSPECTION RESULTS

On September 9, 2010 PPLC was inspected by Department staff. During the inspection the Department found:

- A. PPLC was in the process of finishing work on tank# 23 and 24. The tanks were taken out of service for repair and alterations with a plan for being back in service



PORTLAND PIPE LINE CORPORATION	3	OIL DISCHARGE
SO. PORTLAND, CUMBERLAND COUNTRY, MAINE	)	PREVENTION AND
OIL TERMINAL FACILITY	)	POLLUTION CONTROL ACT
	)	
LICENSE #'S O-000305-91-F-R, O-000306-91-F-R	)	RENEWAL LICENSE

during 2010. The tanks had been inspected and hydrostatically tested in accordance with American Petroleum Institute Standard 653 and were found to be fit for their intended purpose.

- B. PPLC conducts a reconciliation of facility inventories once per month. The process includes the investigation and reporting of any loss that exceeds 0.5% of the monthly through put as required by 06-096 CMR 600, Section 9C(1)(b) Mandatory Loss Reporting. Inventory records are maintained at the facility.
- C. PPLC conducts daily and monthly facility inspections and maintains a log of the inspection results at the facility office as required by 06-096 CMR 600, Section 9C(2).
- D. PPLC conducts annual cathodic protection surveys as required by 06-096 CMR 600, Section 8B (3). PPLC operates impressed current cathodic protection systems on all its tanks and below ground pipe lines. PPLC personnel inspect the rectifiers associated with the cathodic protection system weekly insuring proper operation. Records of these inspections and of the annual survey are maintained on file at the maintenance office on the main tank farm. The cathodic protection system was operating properly at the time of the inspection.
- E. PPLC has kept the containment dikes in good condition and the containment capacities were verified to be sufficient during 2010. The dike containment meets the requirements of 06-096 CMR 600, Section 7 D (1) (b).
- F. PPLC's Integrated Contingency Plan was last revised and signed by management on August 28, 2009.
- G. Soil was found at certain locations along the tank base along with rodent burrows under the tank floors at tank 27 and 28.

5. OTHER FINDINGS

- A. PPLC submitted financial assurance documentation (insurance policy) coverage in compliance with Chapter 600, Section 9 C (5).
- B. Fifty percent (50%) of the above ground oil storage tanks at the PPLC facility are equipped with release prevention barriers and interstitial leak detection as required by 06-096 CMR 600, Section 8B(6).

PORTLAND PIPE LINE CORPORATION	4 OIL DISCHARGE
SO. PORTLAND, CUMBERLAND COUNTRY, MAINE	) PREVENTION AND
OIL TERMINAL FACILITY	) POLLUTION CONTROL ACT
	)
LICENSE #'S O-000305-91-F-R, O-000306-91-F-R	) RENEWAL LICENSE

- C. PPLC filed public notice of its oil terminal license renewal application in the Portland Press Herald on May 20, 2010. PPLC also notified abutting property owners with a letter dated May 18, 2010. No public comments were received by PPLC or the Department.
- D. PPLC pressure tested its loading arms and associated piping to 300 psi on June 21-22 2010. No leaks were detected.
- E. PPLC presently holds a waste water discharge license, permit # ME0021440, which was issued by the Department in 2009.
- F. PPLC is a business corporation in good standing with the Secretary of State and doing business in the State of Maine.

BASED on the above Findings of Fact and subject to the conditions listed below, the Department makes the following CONCLUSIONS:

1. PPLC was in compliance with the Department's Oil Discharge Prevention and Pollution Control Regulations 06-096CMR Chapter 600, at the time of the inspection on June 10, 2010.
2. During 2009-2010 PPLC has installed release prevention barriers with leak detection in tanks 23 and 24. The tanks were inspected and hydrostatically tested in accordance with API 653 Standards. The tanks were found fit for their intended service.
3. PPLC has met the Department's public notice requirements.
4. PPLC's ICP was updated and certified on August 28, 2009.
5. PPLC submitted sufficient financial assurance documentation for \$ 2,000,000.00.
6. Dike containment capacities were verified pursuant to 06-096 CMR 600, Section 7 D.
7. Soil and rodent burrows were observed at the base of some tanks.

PORTLAND PIPE LINE CORPORATION  
SO. PORTLAND, CUMBERLAND COUNTRY,  
MAINE  
OIL TERMINAL FACILITY  
LICENSE #'S O-000305-91-F-R, O-000306-91-F-R

5 OIL DISCHARGE  
) PREVENTION AND  
) POLLUTION CONTROL ACT  
)  
) RENEWAL LICENSE

THEREFORE, the Department APPROVES the noted license of PORTLAND PIPE LINE CORPORATION SUBJECT TO THE ATTACHED CONDITIONS and all applicable standards and regulations.

- 1 This license expires on August 10, 2015.
2. PPLC shall fill rodent burrows and remove soil from the base of the tanks as was identified during the Department inspection. In the future PPLC shall perform these actions within ten (10) business days when they are observed during PPLC inspections.
3. The invalidity or unenforceability of any provision, or part thereof, of this license shall not affect the remainder of the provisions. This license shall be construed and enforced in all aspects as if such invalid or unenforceable provision or part thereof had been omitted.

DONE AND DATED AT AUGUSTA, MAINE THIS 20<sup>TH</sup> DAY  
OF DECEMBER 2010.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Beth A. Nagusky* FOR  
Beth A. Nagusky, Acting Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

Date of initial receipt of application: June 1, 2010

Date of acceptance: June 7, 2010

Date filed with Board of Environmental Protection:

Xrk72055, 72056

