

RECEIVED  
U.S. E.P.A.

2013 APR 18 PM 12:19

ENVIR. APPEALS BOARD

**CECILE T. SCOFIELD**  
**609 HWY. 466 – 1132**  
**LADY LAKE, FL 32159**  
**TEL.: 774-526-4738**  
**dawson.chris@comcast.net**

April 8, 2013

VIA PRIORITY MAIL

Clerk of the Board  
U. S. Environmental Protection Agency  
Environmental Appeals Board  
1200 Pennsylvania Avenue, N.W.  
(Mail Code 1103M)  
Washington, DC 20460-0001

Dear Clerk:

**RE: NPDES APPLICATION #MA0004871 (FOR WEAVER'S COVE ENERGY, LLC), ONE NEW STREET, FALL RIVER, MASSACHUSETTS**

**PETITION FOR REVIEW (APPEAL)**

*"The path to an intelligible standing doctrine lies in acknowledging statutory violations as injurious to the social and legal system..."<sup>1</sup>*

I believe that, discounting the documented clouded history of NPDES Permit #MA0004871 in a rush to issue this Permit to Weaver's Cove Energy, even with the new requirement that the permittee prepare a SWPPP, sets a dangerous precedent, encourages the type of corporate shenanigan that has taken place, and is contrary to the intent of the Clean Water Act to protect human health and the environment by reducing pollution in our waterways.

I filed written comments and participated in public hearings in conjunction with the referenced Permit. In addition, I am the former President of Citizens for Environmental Justice of Greater Fall River, Inc., a Massachusetts Non-Profit Corporation (now dissolved). I am also a Public Involvement Plan ("PIP") Petitioner for the Former Shell Bulk Oil Storage Facility located at One New Street, Fall River, Massachusetts.

Interestingly, the NPDES Permit in question was the subject of a "Case Study" found on the [iaspub.epa.gov](http://iaspub.epa.gov) website (see Exhibit A). Some of the issues raised in this Case Study are the same concerns that I have expressed with the awarding of NPDES Permit #MA0004871 to Weaver's Cove Energy, LLC. There is a pattern of deception with the transfer of this Permit going back to 2003, and the parties involved have made a mockery out of the entire NPDES Permitting process.

The author of the Case Study questioned where the Weaver's Cove Energy, LLC, 23 Spruce Street address came from. According to an FRS Report (see Exhibit B), 23 Spruce Street, Middleborough, is the Mailing Address for Jay Cashman, Inc. The author of the Case Study states that Jay Cashman "sold the property to Hess about five years ago." This is factually incorrect. Jay Cashman, Inc., did not sell this property to Hess (or to Weaver's Cove Energy, LLC). **Jay Cashman, Inc., sold the property to a newly formed Limited Liability Company, Fall River Marine Terminal, LLC, in March of 2001, approximately three months after purchasing the Site from Shell Oil in December of 2000 (see copy of page 1 of Quitclaim Deed marked as Exhibit G).**

I understand that, when property is transferred to a new owner, the entity that is buying the property and accepting responsibility for any existing NPDES Permit has to show a written agreement between the buying and selling parties (see Exhibit J) for EPA to proceed with the transfer of the permit. In the case at hand, at the time Jay Cashman, Inc., may or may not have complied with this regulation in 2003, the company had already sold the property to Fall River Marine Terminal, LLC. The question is whether that newly formed Limited Liability Company (filed with the Secretary of State on March 8, 2001) would have been in a position to accept responsibility for the NPDES Permit.

I find US EPA's response to my concern most troubling (see Response to Comment C2 – page 18): *While not taking a position in this permitting context on the question of whether the factual allegations described by the commenter raise any law enforcement issues, EPA believes that any such enforcement-related implications, if they exist, do not alter the fact that WCE, LLC, is the entity that should be the permittee for the facility in question.*

Shouldn't any possible law enforcement issues be addressed and resolved before issuing an NPDES Permit to an entity that perhaps was a party to any alleged wrongdoing?

*Responses to Public Comments (see Exhibit O):*

**Comments A1 and A2 (page 3):**

*As with the original NPDES Permit from 1978, the draft NPDES permit accurately identifies the facility address as One New Street in Fall River, MA. However, the Fact Sheet attached to the draft permit incorrectly identifies the site as approximately 73 acres. WCE in fact owns multiple parcels in the area, but the One New Street site that is the subject of this permit comprises approximately 50 acres.*

**Deception – Lot Size:**

See Draft Public Involvement Plan, 1 New Street, Fall River, MA (RTN #4-0749), Page 2 of 13, October 2007 (Exhibit C):

**2.0 SITE INFORMATION & BACKGROUND:**

Address: 1 New Street, Fall River

"The Site is a parcel of land, 65.3 acres in area..."

