

STEPHEN F. HINCHMAN
ATTORNEY AT LAW

December 2, 2011

Michele Lumbert, Clerk
Kennebec County Superior Court
95 State Street, Augusta 04330

Re: *Thanks But Not Tank, et al., v. Department of Environmental Protection*

Dear Ms. Lumbert,

Please find attached a copy of Thanks But No Tank, *et al.*'s petition for judicial review of the Department of Environmental Protection's Oct. 24, 2011 Order in the matter of DCP Midstream Partners, LP proposed propane terminal in Searsport, Maine.

Additionally, please also find attached a check for the \$150 filing fee, a civil cover sheet and a copy of the Department's Order, together with a certificate of service.

Sincerely,

Stephen F. Hinchman, Esq., counsel for
Petitioners

Cc: Service List

Enclosures

STATE OF MAINE
Kennebec, ss

SUPERIOR COURT
Docket No.

THANKS BUT NO TANK, TOM GOCZE,)
CHRISTOPHER HYK, ALBERT HALL,)
JAMES GROSSMAN, PHYLLIS SOMMER,)
JOELLE MADIEC, BETTY SCHOPMEYER,)
ANN J. FLACK, JANET WILLIAMS,)
ASTRIG AND STEVE TANGUAY, ANNA) PETITION FOR REVIEW OF FINAL
AND THEODORE KESSLER, TARA) AGENCY ACTION, RULE 80C
HOLLANDER, SUZANNE FARLEY,)
PETER TABER, MCCORMACK AND)
JAY ECONOMY, TIM BOUDETTE, and)
ANNE AND BEN CRIMAUDO)
)
Petitioners,)
)
v.)
)
MAINE DEPARTMENT OF)
ENVIRONMENTAL PROTECTION)
)
Respondents.)

PETITION FOR REVIEW OF FINAL AGENCY ACTION OF THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION IN THE MATTER OF
DCP MIDSTREAM PARTNERS, LP, PROPANE TERMINAL

NOW COME Thanks But No Tank (“TBNT”), Tom Gocze, Christopher Hyk, Albert Hall, James Grossman, Phyllis Sommer, Joelle Madiec, Betty Schopmeyer, Ann J. Flack, Janet Williams, Astrig and Steve Tanguay, Anna Kessler, Theodore Kessler, Tara Hollander, Suzanne Farley, Peter Taber, McCormack and Jay Economy, Tim Boudette, and Anne and Ben Crimauco (together as “Petitioners”) to seek review of final agency action by the Maine Department of Environmental Protection on October 24, 2011, granting Natural Resources Protection Act (“NRPA”) and Site Location of Development Act (“Site Law”) permits to DCP Midstream

Partners, LP (“DCP”) authorizing construction of a liquefied propane gas (“LPG”) terminal in Searsport, Maine.

I. INTRODUCTION AND BACKGROUND

1. DCP Midstream, LP, a wholly owned limited liability subsidiary of Conoco Phillips and Spectra Energy, wants to build the largest LPG terminal and bulk storage tank on the East Coast on 24 acres on the edge of Long Cove in Searsport, Maine. The facility (the “Terminal”) will include ship unloading facilities, a mile long pipeline to a 22.7 million gallon bulk storage tank that will store compressed LPG at -44 °F, a 75-foot tall emergency propane flare that will burn about 500 hours a year, additional tanks, compressors, pumps and refrigeration units encircled by a 20 foot containment dyke, LPG tanker truck loading stations, a rail car loading yard, and miles of roads and fencing.

2. The 24-acre Terminal grounds will be permanently clear-cut, and will operate 24 hours per day, 365 days per year. The bulk storage tank will be 200-feet wide and 138-feet tall, will tower above anything else in Searsport, and the tank and terminal will be visible for miles along the Midcoast and from Penobscot Bay – particularly at night.

3. The Terminal’s truck and rail loading facilities are expected to fill 40 to 144 trucks and 8 rail cars per day – equating to 80 to 288 truck trips per day, or one truck trip through town every five to 15 minutes – double the current truck traffic from the Mack Point Intermodal Cargo terminal.

