

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

PORTLAND PIPE LINE CORPORATION;  
THE AMERICAN WATERWAYS  
OPERATORS,

Plaintiffs,

v.

CITY OF SOUTH PORTLAND, MAINE;  
PATRICIA DOUCETTE, IN HER OFFICIAL  
CAPACITY AS CODE ENFORCEMENT  
DIRECTOR OF SOUTH PORTLAND,

Defendants.

Civil Action No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs Portland Pipe Line Corporation (“PPLC”) and The American Waterways Operators (“AWO”) and, through their undersigned counsel, file this complaint against Defendants City of South Portland (“the City”) and Patricia Doucette, in her official capacity as the City’s code enforcement director. This is an action for declaratory and equitable relief challenging an ordinance adopted by the City on July 21, 2014 (“the Ordinance”). Through the Ordinance, Defendants seek to retard, and in fact have retarded, international and interstate commerce arising out of the trade in crude oil, violating multiple provisions of the U.S. and Maine Constitutions as well as federal and state statutes. By seeking to interfere in international and interstate commerce, and maritime trade, and in fact doing so, the Ordinance contravenes fundamental principles upon which our Republic was founded and seeks to regulate in areas in which local regulation is preempted.

## **PARTIES**

1. The Plaintiff parties to this suit are participants in international and interstate commerce in petroleum products.

2. The purpose and effect of the Ordinance, a complete and accurate copy of the Ordinance, as adopted by the South Portland City Council, is attached hereto as Exhibit A, is to hinder this international and interstate commerce and to discriminate against Canadian interests by prohibiting the loading of Canadian crude oil at the through-point of the harbor in South Portland. Based on antipathy for products derived from oil sands originating in Canada and a desire to curtail the exportation of such products from Canada throughout the United States, the Ordinance seeks to and does effectively preclude the importation of oil for further transportation by marine vessels at the harbor in South Portland, adversely affecting the participants at each leg of the interstate and international distribution of petroleum products from Canada, across the United States, throughout New England and beyond.

3. Plaintiff PPLC is a Maine corporation, with its principal place of business in South Portland. It is a wholly-owned subsidiary of Montreal Pipe Line Limited, a privately-held corporation located in Canada, and is engaged in the international transportation of hydrocarbons via pipeline and associated facilities located in a continuous transportation corridor running from the harbor in South Portland, Maine, through three states, across the Canadian border, to facilities located in Montreal, Quebec. The Ordinance is intended to and effectively does preclude PPLC from transporting crude oil produced in and/or transported across Canada via interstate and international commerce through PPLC's pipelines.

4. Montreal Pipe Line Limited is owned by four entities: McColl-Frontenac Petroleum, Inc., Imperial Oil Limited, Suncor Energy, Inc., and Shell Canada Limited – all

Canadian corporations. Each of these entities, directly or through affiliates, produces, transports by pipeline, and refines crude oil in Canada, including crude oil derived from oil sands, which includes bitumen. The Ordinance is intended to and effectively does preclude the importation of these entities' crude oil produced in Canada through PPLC's pipelines.

5. Plaintiff AWO is the national trade association for the nation's inland and coastal tugboat, towboat, and barge industry. The industry employs more than 33,000 American seamen and owns and operates over 4,000 tugboats and towboats and more than 27,000 barges throughout the country. AWO represents the largest segment of the U.S.-flag domestic fleet. Its 350 member companies carry more than 800 million tons of domestic cargo every year, operating vessels on the inland rivers, Atlantic Ocean, Pacific Ocean, the Gulf Coast, the Great Lakes, and in ports and harbors around the country, including the Portland Harbor, incorporating the harbor in South Portland. AWO's member companies operate numerous vessels licensed by the United States Coast Guard to engage in coastwise trade, such as the transportation of crude oil products. AWO has consistently supported federal control over harbor-related activities, noting that to move critical cargo in interstate and international commerce safely and efficiently, the maritime industry needs uniform safety and environmental standards established by one engaged and experienced federal agency, the United States Coast Guard, and that subjecting vessel operators to duplicative or conflicting federal and state standards creates confusion, adds inefficiency, and increases costs to shippers who rely on water transportation. By prohibiting the loading of crude oil at the harbor in South Portland, the Ordinance interferes and conflicts with its members' federal licenses; eliminates a market for its member vessels' services in transporting such products from the harbor; and sets a precedent for inconsistent local harbor regulation that could cripple import and export activities nationally and invite reciprocal commerce curtailment from other nations.

6. The Defendant City is a municipality located in Cumberland County, Maine, on the Portland Harbor. The Portland Harbor is the second largest oil port on the United States' East Coast, serving as a key center for shipping by both land and sea.

7. Defendant Patricia Doucette, as the City's code enforcement director, is charged under South Portland Code Sec. 27-131 with enforcing the City's ordinances, including the Ordinance.

### **VENUE AND JURISDICTION**

8. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201-02, and 42 U.S.C. § 1983. The Court has jurisdiction over the claims seeking relief under Maine law pursuant to 28 U.S.C. § 1367, because this Court has original jurisdiction over the claims raising questions under the United States Constitution and federal law, and the state claims are so closely related to the federal claims so as to form part of the same case or controversy.

9. Venue in the District of Maine is proper pursuant to 28 U.S.C. § 1391 because the events giving rise to these claims occurred in this district, and Defendants are located within or reside in the State of Maine.

### **FACTS**

10. Portland Harbor, at the western end of Casco Bay and incorporating the harbor in South Portland, has the capability of handling some of the largest and deepest draft marine tankers on the East Coast, with up to 52 feet of draft and 170,000 deadweight tons of cargo. This rare natural resource prompted the City's waterfront to become a critical interstate and international hub for the transportation of petroleum and petroleum products, including crude oil.

**PPLC's current and potential cross-border commercial activity**

11. PPLC owns and operates the U.S. portion of a transportation system that includes, without limitation, 12-inch diameter, 18-inch diameter, and 24-inch diameter pipelines and associated facilities extending from South Portland, Maine to Montreal, Quebec. Currently, approximately 48 ships offload at PPLC annually, and PPLC transports crude oil to Quebec via pipeline and associated facilities at a rate of approximately 2.4 million barrels of oil per month.