In addition, the Site Plan (see Exhibit D) for Weaver's Cove Energy's formerly proposed LNG Import Terminal at the One New Street Address, states: "**The Weaver's Cove project involves a proposed state-of-the-art LNG Terminal on an approximately 73 acre site located in the City of Fall River.**" While the Site may include more than one Lot, you will note from the attached artist rendering that the Weaver's Cove proposed LNG Terminal appears to include all 73 contiguous acres.

**From EPA – page 7:**

*The limited data available relating to the presence of metals and VOCs in the discharges through Outfalls 001 and 004 indicate the presence of these pollutants in some amounts, but EPA has determined that such information is insufficient to demonstrate whether these pollutants are originating from groundwater infiltration, surface runoff, or from residual contamination (associated with historical practices at the site) in the stormwater drainage system itself. The goal of the final permit's investigative study requirement is to demonstrate whether or not contaminated groundwater is infiltrating the stormwater drainage system on the site.*

**And from EPA – page 28:**

*The final Permit contains a Stormwater Pollution Prevention Plan (SWPPP) requirement, and the permittee must account for and address the drainage area of the entire site in developing its SWPPP, not only those drainage areas that are associated with the permitted outfalls to minimize the transport of such pollutants to the receiving water (the Taunton River), regardless of whether or not these portions of the site are drainage areas for outfalls.*

**Documented Spills and Releases:**

This requirement could be the reason that, according to Weaver's Cove Energy, LLC, the Site (One New Street, Fall River, MA) consists of only 50 acres (see above). There have been 78 documented Spills and Releases at the Site from 1972 to 1991 (see Exhibit E), with known quantities of contaminants totaling approximately 27,000 gallons and with additional quantities labeled as "unknown." According to Michael Bingham, former LSP of Record for Shell Oil, over 1,150,000 gallons of petroleum product (LNAPL) had been recovered from the subsurface as of September, 2004 (see Exhibit F).

In Comment J5 from the City of Fall River, as of 2005, it was estimated that the total volume of petroleum product in subsurface at the Site was 703,000 gallons. On what was that figured based, especially since there is a 30-acre plume of LNAPL floating on the water table at the Site? I look forward to reviewing Weaver's Cove's Energy's response to the EPA's request to account for and address the drainage area of the entire site in developing its SWPPP, especially since Weaver's Cove Energy's contention, according to a representative from MassDEP, is that "it's Shell's oil and Shell's problem."

**Comment B4 from the City of Fall River (page 10):**

"Periodically sheens are observed on the river. Most recently in April 2010 a substantial release of LNAPL to the river was discovered (RTN 4-22552) as a result of a high groundwater table from recent rains causing LNAPL to infiltrate the existing, historic brick drain line in places where it lacked integrity."

While the discharge came from the City of Fall River's Combined Sewer Overflow (CSO) system, an attempt was made to blame the Release on the City of Fall River. Fortunately, a fingerprint analysis of the oil performed by the U. S. Coast Guard found that the oil matched samples taken from one of Shell's remediation wells. Shell Oil assumed responsibility for the release and all follow-up work required by the Massachusetts Department of Environmental Protection.

**Deception – Weaver's Cove Energy threw the City of Fall River under the bus:**

In spite of the above resolution concerning the above spill (RTN 4-22552), Weaver's Cove Energy has now made the following very serious allegation against the City of Fall River (see page 29): **"The City of Fall River during routine rain events discharges raw untreated sewage from this outfall [the CSO] into the river. When it rains, toilet paper can be seen freely flowing into the river. The outfall pipe associated with this CSO is exposed at the river and is flushed with salt water from the Taunton River during every tidal cycle."**

Why did Weaver's Cove Energy feel the need to make such an outlandish statement? Is there an attempt here to vindicate themselves from potential future liability from any new reportable Releases of LNAPL or other VOCs from the 73-acre contaminated Site by blaming others?

**Comment L3 – Cecile Scofield (page 33):**

"I have a letter dated February 10, 2003, from the US EPA to Shell Oil, and page 2 paragraph 2 states, "We understand that the terminal proper has been sold to Jay Cashman, Inc., and is now known as Fall River Marine Terminal. This includes Outfalls 001 and 004 under NPDES permit 0004871." "Thus as we understand it, Shell is currently responsible for existing groundwater contamination and Jay Cashman for the marine terminal discharges 001 and 004 and any future potential contamination. Please advise if this is not correct."

