



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

draft dec. 1 2003

Revised 3

DEPARTMENT ORDER

IN THE MATTER OF

I 295 CONNECTOR
PORTLAND, MAINE

-) COMMISSIONER'S CERTIFICATION
-) OF COMPLETION OF REMEDIAL
-) ACTIONS UNDER A VOLUNTARY
-) RESPONSE ACTION PLAN

JURISDICTION

This certification of completion of a Voluntary Response Action Plan ("VRAP") is made pursuant to the authority vested in the Commissioner of the Maine Department of Environmental Protection ("Department") or the Commissioner's delegee under 38 M.R.S.A. Section 343-E.

FINDINGS OF FACT

1. The covered property (property and/or site) is the I 295 connector beginning at the I 295 exit 5 interchange near Congress Street and extending to the Veterans Memorial Bridge in Portland including the entire right of way for the road. The property is approximately 11 acres. The current parcel was comprised from four separate parcels of land that were part of the Main Department of Transportation (MDOT) Northern Wye Parcel, the Fore River Transportation Park, Guilford and Portland Transportation Company and Barber Foods. Past operations at these parcels were primarily as a rail yard and other railroad associated activities with the exception of the Barber Foods parcel.
2. The property use in the area is mixed commercial/residential.
3. The area is served by public water and sewer. No known private wells are located in the area (within 2000' of the site).
4. Four environmental assessment reports were completed for properties that include the I 295 Connector site: The Voluntary Remedial Action Plan, Fore River Site, Mercy Health Care System of Maine (February 2002); Interstate 295 Connector Road, Portland, Maine, Environmental Assessment (July 2002); Preliminary Geotechnical and Environmental Data Report, I-295 Connector Road, Portland, Maine (November 2002); Voluntary Remedial Action Plan and Application, Northern Wye Parcel, I-295 Connector-Northern Wye Project, Portland, Maine (February 2003).
5. Two No Action Assurance Letters were issued by the Department through the VRAP that apply to this site. A No Action Assurance Letter for the I 295 Connector Road- Northern

Rail Wye issued in March 2003 proposed a cover system for contaminated soils that remain onsite comprised of 4 inches of clean soil and a non-woven geotextile fabric or 24 inches of clean soil. Additionally, storm water structures such as detention basins would be constructed with a barrier or lining will prevent direct contact between the contaminated soils and the storm water. Any subsurface utilities brought onto the site will be contained in clean bedding materials.

A No Action Assurance Letter Issued to Mercy Health Care System of Maine issued in April 2004 proposed a cover system comprised of a minimum of 4 inches of clean soil for contaminated soils exceeding the residential remedial action guidelines.

6. MDOT submitted a Voluntary Remedial Action Plan (VRAP) Report, Summary of VRAP Environmental Monitoring and Response Actions, I-295 Connector Construction Project, Portland, Maine prepared by SW Cole Engineering dated October 18, 2005. This report documented the sampling conducted during construction activities as well as the remedial measures undertaken. A clarification letter was submitted in December 2005 describing the cover systems for contaminated soils which remain onsite along the MDOT parcel.

CONCLUSIONS

1. Maine Department of Transportation and Portland Terminal Company, submitted a Voluntary Response Action Plan application to the Commissioner pursuant to 38 M.R.S.A. § 343-E for the I 295 connector property beginning at the I 295 exit 5 interchange near Congress Street and extending to the Veterans Memorial Bridge in Portland, including the entire right of way for the road.
2. Site assessments conducted at the site, included investigations and reports that adequately identified the nature and extent of contamination at the site.
3. Remedial actions addressing the potential sources of contamination on the property have been completed. These actions included managing contaminated soils on the property by covering with a minimum of 4 inches of clean soil and a geotextile fabric or 24 inches of clean fill or pavement. It has been demonstrated to the satisfaction of the Commissioner that the necessary remedial actions are complete.
4. Provided that Maine Department of Transportation, Portland Terminal Company and their successors and/or assigns comply with the conditions of this certification, the response actions that have been completed and the activities associated with the continued use of the site will not cause, contribute, or exacerbate releases, or threatened releases, if they exist at the site, that are not required to be removed under the VRAP.

I 295 CONNECTOR
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) COMMISSIONER'S CERTIFICATION
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THEREFORE, pursuant to 38 M.R.S.A. § 343-E(5), Stephen Davis, Director, Bureau of Remediation & Waste Management of the Maine Department of Environmental Protection certifies, subject to the conditions set forth below, that remedial actions have been completed at the I 295 connector beginning at the I 295 exit 5 interchange near Congress Street and extending to the Veterans Memorial Bridge in Portland, including the entire right of way for the road. This property is further described in Book 19154 page 155 at the Cumberland County Registry of Deeds. Upon issuance of this CERTIFICATE, Maine Department of Transportation, Portland Terminal Company, and the persons qualified for protection under 38 M.R.S.A. § 343-E(6) are entitled to the protection from liability to the extent provided by 38 M.R.S.A. §343-E(1). This protection from liability is limited to the matters addressed by and identified by the environmental reports and is subject to the qualifications and conditions set forth below and in 38 M.R.S.A. § 343-E.