12. PPLC holds submerged land leases with the State of Maine upon which are located two piers it owns at the Harbor in South Portland. PPLC's pipeline transportation system includes, without limitation, one of the two piers (Pier 2), tanks located both at the waterfront and at a tank farm within the City, as well as the pipes, additional infrastructure, and facilities needed to transport petroleum products from tankers berthing at Pier 2 to their ultimate cross-border destination.

13. Oil is pumped using pump stations located along the route from South Portland to Montreal, spaced 25 to 40 miles apart. These six pump stations are located in South Portland, Raymond, and North Waterford, Maine; Shelburne and Lancaster, New Hampshire; and Sutton, Vermont.

14. The process of transferring oil cargo from a tank vessel to the pipeline is overseen by the Coast Guard's Captain of the Port (COTP). This process entails hydraulically connecting pipeline equipment at a flange on the ship, with the oil pumped from the ship. The tank and pipeline equipment used is tested and inspected by the Coast Guard, must adhere to Coast Guard regulations, and the transfer operations and activities are regulated and overseen by the Coast Guard.

15. The same regulatory framework applies to loading a tank vessel as applies to unloading; Coast Guard regulations apply to cargo “transfer,” *i.e.*, loading and unloading. and adjustments to operations and equipment with respect to the transfer would be overseen and regulated by the Coast Guard.

16. PPLC’s transportation system was first established with the construction of the 12-inch diameter pipeline in 1941 during World War II for national security purposes to transport crude oil by pipeline as an alternative to direct international marine shipments by crude oil tankers. The 18-inch diameter pipeline, built in 1950, transported oil until 1986, when it converted to natural gas transmission, importing gas from Canada to the United States pursuant to Executive Order 10485 (Sept. 3, 1953) and Executive Order 12038 (Feb. 3, 1978). *See* 44 FERC ¶ 61177 (Aug. 10, 1987). In 1999, the 18-inch diameter pipeline converted back to oil transportation, as authorized by a Presidential Permit issued in accordance with Executive Order 11423 (August 16, 1968), Executive Order 12847 (May 17, 1993), and Department of State (“State Department”) Delegation of Authority No. 118-1 (April 11, 1973). The 24-inch diameter pipeline was built pursuant to a Presidential Permit issued January 13, 1965. A complete and accurate copy of the 1965 and 1999 Presidential Permits are attached hereto as Exhibit B.

17. PPLC’s Presidential Permits and approvals were issued as an exercise of the President’s authority over foreign affairs and as Commander in Chief, and are consistent with, advance, and are issued as an exercise of United States foreign policy and to facilitate the cross-border trade in hydrocarbons between Canada and the United States.

18. In a Transit Pipe-lines Agreement between the United States and Canada, effective October 1, 1977, 28 UST 7449, TIAS 8720 (the “TPA”), both governments agreed to

measures designed to ensure the uninterrupted transmission of hydrocarbons, including crude oil, by pipeline through the territory of one country for delivery to the territory of the other.

19. In Article II of the TPA, the two countries expressly promised: “No public authority in the territory of either [country] shall institute any measures, other than those provided for in Article V [relating to emergencies], which are intended to, or which would have the effect of, impeding, diverting, redirecting or interfering with in any way the transmission of hydrocarbons in transit.”

20. At a subsequent summit in Quebec, the President and the Canadian Prime Minister signed Joint Canada-United States Declarations on Trade and International Security, dated March 18, 1985, agreeing to strengthen Canada-U.S. energy trade “by reducing restrictions, particularly those on petroleum imports and exports, and by maintaining and extending open access to each other’s energy markets, including oil[.]” *Joint Canada-United States Declarations on Trade and International Security*, 1 Pub. Papers 307 (March 18, 1985). The President further entered Findings confirming “the objective of liberalizing energy trade, including crude oil, between the United States and Canada. Both Governments recognized the substantial benefits that would ensue from broadened crude oil transfers and exchanges between these two historic trading partners and allies. These benefits would include the increased availability of reliable energy sources, economic efficiencies, and material enhancements to the energy security of both countries.” (Presidential Findings on United States-Canadian Crude Oil Transfers, dated June 14, 1985, 50 Fed. Reg. 25189 (June 18, 1985).)

21. In 2008, PPLC requested authorization from the State Department to reverse the flow of the 18-inch diameter international pipeline, in order to transport oil south from Canada to be loaded onto tankers in Portland Harbor, instead of transporting oil north to Canada, as had

occurred since the conversion from natural gas back to oil in 1999. The State Department responded that PPLC's 1999 Presidential Permit was sufficient, so that no further approvals or amendments were needed, and the State Department has continued thereafter to monitor PPLC's pipeline activities. A complete and accurate copy of the State Department's letter of July 18, 2008 is attached hereto as Exhibit C.

22. Recent correspondence from the State Department asks that PPLC keep the Department informed as to PPLC's pipeline operations, noting that such information "will assist the Department in carrying out its policies, as they relate to pipeline permitting, including with regard to energy, environmental, and safety considerations." A complete and accurate copy of the State Department's letter of August 13, 2013 is attached hereto as Exhibit D.

23. No crude oil is produced within the State of Maine. Currently, PPLC uses its 24-inch diameter pipeline, with a capacity of 410,000 barrels a day, to transport crude oil unloaded from oil tankers at the harbor in South Portland north to Canada in far smaller amounts than its capacity can serve. The 18-inch diameter pipeline is currently idle and being maintained to protect the integrity of the pipeline in a state that allows PPLC to return the line to service when market demands warrant. PPLC's pipelines are currently underutilized due to market conditions that favor the transportation of oil south from Canada to the United States and other international markets, instead of from the Harbor north to Canada.

24. As the historical use of PPLC's pipelines reflect, in order to react promptly to international and national market conditions in the cross-border trade of hydrocarbons, the type of and the direction in which hydrocarbons may flow through PPLC's pipelines changes, as overseen by the President implementing his foreign affairs powers given, *inter alia*, national strategic interests surrounding the cross-border flow of hydrocarbons. The Ordinance's



interference with these foreign affairs powers and with the exclusive federal authority over the flow of hydrocarbons through its pipelines adversely affects PPLC's ability to respond to market conditions and to facilitate the cross-border flow of hydrocarbons as supported by international treaty and Presidential findings.

25. By limiting the direction in which bulk oil may flow through PPLC's pipelines, the Ordinance immediately and currently reduces the current market value of PPLC's pipelines and hinders its ability to engage in interstate and international commerce. The Ordinance purposefully and effectively prohibits all use of PPLC pipelines for the transportation of oil from Canada to the United States, to the detriment of PPLC's ability to offer its transportation services to the national and international export market.