**Deception – Shell Oil was not aware that property had been sold:**

See letter dated March 12, 2003, from Shell Oil to the USEPA (Exhibit H) stating as follows: "Pursuant to Michael O'Brien's request, Shell is providing written documentation to the USEPA Region that Jay Cashman, Inc., is the current owner and operator of the Fall River Marine Terminal and therefore is environmentally responsible for outfalls 001 and 004. Shell also verifies that all the information contained in page 2, paragraph 2 of your letter dated February 10, 2003 is accurate."

As you are aware, once again, Jay Cashman, Inc., did not own this site in 2003. As of March, 2001, the site was owned by Fall River Marine Terminal, LLC, and as noted in Response to Comment L5 (page 35), the Office of Environmental Stewardship has been provided with this information for its consideration. I expect that any adverse conclusions that may be drawn by the OES in this regard will be made public.

**Comment L10 (page 38):**

"The discharge monitoring report data for Outfalls 001 and 004 for the reporting period of January 2004 to June 2010 were reviewed for this permit reissuance. Please note that 36 DMRs filed from 2003 to 2006 for the permit actually list Fall River Marine Terminal as the permittee."

**Response to Comment L10 (page 38):**

*Since the last transfer took place in 2007, a portion of the monitoring period that was evaluated did coincide with ownership by a former entity, which was referred to on DMRs as Fall River Marine Terminal, LLC.*

**Deception – That is the issue...:**

**Fall River Marine Terminal, LLC, discharged effluent into the Taunton River without holding an NPDES Permit! The Company that held the NPDES Permit is not an affiliate of the LLC according to the Commonwealth of Massachusetts Secretary of State's Office.**

The Massachusetts Clean Waters Act, General Laws 21, Sections 26 through 53, and the Code of Massachusetts Regulations 314 CMR 3.00 prohibit the discharge of a pollutant to waters of the Commonwealth unless authorized by a permit issued by the Massachusetts Department of Environmental Protection. NPDES Permits are jointly issued in the Commonwealth of Massachusetts by EPA and MassDEP.

Also, as noted by the USEPA on page 39, *"It should be noted that any falsification of information submitted under this permit is subject to civil and criminal penalties as provided in Part II.C.1.e. of the permit."*

Once the communications from Shell Oil, et al, concerning the transfer of the NPDES permit finally surfaced (after I sent numerous inquiries via Email and had made several telephone calls to the USEPA, et al) I notified Mr. George Papadopoulos via Email on May 19, 2011, (see Exhibit I) that I believed that NPDES Permit MA 0004871 may have been transferred to Jay Cashman, Inc. "under a cloud."

**Comment L3 – page 33:**

The Draft Permit must also include verbiage to the effect that Weaver's Cove Energy will be responsible for any "future potential contamination." And I believe that failure to include such verbiage would frustrate Shell Oil Company's clear intent under the terms of the Purchase and Sale Agreement [Shell Oil, Seller, to Jay Cashman, Inc., Buyer, in December of 2000].

**Response to Comment L3:**

"It is not clear what the intention of the term "future potential contamination" was.

**US EPA's Own Words:**

"Future potential contamination" are the exact words used by the US EPA in its February 10, 2003, letter to Shell Oil referenced above: "Thus as we understand it, Shell is currently responsible for existing groundwater contamination and Jay Cashman for the marine terminal discharges 001 and 004 and any future potential contamination."

I think it is imperative that the US EPA contact Shell Oil to ascertain exactly what Shell's understanding of what "future potential contamination" means before any final NPDES Permit is issued to Weaver's Cove, especially since, according to the attached Email dated May 16, 2012, from Attorney Laura Turley, Managing Counsel for Shell Oil, (see Exhibit K): "Shell is committed to perform the required remediation at the site associated with Shell's historical use pursuant to Massachusetts requirements as outlined in the Purchase and Sale Agreement when Shell sold the property to Jay Cashman, Inc."

The original Deed between Shell Oil and Jay Cashman, Inc., contained numerous Covenants that were entered into and agreed to by the parties, and I believe these Covenants protected and indemnified Shell Oil from any loss from the exacerbation of the environmental contamination at the Site that may have been caused by other parties. This fact cannot and should not be ignored.

**More Deception – DMRs for NPDES Permit MA#0004871 for Outflows 001 and 004::**

**Permittee Listed:**

Jay Cashman, Inc. – from 01/01/04 to 03/01/04 [Jay Cashman, Inc., did not own the Site]

Jay Cashman, Inc. – name is deleted – Fall River Marine Terminal, LLC, typed in – from 04/01/04 to 07/01/05

Jay Cashman, Inc. – name is deleted from 09/01/05 to 11/01/05

Fall River Marine Terminal, LLC – handwritten – listed from 04/01/06 to 12/01/06  
(Note: Fall River Marine Terminal, LLC, was preparing to sell the property to Weaver's Cove Energy, LLC.)

