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Maine Department of Environmental Protection

**Report to Joint Standing Committee on Natural Resources
on the Portland-Bangor Waste Oil Services Site
Wells, Maine**

This report is filed as required under PL 1999, c. 505, *An Act to Assist in the Cleanup of the Town of Wells Maine Waste Oil Site* (the "Act"). Section A-17 of the Act requires the Department of Environmental Protection (the "department") to evaluate the status of remediation at the Portland-Bangor Waste Oil Services Site in Wells. The site is one of 474 on the state list of uncontrolled hazardous substance sites, and one of 132 such sites requiring further investigation or remediation.

An "uncontrolled hazardous substance site," as defined under 38 MRSA §1362(3), is a location where the Commissioner of Environmental Protection has concluded that the presence of contamination from hazardous substances requires action to abate, clean up or mitigate threats to public health or the environment. The Wells site appears on the uncontrolled site list because of contamination emanating from a waste oil recycling facility operated by a company called Portland-Bangor Waste Oil Services (PBWO).

PBWO operated its Wells facility from the mid 1950s through about 1980. Waste oil was accepted from sources throughout New England. Customers included auto dealers, manufacturing facilities, military installations, and public works garages. Under Maine law, each customer is a "responsible party" and, as such, is jointly and severally liable for the cost of clean-up. Nearly 3000 responsible parties have been identified.

The large number of responsible parties distinguishes the Wells site from most other uncontrolled sites in the State, and was a factor in the Legislature's decision to establish the Wells Waste Oil Clean-up Fund (the "Wells Fund") to reimburse responsible parties for part of the clean-up costs. The fund was established under section A-7 of the Act, and is available to certain responsible parties at the Wells site only. The purpose of this report is explore whether the state should extent this reimbursement concept to other uncontrolled sites, in particular, to sites at which waste oil was the primary substance handled. Specifically, section A-17 of the Act directs the department to evaluate and report on:

- The amounts disbursed from the fund;
- Whether the fund should be extended to other uncontrolled hazardous substance sites or federal Superfund sites;
- The components and substances at uncontrolled hazardous substance sites where waste oil constitutes more than 50% by volume of the substances delivered to the site; and
- The need for and the amount of any adjustment to the maximum balance in the Groundwater Oil Clean-up Fund.

1. Amounts disbursed

On December 16, the Finance Authority of Maine (FAME) adopted rules governing fund disbursements, but no fund disbursements have been made to date. Final rule adoption was delayed to accommodate requests for an extended public comment period. The rule currently is under review by the Attorney General's Office, and is expected to become effective in January 2000. In the meantime, FAME sent reimbursement applications to responsible parties on December 31, 1999.

Many of the responsible parties at the Wells site have entered into a settlement agreement (the "Wells Waste Oil Agreement") with the department whereby, in exchange for paying a fee based on the number of gallons of waste oil the party sent to the site, the department will release the settling parties from future liability. The fees would go to TRC, Inc., a remediation firm that brokered the deal and that will assume liability for site remediation and guarantee its success. Final execution of the agreement is contingent on participation by a sufficient number of responsible parties to make the project financially viable for TRC. If the agreement goes forward, many of the settling parties will be eligible for reimbursement of their settlement share from the Wells Fund.

2. Extension of the fund to other uncontrolled sites

The department opposed the creation of the Wells Fund because it represented a sharp departure from the longstanding policy that those who cause or contribute to contamination should pay for the remediation. The Department anticipated that taxpayer relief of responsible parties at the Wells site would trigger similar requests at other sites, including but not limited to waste oil sites. We were correct in this regard.

In determining whether the Wells Fund should be extended to other sites, waste oil sites should be distinguished from non-waste oil sites. Waste oil sites differ from other hazardous substance sites in several important respects. As shown in Table 1 on the next page, waste oil sites typically involve many more responsible parties. Inevitably, some of these numerous responsible parties are small businesses who find payment of their proportionate share of remediation costs to be burdensome. This dynamic led to the creation of the Wells Fund.

Unlike waste oil sites, the vast majority of hazardous substance sites involve relatively few potentially responsible parties—often large companies familiar with the polluters-pay liability aspect of state and federal remediation programs. For these non-waste oil sites, the Department fully concurs with the findings of the Legislature's Select Commission to Study State Participation in Funding Cleanup and Remediation of Uncontrolled Hazardous Substance Sites (Select Commission). The Select Commission found that the liability scheme of state and federal law has led to cost-effective and timely cleanups, and that extending the Wells Fund to non-waste oil sites is both unnecessary and unwise given the relative maturity of the remediation programs and lack of a demonstrated need to do so.