26. PPLC's shareholders actively market their crude oil to markets in the United States and other countries. The Ordinance prohibits them from transporting its product to market through the Harbor in South Portland and via PPLC's pipelines, which could handle hundreds of thousands of barrels of their products a day. By prohibiting the loading of oil onto marine vessels in South Portland, the Ordinance further forecloses the Harbor as a means of export for their product, however that product arrives, whether by pipeline, ship or rail. The inability to use the Harbor and existing commerce avenues has a depressive impact on the value of these shippers' crude oil, and the precedential impact of the Ordinance, if copied in other U.S. harbor municipalities, would have a profound impact on shippers' ability to engage in international commerce.

**Tankers' current and potential cross-border commercial activities**

27. The current transportation of tankers into the South Portland harbor is threatened by the lack of economics in transporting crude oil from south to north. Conversely, PPLC's

unused capacity is such that, if oil could be transported from Canada through PPLC's pipelines and loaded onto ships in the harbor in South Portland at an economically rational cost, the commercial activities of the AWO and its members stand to benefit from increased traffic and shipping opportunities. Allowing the import of oil, but not its export, through the Harbor restricts the ability of AWO's members from engaging in interstate and international commerce. More broadly, the precedential impact of the Ordinance, if copied in other U.S. harbor municipalities, would have a profound impact on the ability of marine vessels to engage in international commerce and undermines the uniformity of international and national vessel regulation, to the detriment of AWO member interests..

28. The United States has adopted the International Convention for the Prevention of Pollution from Ships ("MARPOL"), including Annex VI and Regulation 15 thereto ("Regulation 15"). S. Treaty Doc. No. 108-7 (2003); 152 Cong. Rec. S3400 (daily ed., 7 April 2006) and 33 U.S.C. §§ 1901-1915.

29. Regulation 15 applies to the emissions of volatile organic compounds (VOCs) in cargo transfer operations between tankers and port facilities – the purported concern of the Ordinance.

30. The first paragraph of Regulation 15 provides: "If the emissions of VOCs from a tanker are to be regulated in a port or ports or a terminal or terminals under the jurisdiction of a Party, they shall be regulated in accordance with the provisions of this regulation." The remainder of Regulation 15 obligates parties to MARPOL to notify the International Maritime Organization ("IMO"), an agency of the United Nations, before the party imposes vapor emission control requirements, and to take into account safety guidance developed by the IMO in doing so.

31. In forwarding MARPOL to the Senate for approval on May 15, 2003, the President noted that ratification of the Convention and Annex VI “will demonstrate U.S. commitment to an international solution” for air emissions from tankers, and in the Secretary of State’s Letter of Submittal of MARPOL, submitted to the Senate in 2003 during the ratification process, the Secretary of State explained that “the United States has basic and enduring national interests related to the oceans and U.S. port regions, and has consistently taken the position that the full range of these interests is best protected through a widely accepted international framework governing uses of the sea. A workable international regime for the prevention of air pollution from ships is in the best interests of all States because it will subject international shipping to a uniform standard that is environmentally protective.”

32. Consistent with its treaty adoption of MARPOL, the United States has adopted VOCs emission control regulations for tanker loading operations and requires vapor emission control systems, and pursuant to Regulation 15.6 and consistent with IMO Resolution MEPC.185(59), tankers follow VOC management plans required under Regulation 15.

33. Canada and the United States act cooperatively consistent with MARPOL regulation and the United States’ goal of acting on an international level in regulating tanker activity and emissions, VOCs and otherwise. One illustrative example is these two countries’ joint proposal to the IMO pursuant to MARPOL Annex VI, Appendix III of a North American Emission Control Area surrounding their coastlines, subsequently adopted by the IMO to reduce SO<sub>x</sub>, NO<sub>x</sub> and particulate matter emissions. In proposing this Emission Control Area, the two countries noted that they “have an obvious common interest in addressing emissions from ships operating off their coasts given their geographic proximity and the nature of their markets.”

34. AWO members comply with MARPOL and the federal regulations adopted consistent with MARPOL. The Ordinance's attempt to add another layer of regulation and to ban loading altogether impairs their ability to engage in transportation activities at the Harbor in South Portland, and the precedential impact of the Ordinance, if copied in other U.S. harbor municipalities, would have a profound impact on tankers' ability to engage in national and international commerce by eliminating the uniformity of international maritime regulation sought by the United States in its federal treaties and statutes.

**Other Cross-Border Commercial Activity Emanating From the City Waterfront**

35. The commercial activities noted above reflect just one sub-set of a broad array of commercial petroleum-handling activities at the City's waterfront. A recent economic report provided that the total commercial impact of such activities on just the City and its regional economy amounts to over \$64 million in sales, supporting 335 jobs earning over \$20 million in pay and benefits, and that the oil terminal industry serves as the anchor for the entire Port of Portland, accounting for 84% of the port's cargo vessels and 94% of its total cargo.

36. The petroleum-handling facilities and operations at the City's waterfront constitute a vital hub for the interstate and international delivery of petroleum products, providing the interstate region with a reliable supply of products necessary for heating homes and businesses, among other uses. By curtailing oil-handling activities at the City waterfront, and by permitting the importation but prohibiting the exportation of petroleum products, contrary to market conditions, the Ordinance cripples the commercial activities not only of the named plaintiffs but of all Harbor-related actors. By purposely and effectively legislating that crude oil may be imported but may not be exported, the Ordinance, as intended, precludes any such exportation commerce in the Harbor and affects petroleum-based commerce outside the City,

outside Maine, across the interstate region, and across the U.S.-Canada border, and, if copied in other U.S. harbor municipalities, would have profound adverse precedential impacts.

### **The Ordinance**

37. The purpose and effect of the Ordinance is reflected in its substantive text and history.

38. In its substantive text, the Ordinance prohibits all “bulk loading” of crude oil at the harbor in South Portland and prohibits the installation, construction, reconstruction, modification, or alteration of new or existing facilities, structures, or equipment for the purpose of bulk loading of crude oil onto any marine tank vessel in the harbor in South Portland, thus precluding the use of PPLC’s pipelines or other means for the importation of oil to be loaded at the Harbor in South Portland for further transportation in national and international commerce, and thus prohibiting all activities related to the importation of such oil by pipeline or other transportation methods for export.

