



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

April 26, 2021

Tim Winters
Sprague Operating Resources, LLC
185 International Drive
Portsmouth, NH 03801

Re: Sprague's submittals in response to 2021 Notice of Violation

Dear Mr. Winters:

On February 27, 2021, Sprague submitted to the Department the following documents in response to the corrective actions 1 and 2 in the Department's January 15, 2021 Notice of Violation (NOV):

1. Terminal Operations Manual (TOM) 3.02 "Cargo Operations for Dry Bulk, Breakbulk & Project Cargo";
2. TOM 3.06 "Dry Cargo Pollution Prevention and Response";
3. Form 03 "Ship Shore Safety Inspection"; and
4. Form 19 "Dry Cargo Risk Assessment".

The Department has reviewed the documents relative to whether, in our assessment, these procedures, if employed during operations similar to the December 2, 2020 event, would have either prevented the spill, reduced its severity, or changed Sprague's overall response.

TOM 3.02 appears to be a reasonable procedure to follow in conjunction with the associated forms. We suggest that the Terminal Log include an entry for any loss of cargo. TOM 3.06 raised a number of questions. Most importantly, how would Sprague determine the risk of materials that do not have a reportable quantity (RQ) pursuant to 40 CFR 302.5? Specifically, in 3.06 (5) *Release Response and Reporting*, there is no section (b) detailing the plan for the release of dry cargo that does not have a RQ. This is exactly the information that the Department was seeking as it pertains directly to the December 2, 2020 spill of Solid Recovered Fuel that has no RQ because it is not a listed hazardous or toxic substance.

The steps detailed in 3.06 *Procedure* appears systematic and fairly comprehensive though *Severity Assessment* (2) relies in part of the RQ once again and (d) raises the topic of response complexity, which from the Department's perspective is directly a result of the speed of the

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response and adequacy of the response plan. As systematic as TOM 3.06 appears, it's translation into Form 19 raises concerns. It might be helpful to reference specific sections of 3.06 in Form 19, for guidance on each part of the form. However, there is detail in the tables in Form 19 that is not included in the 3.06 which might be helpful. For instance, in Form 19 there are specific descriptors for *Distribution* that are not included in 3.06 which are very clear. However, Form 19 includes very vague language in *Quantity Released*, where 3.06 refers to the quantity that "could be" released during transfer operations. It is the Department's opinion that consistency and clarity of terms in making these judgements is essential. Form 19 also relies on the RQ in severity matrix, which in conjunction with Step 1, drives the overall risk assessment. With nebulous terms like "negligible/significant/substantial" and the reliance on RQ values, it is not clear how the risk would be assessed for cargoes like the Solid Recovered Fuel.

In summary, it is unclear to the Department how Sprague will assess the risk of or handle spills to waters of the state of cargoes without an RQ. There also does not appear to be any acknowledgement in these documents that spills of any pollutant to the waters of the state from cargo operations are a violation of State law.

The Department has received numerous requests for copies of the materials submitted in response to the NOV from interested parties. We will be providing them with this letter and the documents referenced. We may receive additional comments from those interested parties.

Once you have had the opportunity to review this letter, we would like to schedule a meeting to discuss our concerns. Please contact me at your earliest convenience.

Sincerely,



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