Table 1
Maine Hazardous Substance Sites by Number of Responsible Parties (RPs)

Abandoned sites and sites with no viable RPs:	58
Sites with 3 RPs or fewer	58
Sites with more than 3 but fewer than 7 RPs	2
McNair, Houlton (4)	
Brewer Junkyard, Brewer (6)	
Sites with more than 7 RPs	6
PBWO, Wells (2900)	
PBWO, Plymouth (517)	
PBWO, Ellsworth (223)	
PBWO, Casco (192)	
Union Chemical, Hope (228)	
McKin Co., Gray (320)	
Sites where RP identification is pending	8

3. Description of waste oil sites

Based on review of department records, eight hazardous substance sites in the state could be considered "waste oil sites" in that waste oil constitutes greater than 50% by volume of the substances delivered to the site. They are:

- Maine Oil Recycling in Buckfield;
- McKin Superfund Site in Gray;
- Millington Norton Pond Site in Lincolnville;
- Millington Thurlow Road Site in Lincolnville;
- Portland-Bangor Waste Oil in Casco;
- Portland-Bangor Waste Oil in Ellsworth;
- Portland-Bangor Waste Oil Superfund Site in Plymouth; and
- Portland-Bangor Waste Oil, Wells.

The characteristics of these sites are compared in Table 2 on the next page.

In 1978, the only year for which we have survey data, about 4,860,000 gallons of waste oil was generated in Maine. Less than 50 % of that total was collected and recycled. In 1985, the department began regulating "waste oil dealers," those persons who transport or handle more than 1,000 gallons of waste oil for resale in a calendar month. Waste oil dealers are required to submit a quarterly report with the amount and destination of all waste oil collected, transported, stored or delivered. In 1997, these quarterly reports show that dealers transported about 6.4 million gallons of waste oil in the state. The reports do not capture waste oil totals from some

generators, such as “do-it-yourselfers” who change their own oil and facilities that collect and burn waste oil as heating fuel.

The general public tends to view waste oil as a rather innocuous liquid drained from automobile crankcases. However, automotive waste oil is a complex substance made up of: the original petroleum product; contaminants introduced by use in internal combustion engines like gasoline, lead, chromium, and gasoline additives; and contaminants such as chlorinated solvents, antifreeze and lube oils that sometimes are introduced at the point of collection.

Waste oil also is produced from a number of industrial and commercial sources, many of which introduce exotic contaminants to the waste oil. Industrial and commercial waste oils include oil-contaminated bilge water from ships; electric transformer cooling oil containing PCBs; lubricating oil from large machinery; cutting and grinding oils from metalworking; machine oils; tank cleaning solvents and oils; stillbottoms and tank sludges; solvents from electrical and mechanical parts washing; jet fuels and lubricants; paints and mineral spirits; turbine oil; #6 heating oil; and hydraulic oils.

Waste oil at the eight Maine sites identified above contains a number of hazardous constituents. Table 3 on the next page shows the typical waste oil contaminants found in the soils and ground water at these sites.

Table 2
Comparison of Maine Waste Oil Sites

Site	Responsible Parties	Gals. of Waste Oil	Contaminated wells	Wells at risk	Estimated Cleanup Costs
McKin	400+	3,000,000	16	50	\$20,000,000
Maine Oil, Buckfield	25?	~2,000,000	0	0	\$130,000
Millington, Thurlow Rd.	Unknown	60,000	0	0	\$900,000
Millington, Norton Pond	Unknown	17,000	0	0	See Above
PBWO Casco	192	96,171	0	1	\$1,500,000
PBWO, Ellsworth	223	95,558	3	2	\$1,500,000
PBWO, Plymouth	517	244,537	12	35	\$12,000,000
PBWO Wells	2990	3,929,654	2	7	\$14,000,000

Table 3
Maine Waste Oil Sites by Contaminant Type

Site/ Contaminant	DCA*	TCA	TCE	PCE	DCE	PCB	Lead	Chromium
McKin		X	X					
Maine Oil Buckfield								
Millington Thurlow Rd.		X		X		X	X	X
Millington, Norton Pond		X		X		X	X	X
PBWO Casco	X	X	X	X	X			
PBWO Ellsworth	X	X	X	X	X			
PBWO Plymouth	X	X	X	X		X		
PBWO Wells			X	X	X	X	X	X

*DCA is dichloroethane; TCA is trichloroethane; TCE is trichloroethylene; PCE is tetrachloroethylene
DCE is dichloroethylene; and PCB is poly chlorinated biphenols.