39. The history of the Ordinance reflects that both the purpose and the effect of the Ordinance is to regulate interstate and international commerce so as to preclude the importation of Canadian products derived from oil sands. The Ordinance is based on purported safety concerns as to the transportation of such products via pipelines and otherwise, and on the objective of affecting U.S. foreign policy as to the importation of Canadian products derived from oil sands.

40. The first incarnation of the Ordinance emerged as a citizen initiative in 2013, and was referred to as the “Waterfront Protection Ordinance” (“WPO”). A complete and accurate copy of the WPO is attached hereto as Exhibit E.

41. Proponents of the WPO articulated that the main objective of the WPO was to prevent the transportation of Canadian oil through PPLC's pipelines due to perceived dangers from products derived from oil sands derived crude oil.

42. Illustrative reflections of the purpose of the WPO and the Ordinance as ultimately enacted include statements by the initiators of the WPO, "Protect South Portland," the organization that collected the signatures to place the WPO on the ballot. "Protect South Portland" posted fact sheets on its website prior to the 2013 vote on the WPO stating that an ordinance was needed to protect "Casco Bay from spills of toxic tar sands from tankers" and exhorted the electorate to "Vote for the Waterfront Protection Ordinance to stop out-of-state big oil companies from building a tar sands export terminal in South Portland."

43. Further illustrative reflections of the purpose and intent of the WPO and the Ordinance as ultimately enacted include statements made by proponents at a July 23, 2013 meeting of the South Portland Planning Board, in which they advocated for ordinance enactment, arguing that the transport of oil derived from tar sands "isn't consistent with sustainability" and the WPO will "help us protect the earth" and "help us protect our children and our grandchildren"; asserting that there were "catastrophic risks involved with tar sands oil," and "we cannot afford to have a spill in South Portland"; claiming that citizens had been "alerted to unacceptable risks involved in carrying tar sands through our community," that tar sands "creates lakes of toxic waste," that there is "no place to put the waste in Canada," that tar sands are "destroying the land, " and that "our whole way of life and our economy is in jeopardy"; and stating that they "ask nothing but to prevent tar sands from being pumped from Canada to South Portland."

44. Further illustrative reflections of the purpose and intent of the WPO and the Ordinance as ultimately enacted include statements made by proponents at an August 13, 2013 meeting of the South Portland Planning Board, in which they advocated for ordinance enactment arguing that tar sands will “poison our school, children, and teachers,” and will be pumped through “very old pipes that are unmapped,” and that PPLC wanted to “pump tar sands into our community.”

45. Further illustrative reflections of the purpose and intent of the WPO and the Ordinance as ultimately enacted include the statement of David Lourie, an attorney for Concerned Citizens of South Portland (the predecessor to Protect South Portland) and the original drafter of the WPO, at an August 19, 2013 meeting of the South Portland City Council, who stated that “South Portland has a unique ability to stop the flow of tar sands into the state of Maine.” Proponents further argued at the August 19, 2013 meeting that an ordinance would “protect our community from multiple threats,” including “fouling our drinking water”; stated “with a 64 year old pipeline that is used to supporting crude oil, it is only a matter of time before it leaks”; and asserted that the “Waterfront Protection Ordinance will prevent our community from becoming the North American tar sands oil shipping point.” A proponent explained that “the core intent of the Waterfront Protection Ordinance is to prevent tar sands from flowing from Canada to our community and being exported around the world,” noting “South Portland’s unique proximity to Canada,” and that “Alberta, Canada is the beginning of our connection to tar sands,” with another proponent explaining, “[w]e do not want to pollute the working waterfront with out of state interests ” and another stating that “if tar sands is so safe, let Canada export it through its own shores.” Proponents argued that that PPLC wanted “to expand operations in Alberta to include tar sands and they need the pipeline in South Portland to transport to places

like China,” and an ordinance was needed because PPLC wants to “facilitate the flow of tar sands from Canada to South Portland and out to the greater world.”

46. Shortly before the vote on the WPO, an opinion piece published in the Bangor Daily News entitled “Climate Change is here; now what will Maine do about it?” advocated for passage of the WPO because “tar sands are terrible for the climate, with significantly higher emissions of the pollution that causes global warming than conventional oil. Big Oil’s push for tar sands is a national issue that touches us right here in Maine, and we can do something about that.”

47. In addition to language prohibiting the unloading of petroleum products, the WPO included broader language freezing existing petroleum-related operations in the City.

48. Voters rejected the WPO 51% to 49% at the November 2013 elections.

49. Ordinance proponents attributed the WPO’s defeat to the broader provision noted in Paragraph 47 and immediately vowed to re-draft the ordinance to target more narrowly the importation of oil from Canada. The spokesperson for Protect South Portland stated that the organization was “more committed than ever to keeping tar sands out of South Portland.”

50. After the defeat of the WPO, the strategy to enact prohibition of the importation of oil from Canada into the United States included circumvention of the electorate via ordinance initiation not by citizen initiative as with the WPO, but rather enactment through a vote of the City Council alone. City Councilor and Mayor Gerard Jalbert stated that “[p]eople’s feelings are clear” that “[t]hey don’t want to be known as the tar sands capital of the United States.” Interviewed on Election Day, City Councilor Tom Blake stated that having a City committee draft the ordinance banning the flow of oil derived from oil sands through PPLC pipelines would



protect the City, and that he was assured that all councilors opposed tar sands coming into the City.

51. Within hours of the WPO's defeat at the ballot box, City officials introduced and held a workshop on a moratorium to prevent the transportation of "oil sands/tar sand products" onto vessels in the Harbor, applicable as of that day, and subjecting any person engaged in "the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland" to immediate fines and penalties. A complete and accurate copy of the moratorium as enacted by the City, referencing the need to "study oil sands/tar sands products and related issues and to develop any appropriate ordinance amendments to address development proposals involving the loading of oil sands/tar sands products onto marine tank vessels docking in South Portland," is attached hereto as Exhibit F.

52. While the moratorium was in place, the City appointed a committee (the Draft Ordinance Committee or "DOC") charged with drafting an ordinance to stop the flow of "tar sands" oil through South Portland. That this was the DOC's charge was repeatedly and publicly acknowledged by the City. The City's public written solicitation for members for the DOC stated that "[t]he committee has a City Council charge of exploring the development of ordinance language to address development proposals involving oil sands/tar sands production." A complete and accurate copy of this City solicitation is attached hereto as Exhibit G.