4. This massive facility will be located a stone’s throw from Route 1 and mere yards away from Searsport’s most popular restaurant, a motel and several businesses and private restaurants. While the only other facility of this size in the east, in Tampa, Florida, has a safety

and security zone of two miles with no other homes or businesses, historic downtown Searsport, population 1,161, will be just over a mile away.

5. Searsport has had a commercial port for many years and the current intermodal cargo terminal tucked out of sight on Mack Point, is an important part of its economic base. But tourism is a far larger part of its economy and provides many more jobs and small businesses.

6. The proposed DCP Terminal will upset the region's current balance between tourism, industry and small business. The extreme visual impacts from this major industrial site, the excessive noise, light and air pollution, and the inherent safety, security, and environmental risks associated with this highly volatile and explosive fuel, will fundamentally and permanently change Searsport and the surrounding community. Petitioners believe the direct and indirect impacts of the project, including reduced scenic character, loss of recreational opportunities, heavy industrialization, pollution and the intensive truck traffic – will devastate the community and economy of Searsport, destroying their quality of life and making their homes and businesses unmerchantable.

7. Despite an outpouring of public comment and concern over the impacts of the proposal, Maine Department of Environmental Protection Commissioner Patricia Aho has determined that the Terminal will fit harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character air quality water quality or other natural resources under the Site Location of Development Act (“Site Location Law”), 38 M.R.S.A § 481, *et. seq.*, and will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses under the Natural Resources Protection Act (“NRPA”), 38 M.R.S.A § 480 *et seq.*

8. As alleged below, the applicant failed to meet its burden to demonstrate compliance with the Site Location Law and NRPA by submitting fatally deficient visual impact assessment and noise modeling analyses, and by failing to provide evidence of any kind regarding impacts to air quality, truck noise and scenic impacts, recreational and navigational impacts, and impacts to existing uses. The Department's rubber-stamp review – despite and in blatant disregard of extensive public comment about the project's significant and unavoidable impacts – further violates the Acts, and is unsupported by the evidence, is arbitrary and capricious, and is an abuse of discretion.

9. Therefore, Petitioners request this Court declare the proposed project in violation of the Site Location Law and NRPA and vacate and reverse the Commissioner's Order.

II. THE PETITIONERS

10. Thanks But No Tank ("TBNT") is a coalition of residents and small business owners living and working in the Searsport region that seek to support, protect, and maintain the region's economy, environment, scenic character and quality of life. TBNT's members, which include all of the individually named Petitioners in this case, and many others, are concerned that the extreme visual impact and excessive light, noise, and air pollution from the proposed DCP Terminal and associated ship, truck and rail traffic, would severely, adversely and unduly affect their homes, businesses, environment community and quality of life. TBNT's members believe that this extreme industrial activity does not fit harmoniously within the existing natural environment and that – as a direct result of the reduced scenic character, loss of recreational opportunities, heavy industrialization, pollution and lower quality of life – it will devastate the community and economy of Searsport, make life there unviable and their homes and businesses unmerchtable.

11. Tom Gocze resides at 245 E. Main Street in Searsport. He owns 7.7 acres abutting the eastern edge of the DCP Terminal, including 1,200 feet of waterfront on the east side of Long Cove. Mr. Gocze is President of American Solartech, LLC, which is based on the same property and which manufactures heat storage systems for wood boiler and solar heating systems. Mr. Gocze also uses and enjoys his property and nearby scenic resources, such as Sears Island and the waters and shoreline of Long Cove, for recreational and aesthetic purposes. Mr. Gocze is concerned the 24-acre Terminal, LPG bulk storage tank, rail car loading station, piping, containment dykes, compressor buildings and other aspect of the facility will be highly visible from his home, on-site workplace, and areas he uses for recreation, and that the extreme visual impact, and excessive light, noise, and air pollution from the Terminal will severely and adversely affect his property value, business, existing uses of the area, and quality of life.