CONDITIONS

1. The installation of groundwater extraction wells on the property is prohibited without the written permission of the Department.
2. An operations and maintenance plan will be submitted to the Department for approval that outlines how contaminated materials will be handled as well as worker safety.
3. Future development of the site will not be for residential purposes.
4. Cover systems over contaminated materials will be maintained.
5. This Certification applies only to the I 295 Connector Road and the right of way for the road. A Certificate of Completion for the remaining undeveloped portions of the property will be issued upon submission of a VRAP completion report that demonstrates that necessary remedial actions have been completed to the satisfaction of the Commissioner.
6. A copy of this certificate for the I 295 Connector located beginning at the I 295 exit 5 interchange near Congress Street and extending to the Veterans Memorial Bridge in Portland including the entire right of way for the road, shall be recorded at the Cumberland County Registry of Deeds. A copy of the recorded document must be supplied to the Department.
7. A Declaration of Environmental Covenants consistent with this Certificate and acceptable to the Department must be prepared and recorded. A copy of the recorded document must be supplied to the Department.

I 295 CONNECTOR
PORTLAND, MAINE

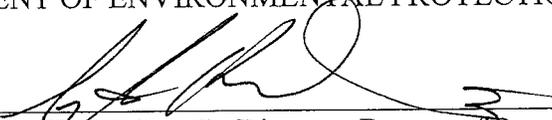
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DONE AND DATED AT AUGUSTA, MAINE, THIS 15th DAY OF DECEMBER 2005.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:

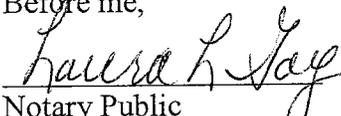

Stephen K. Davis P.G., Director, Bureau of Remediation & Waste Management

STATE OF MAINE
KENNEBEC, ss.,

DECEMBER 15th, 2005

Then personally appeared the above-named Stephen K. Davis P.G., Director Bureau of Remediation & Waste Management of the Maine Department of Environmental Protection and duly authorized delegee for the Commissioner, and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of the Department of Environmental Protection.

Before me,


Notary Public

Laura L. Gay
(Print Name)

This order was prepared by Jean Firth, Bureau of Remediation & Waste Management.

**DECLARATION OF ENVIRONMENTAL COVENANTS
AFFECTING PROPERTY OF THE STATE OF MAINE, by and through its
DEPARTMENT OF TRANSPORTATION AFFECTING THE
INTERSTATE 295 CONNECTOR, CITY OF PORTLAND,
CUMBERLAND COUNTY, STATE OF MAINE**

THIS DECLARATION OF ENVIRONMENTAL COVENANTS is made this 15TH day of FEBRUARY, 2006, by the **STATE OF MAINE**, by and through its **Department of Transportation**, having an address of 16 State House Station, Augusta, ME 04333-0016, (“Declarant”);

WHEREAS, Declarant holds title to certain real property situated in Portland, Maine, as shown on Maine Department of Transportation Right-of-Way Map entitled “State of Maine Department of Transportation – Right of Way Map – State Highway ‘10’ – Portland – Cumberland County – Federal Aid Project No. TCSP-7589(200)X” dated September, 2002, Declarant File No. 3-483, Sheets 1 through 12, on file in the Declarant office at Augusta, Maine, and described in a Notice of Layout and Taking dated November 13, 2002, recorded in the Cumberland County Registry of Deeds, Book 19154, Page 155 on April 7, 2003 and a Release Deed from Portland Terminal Company to the Maine Department of Transportation dated December 19, 2002, recorded in the Cumberland County Registry of Deeds, Book 18587, Page 254 on December 20, 2002; and

WHEREAS, Declarant acquired the above-referenced properties for the purpose of establishing adequate right of way to construct a new connector road between Exit 5 of Interstate 295 and the westerly end of Commercial Street in Portland (the “I-295 Connector”); and

WHEREAS, past operations on portions of the above-referenced properties included use as a rail yard and other railroad-associated activities; and

WHEREAS, Declarant submitted a Voluntary Response Action Plan (“VRAP”) application to the Maine Department of Environmental Protection (“MaineDEP”) pursuant to Title 38 M.R.S.A. §343-E for that portion of the I-295 Connector that begins at the Interstate 295 Exit 5 interchange near Congress Street and extends southerly to the Veterans Memorial Bridge

(the "Protected Property") and subsequently completed the remedial actions proposed in the VRAP to the satisfaction of MaineDEP; and

WHEREAS, MaineDEP issued a Commissioner's Certification of Completion of Remedial Actions under a Voluntary Response Action Plan on December 15, 2005 (the "Certification"), which requires that Declarant prepare and record this Declaration of Environmental Covenants affecting the Protected Property consistent with the provisions of the Certification.