53. Ordinance proponents again publicly noted the goal of blocking export venues for petroleum products derived from Canadian oil sands, and that preventing PPLC from reversing its flow would empower local resistance to "tar sands" worldwide. Media reports are replete with citations confirming the universal understanding that the Ordinance was written "to target tar sands oil from Canada." PPLC asked to be a member of the DOC; this request was rejected

by the City Council. Instead, the City appointed a three-member DOC that included a litigation attorney, Russell Pierce, who represents the environmental organization the National Resource Council of Maine (“NRCM”), which vigorously supported the WPO. Mr. Pierce thereafter engaged in multiple extended ex parte communications with the NRCM and another environmental group, the Conservation Law Foundation (“CLF”), when drafting the Ordinance.

54. During the debate regarding the WPO, opponents of the WPO had warned that the measure violated numerous federal and state constitutional and statutory provisions, which warnings were renewed before the City Council during its deliberations over the Ordinance. Mr. Pierce’s law firm newsletter described his task at the time of the appointment to the DOC as “to serve as one of three members of a special Draft Ordinance Committee to propose ordinance language for waterfront protection and land use planning in the context of a petroleum pipeline project transporting tar sands oil from western Canada to Portland Harbor.” Legal counsel for the City subsequently stated in a January 13, 2014 workshop that the charge to the DOC would provide “maximum flexibility” to the DOC to reach its objective, given that this stated intent of “banning tar sands” would likely face “legal obstacles.”

55. Tasked with the mission of crafting an anti-“tar sands” ordinance that would pass legal scrutiny while achieving the objective of banning the export of Canadian petroleum products derived from oil sands through the Harbor in South Portland, the DOC issued requests for information, including questions such as “[W]hat are the physical capacities (average and peak flow-rates) of the Portland Pipe Line Corporation’s pipelines for carrying unrefined oil products, including diluted bitumen, from Montreal to South Portland?” The City also sought responses as to the “boundaries between local, state and federal authorities/jurisdictions.”

56. Summary notes from the DOC's meetings indicate that its goals included having language that "stands up to any legal challenges," and in a March 24, 2014 workshop, Jeffrey Edelstein, the facilitator working with the DOC, candidly told the City Council that because the City could not legally ban oil derived from oil sands, the DOC was working to "thread the needle" to withstand a legal challenge while accomplishing the goal of preventing the flow of such oil through PPLC's pipeline. The Council responded positively, with one Councilor stating that she liked the DOC's methodology, as "[i]t gets us where we need to be."

57. Ultimately, in an attempt to evade legal limitations, the DOC, supported by submissions and communications from NRCM and CLF, labeled the Ordinance a "Clear Skies" ordinance, and included a very long preamble to the Ordinance reciting purported zoning and air concerns about the loading (yet not unloading) of petroleum products onto marine vessels at the harbor. The express charge of the DOC to enact an anti-"tar sands" ordinance is nowhere mentioned in the Ordinance, as noted with puzzlement by one Councilor. One public commentator in a communication dated June 3, 2014 similarly stated: "I am probably not the only one to point out what might have been an oversight in the draft ordinance: that the term 'tar sands' is conspicuously absent from the document altogether," observing that the DOC's charge "is wrapped up in the term 'tar sands' under the aegis of a moratorium that is also centered on 'tar sands' prohibition[.]" The City's legal counsel also noted in a written memorandum that the unusually long (ten-page) preamble of "findings" was not normally a part of a Maine ordinance.

58. Mr. Edelstein again candidly explained in a June 25, 2014 workshop that the committee put an air emissions spin on what it did because "one of the places where the city is permitted to act is in the regulation of air emissions," and as to the lengthy findings, Mr. Pierce stated that "we can't predict whether all of this will survive a challenge and so we felt let's put as

much belt and suspenders on here as we can.” Natalie West, the attorney representing “Protect South Portland,” explained in a July 1, 2014 email to the City legal counsel that the findings were “legal strategy.” Michael Conathan, another committee member chosen by the City, and the Director of Ocean Policy at the Center for American Progress, which had previously characterized Canadian extraction from oil sands as “polluting” and “destructive” (<http://www.americanprogress.org/issues/green/news/2010/06/23/8001/the-dirty-truth-about-tar-sands/>) assured that the DOC’s charge was to “address the potential throughput of tar sands or oil sands through the City of South Portland.”

59. When presenting the draft Ordinance publicly, Mr. Pierce gave a power point slide presentation, citing “Federal Preemption” and the “Dormant Commerce Clause.” In his presentation, Mr. Pierce stated that “federal preemption and the dormant commerce clause were part of our thinking throughout this process.”

60. Despite attempts to camouflage the purpose and intent of the Ordinance in an effort to withstand legal scrutiny, in enacting the Ordinance, City Councilors nevertheless made various statements further confirming that the purpose of the enactment of the Ordinance were health and safety concerns about pipeline transportation, and to have an extraterritorial impact to stop the global transportation and delivery of oil from Canada. For example, Mayor Jalbert noted that PPLC’s pipelines passed through the Sebago Lake watershed, where the City obtains its drinking water; Councilor Cohen stated that he did not want tar sands in South Portland; Councilor Smith stated that the committee “came up with a compromise to thread the needle. It will protect the health and safety of our residents and potentially the health and safety of global residents”; and Councilor Linscott stated: “This ordinance is a lot bigger than us.” In a recorded

interview, Mayor Jalbert explained that the Ordinance was “in essence [to] prevent the flow of Canadian tar sands crude oil through South Portland as an export[.]”

61. Further anticipating legal difficulties and consistent with the ex parte support of national environmental groups to draft the Ordinance and employ it as a national template, the City has approved the establishment of a legal defense fund to solicit to provide financial resources to defend the Ordinance. A spokesperson for Protect South Portland stated: “We may be a small city, but, boy, we’ve done a big thing[.]”

62. In so enacting the Ordinance, the City rejected the position of the Alberta representative in the Canadian Embassy, who spoke against the Ordinance before the City Council, noting, among other things, that one-third of the oil imported into the United States comes from Canada; that Canada respects the environment and existing regulations are in place; and that the Ordinance reflects a misunderstanding of Canada’s oil sands product.