The clean-up status at the eight sites varies:

- Work at the McKin Superfund Site in Gray is nearing completion. Contaminated soils were removed in the 1980's, a ground water pump and treat system was operated for five years during the 1990's, institutional controls are being developed, and monitoring will take place for many years into the future.
- Cleanup is complete at the Maine Oil Recycling Site in Buckfield.
- Waste oil tanks and contaminated soils have been removed from the two Millington sites in Lincolnville, and a ground water study of the Thurlow Road site is underway.
- The PBWO sites in Casco and Ellsworth are scheduled for further investigation during calendar year 2000.
- Waste oil tanks and contaminated soils have been removed from the PBWO site in Plymouth, and a new public water system has been built to supply the neighborhood with clean water. Consultants for the responsible parties currently are preparing a Remedial Investigation and Feasibility Study to evaluate the need for additional action.

- The required Remedial Investigation and Feasibility Study is complete at the PBWO site in Wells, and responsible parties at that site have entered into an agreement with the department to clean up the site over the next 18 months.

4. Need for adjustment to Ground Water Fund maximum balance

The statutory maximum balance of the Ground Water Oil Clean-up Fund (Ground Water Fund) is \$12.5 million. No adjustment to this cap is needed to accommodate establishment of the Wells Fund.

Of more concern is the statutory minimum balance of the Ground Water Fund. Four million dollars in funds from the Underground Oil Storage Tank Replacement Fund administered through the Finance Authority of Maine was diverted to establish the Wells Fund. This is money that otherwise would have reverted to the Ground Water Fund from whence it came. The absence of this infusion means that less money is available for groundwater remediation and other work paid from the Ground Water Fund, at a time when remediation expenses are rising to address a growing backlog of contaminated sites.

Although we do not here recommend a change in the maximum balance of the Ground Water Fund, it should be noted that legislation has been introduced to the Second Regular Session of the 119th Maine Legislature that would lower the maximum from \$12.5 million to \$9 million. See LD 2437, *An Act to Revise the Funding of the Groundwater Oil Clean-up Fund*. Certainly, the minimum and maximum balances of the Fund will need to be reassessed if the Legislature decides to tap the Ground Water Fund to support reimbursement of responsible parties at other waste oil sites in addition to Wells.

5. Extension of fund to other waste oil sites

The extension of the Wells Fund concept to responsible parties at other state uncontrolled waste oil sites is problematic in several respects.

First, to the extent the Legislature views the Wells Fund as a means of facilitating settlement and encouraging timely remediation under the Waste Oil Agreement worked out by responsible parties at that site, little can be gained by extending the Fund to the McKin Superfund Site in Gray or the Maine Oil Recycling Site in Buckfield because remediation is actually or virtually complete at those two sites. This also is the case at the two Millington sites in Lincolnville, albeit to a lesser degree, where removal of waste oil and contaminated soils is complete.

Moreover, in deciding whether to apply the Wells Fund model to other sites, the Legislature needs to be mindful of several variables that bear on the level of financial commitment required. These factors include:

- The number of responsible parties identified (2900 at Wells; fewer than 500 at most of the other identified waste oil sites);
- The size of the orphan share, i.e., the proportion of waste contributed by parties that cannot be identified, no longer exist, or are insolvent;

- The proportion of waste contributed by in-state versus out-of-state sources;
- The extent of U.S. government liability as a responsible party; and
- Remediation costs per gallon of waste delivered to the site.

At Plymouth, for example, the estimated per/gallon remediation costs are much higher than at Wells. The estimated orphan share of remediation costs also is much higher—about \$8 million as compared to less than \$2 million at Wells. Moreover, at Wells, about two thirds of the waste oil was contributed by out-of-state responsible parties or federal agencies, both of whom were made ineligible for reimbursement from the Wells Fund. Simply extending the Wells model to Plymouth and other uncontrolled waste oil sites would result in a significantly higher burden on the Rainy Day Fund or any other funding source the Legislature might tap for that purpose.