

N00102.AR.001799
NSY PORTSMOUTH
5090.3a

LETTER REGARDING CONSENT AGREEMENT AND ENFORCEMENT ORDER NSY
PORTSMOUTH ME
7/16/1992
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

20 JUL REC'D - Certified etc
16 JUL REC'D



STATE OF MAINE

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
MAIL ADDRESS: State House Station 17, Augusta, 04333
207-289-7688

JOHN R. MCKERNAN, JR.
GOVERNOR

DEAN C. MARRIOTT
COMMISSIONER

July 16, 1992

CERTIFIED NO P 059 649 337

Ken Plaisted
Environmental Regulatory and Operations Division
Portsmouth Naval Shipyard
Portsmouth, N.H. 03804-5000

Dear Mr. Plaisted:

Enclosed please find a Consent Agreement and Enforcement Order which specifies this Department's determination of certain violations by the Shipyard of the state's oil discharge laws.

If the Shipyard wishes to resolve the violations and enter into the Agreement as proposed, the enclosed document should be signed and returned to this office. It will then be presented to the Board of Environmental Protection for its consideration. If accepted by the Board, a completed copy of the Consent Agreement will be returned to you.

If an agreement resolving this matter can not be reached in an expeditious manner, we may refer the violations to the Maine Attorney General's Office and request more formal action be initiated against the Shipyard.

Please respond within five (5) working days of your receipt of this notification and indicate whether or not you are prepared to enter into discussions to resolve this matter in the administrative manner I have described above. If you have any questions or desire to request a conference for the purpose of settlement, please contact me at the above address or telephone me at (207) 289-2651.

Sincerely,

Tim Wright

Tim Wright
Division of Oil and Hazardous Waste Facility Regulation
Bureau of Hazardous Materials and Solid Waste Control

UTE-210-91

printed on recycled paper



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

BOARD ORDER

IN THE MATTER OF

PORTSMOUTH NAVAL SHIPYARD)	ADMINISTRATIVE CONSENT
SEAVEY ISLAND)	AGREEMENT AND
KITTERY, YORK COUNTY, MAINE)	ENFORCEMENT ORDER
OIL DISCHARGE ACTIVITIES)	

This Agreement by and among Portsmouth Naval Shipyard ("Shipyard"), the Maine Board of Environmental Protection (the "Board"), and the Maine Attorney General is entered into pursuant to 38 M.R.S.A., Sections 347-A(1) and in accordance with the Department of Environmental Protection ("Department") Consent Agreement Policy, as amended.

The parties agree as follows:

1. The Shipyard is a United States Navy submarine repair and maintenance facility located on Seavey Island in the Town of Kittery, Maine. In the course of daily operations the shipyard stores and handles large volumes of oil and oily wastes including, but not necessarily limited to, hydraulic oil, lubricating oil, fuel oil and oil contaminated bilge water. The shipyard operates approximately 25 transportable oily waste tanks at this site and employs an in-house oil spill response team.
2. On February 7, 1991 an employee of the Shipyard reported to the Department that a spill of approximately 500 gallons of #6 oil, kerosene and water was accidentally discharged from a transportable oil tank and entered the sanitary sewer at the shipyard.

Shipyard personnel's attempts to contain the spill within the storm drain system were unsuccessful, and as a result, most of the oil escaped and entered the Kittery Water Pollution Control Facility (Treatment Plant). The oil rendered the treatment plant inoperative. Plant staff reported a slight oil sheen on the Piscataqua River near the plant's outfall pipe.

The Shipyard responded to the discharge by placing booms in the Piscataqua River around the treatment plant's outfall pipe and throughout the treatment plant to contain the oil. The Shipyard's response team reported that no sheen was evident on the river. Subsequently, Jet-Line Services cleaned pump station #6 and the treatment plant, collecting approximately 1500 gallons of oil and septage. This material was ultimately disposed of at a facility located outside the State.

PORTSMOUTH NAVAL SHIPYARD	2	ADMINISTRATIVE CONSENT
SEAVEY ISLAND)	AGREEMENT AND
KITTERY, YORK COUNTY, MAINE)	ENFORCEMENT ORDER
OIL DISCHARGE ACTIVITIES)	

3. The Department's and Shipyard's records further revealed that numerous similar oil discharges of various quantities occurred between January 1981 and February 1991. Of 15 oil discharges occurring between January 1989 and February 1991, two were reported to the Department.
4. The actions described in paragraphs 2 and 3 above are violations of 38 M.R.S.A. Section 543, which states that the discharge of oil into or upon any coastal waters, sewer, or onto lands adjacent to, on, or over such waters of the state is prohibited.
5. Through its failure to report to the Department the oil discharges described in paragraph 3 above, the Shipyard was unable to demonstrate that these discharges were removed to the Department's satisfaction. As such, these actions are violations of 38 M.R.S.A., Section 548 which states that any person discharging or suffering the discharge of oil, petroleum products or their by-products in the manner prohibited by Section 543 shall immediately undertake to remove that discharge to the Department's satisfaction.
6. With respect to the matters described herein the Shipyard expressly waives:
 - a. Notice of and opportunity for hearing;
 - b. Any and all further procedural steps before the Board;
 - c. The making of any Finding of Fact by the Board; and
 - d. Its right to appeal any portion of this Administrative Consent Agreement and Enforcement Order.
7. This Agreement shall not become part of the official record unless and until it is accepted by the Board.
8. To resolve the violations referred to in paragraphs 2 and 3 above, the Shipyard agrees to:
 - a. Prevent oil discharges from occurring by properly maintaining oil handling equipment/machinery and properly monitoring activities involving use or transport of oil in accordance with 38 M.R.S.A., Section 543;
 - b. Prevent oil discharges from occurring by reviewing, revising as appropriate, and implementing its standard operating procedures for the transfer of oil at PNS. The procedures shall outline the steps to be taken prior to the commencement of oil transfers and monitoring procedures to be implemented during oil transfers. The procedures shall be posted or otherwise be made readily available in areas where oil transfers are likely to occur. Personnel involved or likely to be involved in oil transfers shall be required to review the procedures annually and within 5 working days after a spill event which results in the discharge of oil to a sanitary sewer or surface water;