**Irreparable Harm Suffered by Plaintiffs**

63. The Ordinance violates the constitutional rights of Plaintiffs, and the harms they are suffering and will suffer from its enactment and enforcement are immediate, substantial, and incalculable, entitling them to declaratory and preliminary and permanent injunctive relief.

**COUNT I**  
**SUPREMACY CLAUSE – THE PIPELINE SAFETY ACT**

64. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 63 of this Complaint as if fully set forth herein.

65. The Supremacy Clause of the U.S. Constitution provides that federal law “shall be the supreme law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const., art VI.

66. The United States Department of Transportation regulates pipeline safety under the Pipeline Safety Act (“PSA”), 49 U.S.C. §§ 60101 *et seq.*, and 49 C.F.R. Part 195.

67. The purpose of the PSA is to “provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities,” 49 U.S.C. § 60102(a)(1), and 49 U.S.C. § 60104(c) provides that “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.”

68. 49 C.F.R. Part 195, app. A provides that the PSA “leaves to exclusive Federal regulation and enforcement the ‘interstate pipeline facilities,’ those used for the pipeline transportation of hazardous liquids in interstate or foreign commerce.”

69. The PSA and associated federal regulations preempt the entire field of interstate pipe line safety for exclusively federal regulation.

70. The Ordinance attempts to regulate pipeline safety in purpose and effect and intrudes into the federally preempted field of interstate pipeline safety.

71. The Ordinance is preempted under the PSA and associated federal regulations.

**COUNT II**  
**SUPREMACY CLAUSE – FOREIGN AFFAIRS**

72. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 71 of this Complaint as if fully set forth herein.

73. Article II, Sections 2 and 3 of the United States Constitution provides broad and exclusive power to the President and federal authorities over foreign affairs. One of the main objects of the Constitution was to make the United States, so far as regards foreign relations, one people and one nation, with power over foreign affairs not shared by the States or their local components, but rather vested in the federal government exclusively, entirely free from local interference.

74. International pipelines, given their nature and impact on the national interest and relations with other countries, have long been the subject of the federal government's relations with foreign nations. Collectively, the TPA, 1985 Trade Declaration and Presidential Findings, Executive Orders, the necessity of Presidential Permits, the language of such permits, and the continuing interest in PPLC's pipelines by the State Department underscore that the decision-making as to the operation of the pipelines and associated facilities, including the direction of the flow of hydrocarbons in such pipelines, falls within the foreign policy powers of the federal government and its determination as to what is in the national interest.

75. As demonstrated by the international agreements discussed in Paragraphs 16-22, this foreign policy embraces expanded trade and facilitation of pipeline transfers between the United States and Canada.

76. A recent illustration of the President's exercise of his foreign affairs powers in the area of pipelines between Canada and the United States is reflected in the State Department's issuance of a Presidential Permit in August 2009 to build a 36-inch diameter pipeline between the oil sands region of Alberta, Canada across the international border in North Dakota to oil markets in the Midwestern United States. In describing how the approval advanced the national interest, the State Department declared that U.S. "strategic interests" advanced by the addition of capacity from Canada to the United States included

increasing the diversity of available supplies among the United States' worldwide crude oil sources in a time of considerable political tension in other major oil producing countries and regions; shortening the transportation pathway for crude oil supplies; and increasing crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer. Canada is a stable and reliable ally and trading partner of the United States, with which we have free trade agreements which augment the security of this energy supply.... Approval of the permit sends a positive economic signal, in a difficult economic period, about the future reliability and availability of a portion of United States' energy imports, and in the

immediate term, this shovel-ready project will provide construction jobs for workers in the United States.

77. More broadly, as reflected in MARPOL and various other multilateral and bilateral treaties and agreements entered into by federal authorities, the operation of vessels in U.S. waters has long been an area in which the federal government has exercised its exclusive authority over foreign affairs.

78. The foreign policy consistently followed by the federal government has been governed by the precept that the United States has basic and enduring national interests in domestic and international maritime trade and that the full range of these interests is best protected through international consensus. This international approach embraces the principle of reciprocity, and the United States has recognized the need to take one national position on these matters so as to avoid the detriment that would flow from piecemeal local regulation undermining this reciprocity principle and impeding the uninterrupted flow of international maritime traffic.

79. It is up to federal authorities, not the City of South Portland, to determine how PPLC's pipelines should be operated, what product they should carry, and whether they should be used for import or export, and it is up to federal authorities, not the City of South Portland, to determine what restrictions, if any, should be imposed on the loading and export of product onto ships through the Portland Harbor.

80. One city in Maine cannot impede federal decision-making on international relations, trade, and resource transportation and replace it with its own foreign policy.

81. The Ordinance undermines the ability of the federal government to speak with one voice and jeopardizes the President's ability effectively to negotiate future agreements at the international level.



82. The Ordinance's design and intent – to impose a policy against the development and exportation of products from Canada and to become an exemplar for other localities to do the same – intrudes into the exclusively federal field of foreign affairs and policy.

83. The Ordinance is preempted under the President's foreign affairs power.

**COUNT III**  
**SUPREMACY CLAUSE – THE PORT AND WATERWAYS SAFETY ACT**

84. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 83 of this Complaint as if fully set forth herein.

85. The Ports and Waterways Safety Act (“PWSA”), found within 33 U.S. Ch. 25 (Title I) and 46 U.S.C. Ch. 37 (Title II), regulates the operation of marine tanker vessels in U.S. harbors, including the loading and unloading of their cargo.

86. Title I of the PWSA authorizes the Secretary of Homeland Security (“Secretary”) to “take such action as is necessary to ... prevent damage to ... [any] shore area” adjacent to U.S. navigable waters, including by “establishing procedures ... for the handling, loading, unloading, storage, stowage and movement ... of ... oil.” 33 U.S.C. §§ 1225(a)(1), 1225(a)(2)(A).

87. Title II of the PWSA requires the Secretary to prescribe regulations governing “the handling or stowage of cargo,” “equipment and appliances for ... prevention and mitigation of damage to the marine environment,” and “the reduction or elimination of discharges during ... cargo handling.” 46 U.S.C. § 3703(a).

88. Title I preempts all state or local regulations that conflict with federal regulations or which the Secretary has concluded should not be the subject of federal regulations. The only state or local regulations allowed under Title I are those based on the peculiarities of local waters that call for special precautionary measures, such as water depth and narrowness idiosyncratic to a particular port or waterway.

