



BURTON S. RUSSELL, P.E.
VICE PRESIDENT, OPERATIONS

June 13, 2014

Mr. Jeff Edelstein
Facilitator, Ordinance Committee
City of South Portland
25 Cottage Road
P.O. Box 9422
South Portland, Maine 04106

Also by E-Mail: draftordinance@southportland.org

Dear Mr. Edelstein,

Thank you for the opportunity to comment on the Draft Ordinance published on the City's website. Sprague has significant concerns with both the process which governed the development of this Ordinance as well as certain elements contained within the draft version. As we have previously discussed, Sprague declined to be an active participant in your Ordinance development process as we believed the task provided by the City was constructed on incomplete and misrepresented information. In short, the entire need and justification for the Ordinance was based on false pretenses. In our initial meeting you confirmed that your Committee had no opportunity to change or alter the task presented by the City and accordingly Sprague saw no benefit in being party to a flawed process that was advertised as collaborative, yet in fact had a pre-ordained outcome. Sprague has a demonstrated history of working collaboratively with communities and city leadership throughout our 144 year history and this decision was not made lightly.

As you recall, in a prior meeting I had expressed concerns to you regarding the tasking the City Council had provided your Committee in that it had drawn several inaccurate and unsubstantiated conclusions about the imminent risk of oil sands derived crude oil to public safety and health. While the City had used what they perceived to be an "imminent risk to public safety" as justification for both the imposed Moratorium, as well as the tasking to your Committee to essentially develop a defensible city wide ban on a single commercial product, they failed to substantiate their perceived risk through any verification by the numerous federal and state regulatory entities entrusted with responsibility for the public's health and safety. The rush to judgment by the City on "what" to prohibit before a thorough evaluation of inherent risks could be undertaken constitutes a great disservice to the public that expects fact based decision making, businesses that rely on consistent standards and the federal and state regulatory agencies best positioned to address the very issues of supposed concern to the City. In contrast, the City's quick adoption of talking points by citizen testimony in lieu of factual based analysis from federal and state safety and environmental regulators causes Sprague great concern for future



public policy development within the City of South Portland. I also would think it should be a concern to any other business that has invested considerable amounts to ensure full compliance with federal, state and local laws and regulations that provide predictable and fact based operating requirements.

The false pretense on which the tasking for this Ordinance is based (i.e. an imminent threat to public health and safety concerning oil sands derived from crude oil) also seems to have carried through to embolden the Committee to extend their initial tasking beyond limiting oil sands, to also include the prohibition of vessel loading of any types of crude oil, including that which is currently handled in the port. Here again, there is a lack of justification to the necessity for such a prohibition beyond the unsubstantiated claim of “significant impacts to air quality, scenic ocean views and land use planning vision”.

The City’s overly broad use of their home rule authority to render an arbitrary and capricious judgment to limit viable transportation alternatives for a product that has been safely transported, transloaded and stored for decades seems unfathomable. While the Committee may consider that the bulk loading of crude vessels may not have previously occurred within the port, the loading of vessels is certainly considered to be an operation well within the traditional scope of a marine liquid bulk storage terminal. To limit a facility in this manner, without any specific detailed justification based on incremental risk causes Sprague great concern about the future operational limitations the City could impose on other marine terminals, or industrial facilities. In addition, to retroactively declare an existing facility to be a non-conforming use without due process clearly will further impede future operational developments that while creative, will have the net impact of a de facto “taking”.

I strongly urge the Committee to review the specific justification for each of the actions they propose in the Draft Ordinance. I am confident that if such a review is conducted with the benefit of the Federal and State regulatory agencies entrusted with responsibility for ensuring public health and safety, you will find your recommended actions to be fully unwarranted.

Sincerely,

Burt Russell

Copy: Mayor Jalbert