12. Christopher Hyk resides in Belfast, Maine. My Hyk is an avid sailor and has chosen to live in this area, in part, because of the world-class sailing and scenic character of the pristine waters of upper Penobscot Bay. Mr. Hyk also enjoys visiting and intends to continue visiting Islesboro, and particularly the Islesboro Land Trust's Turtlehead Preserve, for recreational purposes and to enjoy the spectacular scenery and views. The proposed Terminal will be highly visible from these recreational areas, and the visual impact, and excessive light, noise, and air pollution will negatively affect his existing uses. In addition, Mr. Hyk is concerned that visual impacts and the safety and exclusion zones in effect during the transit, unloading, and anchoring of LPG tankers will prevent or interfere with his recreational uses of the waters of Penobscot Bay.

13. Albert Hall owns and operates the Anglers' Restaurant and Bait Motel at 217 East Main Street on Route One in Searsport. Angler's is the most popular restaurant in Searsport and, together with the motel, operates year round, providing 35 year round jobs in winter and 45-50 jobs during the summer. Summer trade sustains these businesses and their economic viability is dependent upon their ability to attract tourists. Both businesses directly abut the proposed 24-acre Terminal site. The proposed 200-foot wide by 138-foot tall LPG bulk storage tank (a few hundred feet away and slightly downslope) will rise more than 100 feet above the restaurant and motel and will, literally, overshadow the Angler's parking lot. Loaded LPG tanker trucks will exit the Terminal site at the edge of the restaurant parking lot. Because of the gradually sloped terrain and permanent clearing of vegetation, many of the facility's elevated structures, including the bulk storage and fuel tanks, compressor buildings, outdoor equipment, emergency flare, piping, and train loading station may also be visible from the property. Nighttime safety and security lighting would shine directly in the rear windows of the motel, and noise from round-the-clock operations and loading of LPG Tanker trucks a few hundred feet away would disturb guests. Mr. Hall is concerned that the project's extreme visual impact, excessive noise, light and air pollution, construction blasting, truck traffic and other construction and operation activities will devastate his businesses and destroy his property values. In addition, because he had the right lobe of his lung removed a few years ago. Mr. Hall is deeply concerned and afraid that reduced air quality from the Terminal and LPG tanker trucks and rail traffic will negatively affect his health.

14. James Grossman lives on Rocky Point Road in Stockton Springs. His home is just over two miles away from the proposed facility and he will have a direct and unobstructed line-of-sight over the water to the proposed Terminal. Mr. Grossman choses to live in the area,

in part because of the exceptional visual quality, scenic character, and quality of life. Mr. Grossman is concerned that the extreme visual impact, excessive noise, light and air pollution, and risk for catastrophic industrial accident will detract from his uses of the area and will lower his property values.

15. Phyllis Sommer has owned and operated Pumpkin Patch Antiques in Searsport, Maine, for 36 years. Ms. Sommers' business depends upon tourists attracted to the area by its scenic character, natural resources and quality of life. She is concerned that the visual impact of the massive 200-foot wide by 138-foot tall bulk storage tank, 75-foot tall flare, and other industrial structures and the significant increases in truck traffic will stress her business and Searsport's already fragile infrastructure and historic buildings, and will put the town at risk of being classified as a truck route and heavy industry area, such that tourists may by-pass the area. The direct and indirect impacts may result in loss of revenues, property valuation, economic viability, and the ability to attract incoming small businesses or new residents, finance municipal services, and maintain Searsport's status as a tourist destination. In addition, Ms. Sommers is concerned about impacts to scenic and water-related recreational opportunities that attract visitors, as well as safety and security and the Town's emergency response capabilities.

16. Joelle Madiec lives at 51 Rocky Point Road in Stockton Springs. For the last thirteen years, she has been privileged to live on Cape Jellison and enjoyed the beauty of Stockton Springs Harbor. In September 2010, she purchased two acres of land with a deeded right of way to the shore, situated at the end of Rocky Point Road about three hundred feet from a sandy beach which faces Sears Island. It has seasonal partial views of the ocean. This summer, she started clearing the land and constructed a boardwalk to the shore, with plans to build a cottage and to rent it to vacationers in the summer and early fall. The DCP Midstream proposal

has put a halt to her project. If the Terminal becomes a reality, instead of a private ocean retreat, her property will be facing the largest LPG storage and distribution terminal on the East Coast of the United States, with excessive noise, light and air pollution. Instead of a tranquil natural landscape, she will view a major industrial complex. The Terminal threatens the value and salability of her land, and, literally, her dreams for the future.