89. With respect to Title II of the PWSA, Congress intended for the federal government to create uniform national tanker standards that foreclose the imposition of different or more stringent state requirements, and leave no room for the states to impose different or stricter requirements than those which Congress has enacted. Title II, without limitation, has left no room for state or local regulation concerning the operation of tanker vessels.

90. The Secretary has enacted voluminous regulations governing the operation of oil tankers and the handling of oil in U.S. ports, including, without limitation, 33 C.F.R. Subch. L (“Waterfront Facilities”) and Subch. O, Parts 151 (“Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste and Ballast Water”), 154 (“Facilities Transferring Oil or Hazardous Material in Bulk”), Part 155 (“Oil or Hazardous Material Pollution Prevention Regulations for Vessels”), Part 156 (“Oil and Hazardous Material Transfer Operations”), and Part 157 (“Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk”); 46 C.F.R. Subch. D (“Tank Vessels”) and Subch. O (“Certain Bulk Dangerous Cargoes”), Part 153 (“Ships Carrying Bulk Liquid, Liquefied Gas, or Compressed Gas Hazardous Materials”).

91. By prohibiting all loading of bulk crude oil at the harbor in South Portland, the Ordinance has broad extraterritorial impact, forces tanker vessels to adjust their operations outside the City in order to carry out its loading of crude oil elsewhere, and imposes a substantial burden on vessel operations both within and outside the City.

92. The Ordinance’s ban on the loading of crude oil onto marine tank vessels at the harbor in South Portland and the prohibition of any addition or alteration of new or existing facilities or equipment associated with loading of oil marine tank vessels, including vapor control

equipment for tanker loading operations, impermissibly conflict with Titles I and II of the PWSA and the regulations promulgated by the Secretary thereunder.

93. With respect to Title II, the Ordinance impermissibly regulates the operation of tanker vessels and is preempted by PWSA.

94. Alternatively and additionally, the Ordinance's ban on the loading of crude oil onto marine tank vessels at the harbor in South Portland is unrelated to any idiosyncratic characteristic of the harbor, conflicts with federal regulations concerning tanker vessel operations, and is therefore preempted by Title I of the PWSA.

95. The Ordinance is further preempted by the PWSA because it seeks to regulate in an area in which substantive federal law addresses the object, actual and/or purported, sought to be achieved by the Ordinance.

**COUNT IV**  
**MARITIME PREEMPTION**

96. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 95 of this Complaint as if fully set forth herein.

97. From the first days of the Republic, the Founding Fathers determined that the federal government has paramount authority over navigation and commerce, and that the federal government has historically exercised a preeminent and preemptive role in regulating interstate and international shipping. The authority of Congress to regulate interstate navigation without intervention from state or local authorities was cited in the Federalist Papers (The Federalist Nos. 44, 12, 64) as one of the reasons for adopting the Constitution.

98. Article III, Section 2 of the Constitution provides that federal judicial power extends to all cases of admiralty and maritime jurisdiction, and in exercising its authority in the maritime context, the Supreme Court has provided that the Constitution requires uniformity in

admiralty law, reading the language in Article III, Section 2 as referring to a system of law coextensive with and operating uniformly in the whole country.

99. In the seminal decision *Gibbons v. Ogden*, 22 U.S. 1 (1824), and recently confirmed in *U.S. v. Locke*, 529 U.S. 89 (2000), the Supreme Court has held that a state maritime law is preempted when it purports to ban federally licensed maritime activity, and it has been a fundamental principle of federal law throughout the history of our nation that a state or local regulation that completely excludes federally licensed commerce upon a state's waterways is preempted and therefore unconstitutional.

100. Local law is preempted when it works material prejudice to the characteristic features of maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations.

101. The Ordinance is preempted because it seeks to restrict severely the operation of marine vessels within the Portland Harbor, contrary to federal and international law.

102. Title 46, Chapter 121 of the United States code provides for the licensing of domestic vessels engaged in coastwise trade and precludes state and local governmental authorities from banning such trade. Federal law also similarly provides for federal licensing of foreign flag vessels engaged in trade in oil and oil products, and precludes state and local governmental authorities from banning such trade. *See* 46 U.S.C. § 9101; 46 C.F.R. Part 154, Subpart E.

103. The loading of marine vessels with crude oil is a federally licensed activity.

104. By banning the loading of marine vessels with crude oil, the City is not engaged in evenhanded local regulation to effectuate a legitimate local public interest, and the Ordinance

is unduly burdensome on maritime activities. It is impossible to comply with the Ordinance and engage in any exportation of crude oil through the Harbor in South Portland.

105. The Ordinance's ban on the loading of crude oil onto marine tank vessels interferes with federal licensing of tanker vessels, bans the entry of licensed vessels into the Harbor in South Portland to carry out federally permitted commerce and is preempted under 46 U.S.C. Ch. 121 and associated federal regulations.

106. The Ordinance is preempted under Art. III, Section 2 of the Constitution and the Constitution's embedded principal of federal maritime governance.

**COUNT V**  
**COMMERCE CLAUSE**

107. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 106 of this Complaint as if fully set forth herein

108. The Ordinance creates asymmetry in international maritime transportation that could provoke retaliation that would be felt by the nation as a whole.

109. The Ordinance balkanizes commercial regulation in that, should every harbor municipality enact an ordinance similar to the Ordinance, no crude oil could be unloaded at any harbor, and the free flow of interstate and international commerce in crude oil would cease.

110. The Ordinance seeks to and does have the practical effect of regulating conduct outside the City.

111. The Commerce Clause of the U.S. Constitution, Art. I, Section 18, Clause 3, confers upon Congress the power "[t]o regulate Commerce with foreign Nations" as well as among the several states.

112. The Ordinance violates the Commerce Clause because, in purpose and effect, it impermissibly discriminates against and/or excessively burdens foreign commerce between the United States and the Canada.

113. The Ordinance violates the Commerce Clause because, in purpose and effect, it impermissibly discriminates against and/or excessively burdens interstate commerce among the states.

114. The Ordinance violates the Commerce Clause because it imposes a direct burden on interstate and foreign commerce and directly regulates interstate and foreign commerce.

115. The Ordinance violates the Commerce Clause because it attempts to regulate in a sphere of commerce requiring a uniform national rule.