Jay Cashman, Inc. – name is deleted on 01/01/07. Alan Perrault is listed as Vice President of Fall River Marine Terminal, LLC. Organizational structure for LLCs does not include "Vice Presidents", and you will note from the Certificate of Registration for Fall River Marine Terminal, LLC, (see Exhibit L) that Jay M. Cashman is the "Manager" of the LLC, and only Mr. Cashman was authorized to execute any documents to be filed with the Secretary of State of the Commonwealth of Massachusetts.

Weaver's Cove Energy – listed from 2/1/07 to 4/1/11

**Deception before additional Federal Agency (FERC):**

Please note paragraph 130 on the attached Order on Rehearing (Weaver's Cove) before the Federal Energy Regulatory Commission issued January 23, 2006, (see Exhibit M) that lists Jay Cashman, Inc., as the "current owner" of the Site (in 2006) while the DMRs for the period April, 2006, to December, 2006, show Fall River Marine Terminal, LLC, as the "Permittee."

**Conclusion – See Response to Comment L5:**

*As EPA has already stated, to the extent that the comment raises law enforcement related issues or questions, EPA does not believe that such issues affect the entity to whom the final permit should be issued or the permit's terms and conditions.*

I disagree since I believe that the Permittee may have been involved in the deception. As an aside, NPDES Permit #MA0004871 was issued to Jay Cashman, Inc., in March of 2003. Weaver's Cove Energy filed their LNG Application with the Federal Energy Regulatory Commission in December of 2003. I also believe that the Barry P. Fogel, who witnessed Mr. Jay Cashman's signature on the original Deed (Shell to Cashman), is the same Barry P. Fogel who spoke at seminars on "The Role of MEPA in the Siting of LNG projects in Massachusetts" (see Exhibit N).

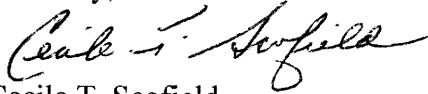
When Shell Oil sold the property to Jay Cashman, Inc., in 2000, the property was "undervalued" with a Purchase Price of \$2.6 million due to the fact that the land was heavily contaminated with petroleum and Other Hazardous Materials. In addition, the Deed (Shell to Jay Cashman, Inc.) contained stringent "Current" and "Future" Development Restrictions. Three months after purchase, Jay Cashman, Inc., flipped the property to Fall River Marine Terminal, LLC, for \$1, and the property was subsequently sold to Weaver's Cove Energy, LLC, for \$16.8 million. As stated previously, Shell Oil is committed to performing the required remediation at the site as outlined in the P & S Agreement with Jay Cashman, Inc.

I am not comfortable issuing NPDES Permit #MA0004871 without input, in writing, from Shell Oil that clearly details exactly who will be responsible for what in the event of a future Release. I think Weaver's Cove has made its position clear (see page 33): "Weaver's Cove has no control over the processing and handling of groundwater pumped from under the site that is owned by Weaver's Cove." However, when you buy contaminated land in Massachusetts and enter the Chain of Title, I believe you are also buying the liability associated with the contamination. Therefore, while Shell may be processing and handling the contaminated groundwater, I believe that Weaver's Cove Energy still owns that groundwater.

I hereby request assurance that Shell Oil is participating in this entire NPDES Permitting process since the citizens of the Commonwealth of Massachusetts could find themselves in the middle of a legal fight between Weaver's Cove and Shell in the event of a new

Release or Spill in the future. Before any final NPDES Permit is issued to Weaver's Cove Energy, I hereby strongly suggest that this important issue be addressed.

Sincerely,



Cecile T. Scofield

cts

Attachments

<sup>1</sup> Cassuto, David N., "The Law of Words: Standing, Environment, and other Contested Terms" (2004). Pace Law Faculty Publications. Paper 39

cc: Attorney Laura C. Turley, Managing Counsel, Shell Oil Company

**Note to Shell Oil:**

According to the USEPA (see Response to the City's Comment J4 and WCE's related comment – page 27): *During EPA's 2007 inspection, photographs were taken of a containment structure upstream of Outfall 004, which apparently was not an oil/water separator. The permittee is correct that the oil/water separator that had previously been in operation for Outfall 004 was dismantled many years ago. **It appears that the containment structure was also removed a few years ago when the permittee replaced some of the drainage structures and altered the routing of some of the drainage lines in the Outfall 004 drainage area.***

Was the "permittee" referenced here Weaver's Cove Energy, LLC, and if so, were Shell Oil and the Massachusetts Department of Environmental Protection aware of these activities? As noted in the footnote to Mr. Bingham's September 16, 2004, letter to the Federal Energy Regulatory Commission (marked as Exhibit F), "Weaver's Cove does not have authorization to modify the existing system on its own behalf."