17. Betty Schopmeyer lives in downtown Searsport, just one house away from Route One, and 1.3 miles from the proposed Terminal site. She works in downtown Searsport and depends on the small businesses there for 90 percent of her shopping. She is deeply concerned about the effect of locating such a major industrial facility so close to her community, home and place of work. In particular she is concerned that significantly increasing truck traffic by up to 288 LPG tanker truck trips per day would severely compromise the community's scenic character and that, if the project is built, this part of Midcoast Maine would become known as a heavy industry/trucking zone that tourists will avoid. Her employer (and thus her job), like many small businesses in town, depend on tourist dollars in the summer and could be damaged or destroyed if this income stream is diminished. In sum, she feels that the proposed project will put her home, job, safety, community, and quality of life at risk.

18. Ann J. Flack lives at 8 Jackson Ave in Searsport. She chooses to live in the area because of its scenic character and quality of life. She is concerned that the proposed Terminal is incompatible with the surrounding community, landscape and scenic character, and would be a severe eyesore in Penobscot Bay. In addition, she is concerned that the enormous increase in heavy truck traffic will result in excessive and unacceptable levels of noise, air pollution and loss of scenic character and would diminish the quality of life for her and her neighbors forever.

19. Janet Williams resides at 5 Elm Street in Searsport resident and owns the Elm Cottage Bed and Breakfast. Ms. Williams is concerned that, unlike the existing facilities on Mack Point, the massive scale of the DCP Terminal and bulk storage tank will be highly visible from Route One and downtown Searsport and, because the entire 24 acre site will be clear-cut, also visible from the water. She is concerned that project will unduly and adversely affect scenic resources in the region and that loss of scenic character, excessive noise, air and light pollution will devalue her home and business and that of her neighbors, and may so fundamentally alter the community and business environment as to make their properties unmerchantable. She is further concerned that loss of scenic character due to significant increases in heavy truck traffic in town will upset the balance between small businesses, tourism, and industry and will deter tourists and retirees, further devaluing her business and property and harming her use of the area and her quality of life.

20. Astrig and Steve Tanguay own and operate the Searsport Shores campground at 216 West Main St. in Searsport. The campground online profile states that it is

Considered Mid-coast Maine's premier oceanfront campground, on the shores of Penobscot Bay, located between bustling Bar Harbor (Acadia National Park) and charming Camden village, you can find camping sites overlooking the ocean. Searsport Shores Ocean Campground offers old-fashioned camping fun in a family atmosphere.

Park your RV along the ocean or in a pull-through site. Pitch your tent in a shady spot or camp under a canopy of stars. From this ocean front campground you can kayak right from the beach, hike the nature trails, eat Maine lobster on the shore, fish from the beach, explore tidal pools and join the kids in a basketball game on the playground.

Want solitude? We'll direct our campers to 900 uninhabited acres on an easily accessible [Sears] island, only 5 minutes away, for day use exploration including hiking, boating and biking. At Searsport Shores Ocean Campground, the fishing (and shopping) is good, the people are friendly, the campfires are crackling and the ocean is inviting.

The Tanguay's guests come from all over the United States to escape the noise, light and air pollution of more urban areas and to vacation on the unspoiled coast of Maine. The proposed Terminal will adversely impact the scenic resources, scenic character, recreational opportunities and quality of life that makes their business so attractive. The bulk tank, flare, and light pollution will fundamentally alter the skyline and views from their oceanfront property and from the waters and scenic resources used by their guests. LPG tankers anchored in front of the campground will exacerbate the noise and light pollution, further detract from the scenic character and, may disrupt their summer kayak business due to maritime safety and security zones. In addition, the Tanguay's are concerned about LPG tanker truck traffic, the impacts of attendant noise and air pollution, and the difficulty increased traffic will have upon visitors entering and exiting the campground onto Route One.