116. The Ordinance violates the Commerce Clause because any legitimate goal of the Ordinance could be advanced through means less burdensome to international and interstate commerce.

117. The Ordinance violates the Commerce Clause because in purpose and effect the Ordinance hoards a scarce resource of a deepwater harbor and a critical international and interstate transportation hub for the local benefit of importation of crude oil, while barring the use of the Harbor for exportation from the Harbor of crude oil for the benefit of out-of-state interests.

118. The Ordinance violates the Commerce Clause because its practical effect is to control conduct beyond the boundaries of the City.

119. The Ordinance violates the Commerce Clause because it intrudes on a domain of exclusive federal jurisdiction and prevents the United States from speaking with one voice in the area of international and national oil importation.

**COUNT VI**  
**DUE PROCESS, EXCESSIVE DELEGATION, AND EQUAL PROTECTION**

120. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 119 of this Complaint as if fully set forth herein.

121. The Ordinance prohibits the “bulk loading” of oil or the installation, construction, reconstruction, modification, or alteration of new or existing facilities, structures, or equipment, for the purpose of “bulk loading” of crude oil onto any marine tank vessel.

122. “Bulk loading” is not defined in the Ordinance.

123. In her review of the draft Ordinance, legal counsel for the City asked what “bulk loading” was and what activity would comprise less than “bulk loading,” and recommended that a definition should be considered to avoid ambiguity. The City ignored her recommendation.

124. The term “bulk package” is used with respect to transportation regulated under the Hazardous Materials Transportation Act, and any local regulation of the same would be preempted under that Act. *See* 49 U.S.C. §§ 5102(2), 5103(a), 5108, 5125(b); 49 C.F.R. § 172.101; 49 C.F.R. Part 172.

125. An ordinance violates the Due Process Clause of the United States Constitution if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. U.S. Const., amend. XIV, Section 1.

126. Under Maine’s Constitution, which imposes separation of governmental powers limitations stricter than its federal counterpart, legislation delegating discretionary authority to administrative agencies must contain standards sufficient to guide administrative action. Me. Const., Art. III, Sections 1 and 2.

127. The Ordinance fails to meet the constitutional clarity requirements set forth in Paragraphs 125-126.

128. The extraterritorial intent and impact of the Ordinance also violates the Due Process Clause.

129. The Ordinance prohibits the loading, but not the unloading, of oil onto marine vessels in order to hinder commerce in oil from Canada.

130. There is no rational and legitimate basis to permit unloading but not loading of oil at the harbor in South Portland, and the Ordinance is so drafted in order to discriminate against a foreign product.

131. The Ordinance violates the Equal Protection Clause of the United States Constitution, U.S. Const., amend. XIV, section 1.

**COUNT VII**  
**CIVIL RIGHTS ACT VIOLATION**

132. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 131 of this Complaint as if fully set forth herein.

133. The Ordinance deprives Plaintiffs of their rights secured by the United States Constitution, as set forth above, under color of state law, thereby violating 42 U.S.C. § 1983.

134. Plaintiffs are suffering and will suffer irreparable harm as a result of being deprived of their Constitutional rights and are entitled to declaratory and injunctive relief against the City and Doucette in her official capacity.

**COUNT VIII**  
**INCONSISTENCY WITH THE CITY'S COMPREHENSIVE PLAN**

135. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 134 of this Complaint as if fully set forth herein.

136. Under 30-A M.R.S. § 4352, “a zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.”



137. The City's Comprehensive Plan, enacted and amended in 2012 pursuant to 30-A M.R.S. § 4352, provides for "existing ... oil facilities to upgrade or expand on parcels that are already used for this purpose" within the Shipyard Development District. Relevant excerpts of the Comprehensive Plan are attached hereto as Exhibit H. A complete copy of the City's Comprehensive Plan can be found at [http://www.southportland.org/index.php/download\\_file/view/1318/647/](http://www.southportland.org/index.php/download_file/view/1318/647/).

138. Numerous provisions in the City's Comprehensive Plan identify oil terminals as industrial marine uses to be maintained, protected, and allowed to expand.

139. The Ordinance conflicts with the City's Comprehensive Plan, which approves of petroleum-related businesses in the waterfront area and expansion of the same, and envisions a new Marine-Industrial growth zone dedicated to assuring the continued viability of the marine terminals.

**COUNT IX**  
**STATE PREEMPTION – 38 M.R.S. § 556**

140. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 139 of this Complaint as if fully set forth herein.

141. Maine's Oil Discharge Prevention Law, also referred to as the Coastal Conveyance Act, or "CCA," provides that "Nothing in this subchapter may be construed to deny any municipality, by ordinance or bylaw, from exercising police powers under any general or special Act; provided that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety are valid unless in direct conflict with this subchapter or any rule or order of the board or commissioner adopted under authority of this subchapter." 38 M.R.S. § 556.

142. “Rules and orders of the board or commissioner” as referenced in the CCA include licenses issued by the Maine Department of Environmental Protection (“DEP”).

143. The DEP issued a license for PPLC that explicitly approves the loading as well as unloading of crude oil onto tankers. Attached hereto as Exhibit I is a complete and accurate copy of PPLC’s license showing that the DEP consciously approved the loading of crude oil at PPLC’s facilities.

144. The Ordinance is preempted by the CCA.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for relief that there be a Judgment rendered that:

- (1) declares that the Ordinance violates the Supremacy Clause of the United States Constitution;
- (2) declares that the Ordinance violates the foreign affairs provisions of the United States Constitution;
- (3) declares that the Ordinance is preempted by principles of maritime preemption;
- (4) declares that the Ordinance violates the Due Process and Equal Protection Clauses of the United States Constitution and the separation of power provisions of the Maine Constitution;
- (5) declares that the Ordinance is inconsistent with the City of South Portland’s Comprehensive Plan;
- (6) declares that the Ordinance is preempted by 38 M.R.S. § 556;
- (7) enjoins Defendants and any City officers, agents, employees, and representatives from enforcing the Ordinance or taking any steps to implement the Ordinance, including the prosecution of any administrative actions, investigations, or suits against Plaintiffs or any of their members or affiliates for alleged violations of the Ordinance;
- (8) finds that Defendants have violated Plaintiffs’ civil rights and award them the costs of suit, including reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988; and

(9) awards all other relief to which Plaintiffs may be justly entitled.

Dated: February 6, 2015

/s/ Matthew D. Manahan  
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