

CONSERVATION LAW FOUNDATION COMMENTS  
ON DRAFT CLEAR SKIES ORDINANCE CIRCULATED ON JUNE 6, 2014

**Page 4, line 14**

*“Whereas the Portland Pipe Line Corporation (PPLC) has, since [1941], operated a pipeline built to carry petroleum products from their point of offloading at the Port of South Portland north to Montreal, Canada; and....”*

We suggest the following language:

*“Whereas since 1941 the area now designated as the Shipyard District has been used for offloading crude oil from marine tank vessels; and...”*

The modified language reflects the fact that the Clear Skies Ordinance (“Ordinance”) will regulate crude oil loading activities and related impacts on air quality, land use, and aesthetic impacts and will not regulate pipelines in letter, purpose or effect. That the crude oil is first conveyed by pipeline before loading operations commence is not relevant.

**Page 4, line 18**

*“Whereas, in 2009, PPLC sought and obtained an air emission license from the Maine Department of Environmental Protection (Maine DEP), as part of PPLC’s application to obtain site plan approval from the City to permit a new use of its facilities by reversing the flow of the its pipeline to transport crude oil south for bulk loading onto marine tank vessels, and to install a vapor control system to convey vapors displaced by bulk loading of crude oil onto marine vessels to vapor combustion units; and...”*

We suggest the following language:

*“Whereas, in 2009, an air emission license was obtained 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 vessels to vapor combustion units; and...”*

For the same reasons noted above, the Ordinance should not reference the pipeline or its operation.

**Page 5, line 10**

*“Whereas, there is no publicly available information on the extent of, or potential public health impacts associated with HAPs or volatile organic compound fugitive emissions from PPLC’s Hill Street crude oil storage terminal facility if that facility were to be retrofitted in order to be able to support loading crude oil onto marine vessels; and...”*

We suggest the following language:

*“Whereas, there would likely be an increase in HAPs and volatile organic compound emissions from PPLC’s Hill Street crude oil storage terminal facility that would diminish air quality in South Portland; and...”*

We suggest this language because the draft clause is inconsistent with other whereas clauses. Moreover, the record demonstrates that loading operations would likely lead to increased emissions of hazardous air pollutants and volatile organic compounds from the Hill Street crude oil tank farm. The Committee should also note that the Ordinance is justified even if emissions from the Hill Street facility were to remain the same.

**Page 5, line 15**

*“Whereas, although the air emission license was voided in 2013, both the air emission license and the site plan approval application proposed a new land use and requested new permits to construct or install related facilities required for the bulk loading of crude oil onto marine tank vessels, which had never been a traditional land use within the City, and which would posed significant implications to future development of the City’s waterfront, including significant impacts to air quality, scenic ocean views, and land-use planning vision; and...”*

We suggest the following language:

*“Whereas, although the air emissions license for crude oil loading activities was voluntarily surrendered in 2013, the proposed crude oil loading operation constituted a new land use, which had never been a traditional land use within the City, and which even under normal operations would significantly impact future development of the City’s waterfront, air quality, scenic ocean views, and land-use planning vision; and...”*

Our proposed language clarifies that the Maine DEP voided the air emissions license at the request of the license holder, PPLC, and demonstrates the lack of any real live controversy PPLC might have.

**Page 6, line 9**

*“Whereas, although other federal or state laws may regulate certain environmental risks or impacts of crude oil loading operations onto marine tank vessels, or operations based on any plan involving the reversal of the Portland-Montreal pipeline to bring crude oil south for bulk*

*loading onto marine tank vessels, even normal operations would still result in significant adverse impacts to air quality, to scenic ocean views, and to the City's land-use planning for future development consistent with the City's Vision which are not addressed by such other federal or state laws, and can only be addressed under the City's exercise of its broad home rule authority and general police powers, and"*

We would strike the whole paragraph because it restates the prior paragraph. It is also unnecessary to say that the City has residual jurisdiction where federal or state law permits it.

**Page 6, line 18**

*"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 or reducing global warming pollution by taking actions in its own operations and community, which would include the cities continuing exercising of broad home rule authority to protect the City from new sources of significant air pollution, and..."*

We would strike this paragraph from the Ordinance because there is no other provision about climate change or greenhouse gases elsewhere in the Ordinance and this language could implicate matters outside of South Portland.

**Page 11, line 3**

*"This Ordinance is enacted, consistent with the City's broad home rule 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, installation, and operation 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."*

The draft paragraph above could be read broadly to implicate pipeline operations. Since the Ordinance is not intended to regulate existing and future pipeline operations, we suggest striking the word "operation" to clarify that the Ordinance does not regulate pipeline operations.

**Page 11, Line 12**

We suggest the addition of "in the City of South Portland" or "City" to the end of this paragraph to clarify that Ordinance only applies to bulk loading of crude oil onto marine tank vessels *in the City of South Portland* and not any other city. We suggest the same addition for the clauses below:

**Page 11, line 18**

*Petroleum storage tank farms and accessory piers, pumping & distribution facilities as governed*

*by all applicable sections of the Code, provided that any such facility shall not be used for the bulk loading of crude oil onto marine tank vessels.*

**Page 11, line 22**

*Storing and handling of petroleum and/or petroleum products subject to the provisions of Ord. Sec. 27-1517, excluding automobile filling stations, provided that any such uses shall not include the bulk loading of crude oil onto any marine tank vessel.*

**Page 12, Line 5**

*“Loading of crude oil in bulk onto any marine tank vessel.”*

**Page 12, Line 11**

*“Loading of crude oil in bulk onto any marine tank vessel”.*

**Page 12, Line 15**

*“Notwithstanding Section 27-1517, 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 marine tank vessels in the Commercial District, or Shoreland overlay.”*

We suggest that “Commercial District, or Shoreland overlay” be replaced with “City of South Portland” for the reasons given above.

**Page 13, Line 4**

*Notwithstanding Section 27-1517, 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 marine tank in the Shipyard District, or Shoreland overlay.”*

We suggest that “Shipyard District, or Shoreland overlay” be replaced with “City of South Portland” for the reasons given above.

**Page 13, Line 20**

*“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 its capable of being so removed; 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.”*

We suggest the following modification to the definition of crude oil to ensure the Ordinance applies to other unrefined tar sands oil products besides diluted bitumen and synthetic crude oil:

“unrefined tar sands oil products, diluted bitumen and synthetic crude oil; but it does not mean...”

We have two remaining suggestions for the Committee’s consideration. As is the general practice, the Ordinance should include a severability clause as follows:

“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.”

Should any portion of the Ordinance be invalidated, the severability clause would help ensure the remaining sections remain in effect. In that regard, the Committee should also clarify that a vapor combustion unit that controls emissions from bulk loading crude oil onto marine tank vessels is a “structure” within the meaning of Sec. 27-201 of the South Portland Code. This will serve two purposes: it will ensure the new prohibitions on the “installation, construction, reconstruction, modification, or alteration of new or existing facilities, structures, or equipment” apply to VCUs. It will also ensure that such VCUs are subject to existing performance standards that apply to “structures.”