PORTSMOUTH NAVAL SHIPYARD	3	ADMINISTRATIVE CONSENT
SEAVEY ISLAND)	AGREEMENT AND
KITTERY, YORK COUNTY, MAINE)	ENFORCEMENT ORDER
OIL DISCHARGE ACTIVITIES)	

- c. Submit a schedule for evaluating all oil handling equipment and machinery to determine if such equipment has been effective in preventing oil discharges. PNS shall also submit a schedule for repairing or replacing any equipment determined by PNS to be ineffective in preventing oil spills;
- d. Immediately undertake the removal of any future prohibited discharge to the Department's satisfaction in accordance with 38 M.R.S.A., Section 548;
- e. Submit to the Department for its review and approval a spill reporting and containment plan, within 60 days of signature of this Agreement. The plan shall include a procedure for providing the Department with an immediate verbal report (within 2 hours) of each discharge along with a description of all measures the Shipyard will use to clean up the discharge. The Department may require PNS to revise this plan and/or the Department may revise this plan in order to approve the plan;
- f. Upon approval of the spill reporting and containment plan by the Department, implement this plan immediately; and
- g. Pay to the Maine Coastal and Inland Surface Oil Clean-up Fund the sum of fifteen thousand dollars (\$15,000.00) pursuant to the following terms and conditions;

The Department asserts that PNS is subject to fines and penalties for violations of Maine's Oil Discharge Laws. PNS claims that, as an agency of the federal government, it is not subject to such fines and penalties. The parties have agreed that if PNS were subject to such fines and penalties, a penalty in the amount of \$15,000.00 (fifteen thousand dollars) would be appropriate for the violations cited in Paragraphs 2,3 and 5 of this Agreement and Order. PNS agrees that if it becomes authorized to pay such fines and penalties for these vilations, due either to 1.) final judicial resolution of the issue of whether federal agencies are liable for the payment of fines and penalties under current statutory authorities for violations of State Oil Discharge Laws, or 2.) due to federal legislative action clearly authorizing the imposition of fines and penalties against federal agencies for violations of state laws, it shall pay the above stated amount to the Department c/o the Maine Inland and Coastal Surface Oil Fund in a manner mututally agreed to by the parties. Payment by PNS of such amount to the Department shall be in full settlement of all claims for fines and penalties for those violations alleged in Paragraphs 2,3 and 5 of this Agreement and Order.

The Board and the State of Maine Attorney General grant Portsmouth Naval Shipyard a release of their causes of action against Portsmouth Naval Shipyard for the specific violations listed in paragraphs 2, 3, and 5 above and described

PORTSMOUTH NAVAL SHIPYARD	4	ADMINISTRATIVE CONSENT
SEAVEY ISLAND)	AGREEMENT AND
KITTERY, YORK COUNTY, MAINE)	ENFORCEMENT ORDER
OIL DISCHARGE ACTIVITIES)	

herein on the express condition that all actions called for in paragraph 8 above are completed in accordance with 38 M.R.S.A. Sections 543 and 548 and the express terms and conditions of this Agreement, except that no release is granted the for the discharge of petroleum products to the ground, groundwater or surface water.

The Department may require the Shipyard to perform additional corrective actions if the Department determines that further action is required to prevent additional oil discharges, as necessary, to protect the public health or the environment.

ORDER

Pursuant to 38 M.R.S.A., Section 347-A-(1) and the Department's Consent Agreement Policy, as amended, and based on the Agreement set forth above, the Board ORDERS Portsmouth Naval Shipyard to:

1. Prevent oil discharges from occurring by properly maintaining oil handling equipment/machinery and properly monitoring activities involving use or transport of oil in accordance with 38 M.R.S.A., Section 543;
2. Prevent oil discharges from occurring by creating and implementing standard operating procedures for the transfer of oil at PNS. The procedures shall outline the steps to be taken prior to the commencement of oil transfers and monitoring procedures to be implemented during oil transfers. The procedures shall be posted in areas where oil transfers are likely to occur. Personnel involved or likely to be involved in oil transfers shall be required to review the procedures annually and within 2 working days after a spill event;
3. PNS shall submit a schedule for evaluating all oil handling equipment and machinery to determine if such equipment has been effective in preventing oil discharges, PNS shall also submit a schedule for repairing or replacing any equipment determined by PNS to be ineffective in preventing oil spills;
4. Immediately undertake the removal of any prohibited discharge to the Department's satisfaction in accordance with 38 M.R.S.A., Section 548;
5. Submit to the Department for its review and approval a spill reporting and containment plan, within 60 days of signature of this Agreement. The plan shall include a procedure for providing the Department with an immediate verbal report (within 2 hours) of each discharge along with a description of all measures the Shipyard will use to clean up