21. Anna and Theodore Kessler live at 7 Navy Street in Searsport, less than one mile from the proposed Terminal. The Kessler's are gravely concerned about the inherent danger of living in such close proximity to a 22 million gallon tank storing highly volatile fuel, the loss of scenic character that they now enjoy, and the impacts of excessive visual, sound, light, odor, and air pollution. They are concerned that Searsport's four-person police force and volunteer fire department cannot provide adequate protection to the community; that the project will irreparably harm, indelibly change and expose to risk of terrorist attack, the entire Penobscot Bay and Midcoast region; that Searsport will become undesirable as a tourist attraction; that the region's recreation, wedding, lodging, restaurant and catering industries will suffer; and that their property values will plummet so far as to become completely unmarketable.

22. Tara Hollander lives at 24 Baycrest Lane in Stockton Springs and owns 26 acres on Cape Jellison including a 250-foot waterfront parcel on Stockton Harbor facing Sears Island

and a 1,000-foot waterfront parcel opening onto Penobscot Bay. The proposed LPG bulk storage tank and other Terminal facilities would be highly visible from her property, and she would be affected by excessive noise, air and light pollution and safety and security concerns. Noise, in particular, carries over and is often amplified by the water. Ms. Hollander is also concerned about the impact increased and concentrated truck traffic on Route One will have on the community and scenic character of the area.

23. Suzanne Farley and Peter Taber reside at 16 Pike Ave., in Searsport. Ms. Farley and Mr. Taber have chosen to live and raise their family in the area because of its scenic character, recreational opportunities and quality of life. They are avid saltwater kayakers who regularly recreate in the local waters off Mack Point and Long Cove. This recreational and aesthetic experience would be adversely impacted and jeopardized both by the visual presence of the proposed Terminal and by safety, security and exclusion zones associated with LPG tanker ship traffic. They are also concerned that the proposed Terminal would fundamentally alter and adversely affect the scenic character and quality of life in Searsport, and that excessive light, noise, and air pollution from the Terminal and associated ship, truck and rail traffic, would severely impact their uses of the area and – as a direct result of the reduced scenic character, loss of recreational opportunities, heavy industrialization, pollution and lower quality of life – the value of their home. Like many other Petitioners, Ms. Farley and Mr. Taber are concerned that this extreme industrial activity in the midst of their community will make life there unviable and their homes unmerchantable.

24. McCormack and Jay Economy own and operate the Yardarm Motel at 172 East Main Street in Searsport. The motel is located on Route One less than a third of a mile from the Terminal. The Economy's are concerned that the loss of scenic character and excessive and

round-the clock noise, air and light pollution from the proposed Terminal and associated truck traffic will severely and adversely impact their business and the entire tourist trade in Searsport. Tourists do not want to stay in a place where they cannot get a good and peaceful night's sleep. The Economy's send many of their guests to Angler's Restaurant and fear the loss of this resource to their business. Tourists will not want to patronize a restaurant that sits, literally, in the shadow of a massive industrial facility and LPG bulk storage tank that is a potential threat to their safety. The Economy's are aware that a liquid propane facility in Toronto exploded in 2008 and they are concerned for their personal safety as well as the safety of our motel guests. The Economy's and others have worked hard to make Searsport a destination for tourists rather than just a stopover on the way to Bar Harbor. They were involved in the process to create the Sears Island Conservation Area in Searsport, and tourists now come and stay to hike the trails and experience the beauty and natural resources of the island. The proposed propane facility will be seen clearly from Sears Island and the Economy's fear this will deter tourists from going to the island. Additionally, the ships that will bring the propane to Searsport may deter recreational boaters from visiting or making return visits to Searsport. The Economy's are also concerned that the Terminal will negatively affect their property values and increase their insurance rates.

25. Tim Boudette lives at 14 Mt. Ephraim Road in Searsport. He is concerned that noise, air, light and visual pollution from the proposed LPG Terminal will adversely and unduly affect his property values, quality of life, degrade the visual characteristics and scenic character of the community, and harm existing businesses.

26. Anne and Ben Crimaudo live at 15 Shoreside Lane in Searsport. They are concerned that noise, air, light and visual pollution from the proposed LPG Terminal will

adversely and unduly affect their property values, quality of life, degrade the visual characteristics and scenic character of the community, and harm existing businesses.