NOW THEREFORE, in consideration of the foregoing and in order to preserve the protections from liability afforded by Title 38, M.R.S.A. §343-E, Declarant does hereby covenant and agree that the Protected Property is and shall be held, and if conveyed shall be subject to, the conditions set forth below, which shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and shall be binding upon the Protected Property as described above. This Declaration is an environmental covenant executed pursuant to the Maine Uniform Environmental Covenants Act ("UECA"), Title 38, M.R.S.A. §§ 3001 – 3013.

CONDITIONS

1. The installation of groundwater extraction wells on the Protected Property is prohibited without the written permission of MaineDEP.
2. Future development of the Protected Property for residential purposes is prohibited.
3. Removal of cover systems over contaminated materials on the Protected Property is prohibited.

ADDITIONAL TERMS

- A. Liberal Construction. It is intended that this Declaration shall be construed liberally to protect the health and welfare of the public and the quality of the environment from the risk of adverse effects of exposure to hazardous substances.

- B. Activity and Use Limitations. In no event shall the Protected Property be used for residential purposes, schools, childcare facilities, or long-term care facilities, even if such uses are allowed under applicable municipal zoning.
- C. Right of Access to Protected Property. The Declarant and future landowners or users of the Protected Property shall provide, without cost, access to the Protected Property to MaineDEP as well as to its authorized employees, agents, representatives, and independent contractors, upon presentation of credentials, for the purposes of monitoring and enforcing this Declaration.
- D. Modification and Termination of Covenant. The terms and conditions hereof may not be terminated, altered, or modified except by an instrument duly executed by the Declarant or its successors in interest in the Protected Property, and approved by MaineDEP, or its successor in legal function, in writing, which instrument is duly recorded in the Cumberland County Registry of Deeds, in accord with 38 M.R.S.A. §§3009 and 3010. The Declarant hereby waives the right to consent to any future consensual amendment or termination of this Declaration after it has transferred title to the Protected Property by deed to a third party.
- E. Duration and Binding Nature of Covenant. This Declaration and each and every covenant shall be a covenant running with the land in perpetuity and shall bind both the Protected Property, the Declarant, its successors and assigns, and all those acting by, through, or under the Declarant, for the duration hereof unless terminated pursuant to §§3009 or 3010 of the UECA.
- F. Invalidity. If any part of this Declaration shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- G. Period During Which Declarant Bound. The Declarant shall be bound for the duration of this Declaration by each and every covenant, restriction, agreement, and obligation hereunder, during the period that Declarant owns or possesses the Protected Property.
- H. Recording of Declaration and Notification of Recording. The Declarant shall cause this Declaration to be duly recorded in the Cumberland County Registry of Deeds within thirty (30) days of execution by the last signatory and shall, within thirty (30) days of this recording of the Declaration, notify MaineDEP of the book and page at which it is recorded, and submit to DEP a copy of the signed Declaration date-stamped by the Register of Deeds.
- I. Representation of Ownership and Encumbrances. By its execution hereof, the Declarant hereby represents that it is the fee simple owner of the Protected Property and that there are no mortgages, easements, or other encumbrances on the Protected Property that

would materially adversely affect the effectiveness or enforceability of this environmental covenant.

- J. Identity of Holder of Environmental Covenant. MaineDEP is the environmental agency with enforcement authority pursuant to the UECA, and is also the only holder of the environmental covenants granted by Declarant in the Declaration. The administrative record for the Protected Property is located at MaineDEP headquarters, whose mailing address is 17 State House Station, Augusta, ME 04333-0017, with a street address of the Ray Building, 28 Tyson Drive, Augusta, Maine. The administrative record is MaineDEP's facility file for the Protected Property.
- K. Grant of Environmental Covenant Pursuant to Law. This Declaration grants environmental covenants subject to the UECA, and no defenses waived by the UECA may be raised in any action to enforce any of these environmental covenants.
- L. Enforcement of Covenant. This environmental covenant shall be enforced as authorized by Title 38, M.R.S.A. §3011. Any forbearance as to enforcement of any of the terms hereof shall not be deemed a waiver of the right to seek and obtain enforcement at any time thereafter as to the same violation or as to any other violations.

IN WITNESS WHEREOF Declarant has executed and sealed this document the day and year first above written.

**STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**



Witness

By: 

David A. Cole, Commissioner

STATE OF MAINE
COUNTY OF KENNEBEC

Dated: 2/15, 2006

Then personally appeared the above named David A. Cole, Commissioner of the Maine Department of Transportation, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the Maine Department of Transportation.

Before me,



Attorney/Notary Public

Print Name:

My Commission Expires:

CHERYL C. MARTIN-HUNT

Notary Public State of Maine

My commission expires Dec 5, 2010

APPROVAL OF THE MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

MaineDEP joins in this Declaration for the limited purpose of approving the terms and conditions set forth in the above Declaration.

STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION


Witness / Notary

By:  (Sik)
David Littell, Acting Commissioner

SEAL

Received
Recorded Register of Deeds
Mar 10, 2006 09:37:28A
Cumberland County
John B O'Brien