III. JURISDICTION AND VENUE

27. This Court has jurisdiction to hear this Petition pursuant to 38 M.R.S.A § 346(1), the Maine Administrative Procedures Act, 5 M.R.S.A § 11001 *et seq.*, and Rule 80C of the Maine Rules of Civil Procedure.

28. Venue is proper pursuant to 5 M.R.S.A § 11002.

IV. STATUTORY AND REGULATORY BACKGROUND

A. THE NATURAL RESOURCES PROTECTION ACT

29. In enacting NRPA, the Legislature found that Maine’s wetlands, streams and rivers have “great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State.” 38 M.R.S.A § 480-A. *See also* 06-096 CMR ch. 315, § 1 (“Legislature’s recognition of the scenic beauty of these protected resources through statute distinguishes the visual quality of these resources and its value to the general population.”).

30. To protect these resources and the public benefits they provide, applicants for permits under NRPA must affirmatively demonstrate that a proposed activity will not

unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses. 38

M.R.S.A § 480-D(1); 06-096 CMR ch. 315, § 1.

31. Pursuant to the Board's rules, to demonstrate compliance with NRPA's scenic and aesthetic standards, "basic evidence must be provided to ensure that visual concerns have been fully addressed in each application," 06-096 CMR ch. 315, § 6, including:

- a. An inventory of scenic resources within the viewshed of the project based upon the MDEP Visual Evaluation Field Survey Checklist;
- b. A description of the activity relative to its location and scale within the viewshed of any scenic resource; and
- c. A description of the existing visual quality and landscape characteristics.

32. A "scenic resource" is defined as public natural resources or public lands visited by the general public in part for the observation, enjoyment, and appreciation of natural or cultural visual qualities. 06-096 CMR ch. 315, § 5(H). A scenic resource is further defined as the typical point from which an activity regulated by NRPA can be seen. *Id.* § 10. Scenic resources can be locations of national, State, or local significance, based on the type of users, and include places such as, but not limited to, State Parks, National Parks, local parks, properties on or eligible for inclusion on the National Historic Register, natural landmarks and refuges, and any other public lands or waters visited for their scenic value. *Id.*

33. Visual impact assessments ("VIA") are required when a proposed activity appears to be located within the viewshed of and has the potential to have an unreasonable adverse impact on a scenic resource. Pursuant to 06-096 CMR ch. 315, § 7, a VIA must be prepared by a design professional trained in visual assessment procedures and must use standard professional practices to illustrate the proposed change to the visual environment. The radius of the impact area to be analyzed must be based upon the relative size and scope of the proposed activity given the proposed location, and the VIA must:

- a. Provide a complete inventory of all scenic resources within the viewshed of the proposed activity;
- b. Describe the existing surrounding landscape;
- c. Identify and illustrate impacted scenic resources, including representative and worst case viewpoints, using either line of sight profiles (cross sections) and/or photosimulations and computer generated graphics; and
- d. Include a narrative description of the significance of any potential impact, the level of use and viewer expectations, measures taken to avoid and minimize visual impacts and steps to mitigate potential adverse visual impacts.

34. Pursuant to Department guidance, for each impacted scenic resource, licensing staff must complete a Basic Visual Impact Assessment Form rating the degree of impact to visual elements including landscape compatibility (color, form, line, texture), scale contrast (degree of intrusion, size), and spatial dominance (landscape, situation, backdrop). Those ratings are then compared in a Visual Impact of Development Matrix comparing the impact with the scenic significance of the view. *Guidance for Assessing Impacts to Existing Scenic and Aesthetic Uses under the Natural Resources Protection Act*, DEPLW0541-A2003 (July 20, 2003).

35. The visual impact ratings and matrix for each scenic resource serve, in aggregate, as guidance for the Department's determination of compliance with NRPA's scenic and aesthetic impact standards. The determination of visual impact is based upon consideration of landscape compatibility, scale contrast and spatial dominance, and the type, area and intransience of the activity, the significance of the scenic resource and the degree to which viewer expectations will be altered. 06-096 CMR, ch. 315, § 9. In addition the Department must consider the functions and values of the protected natural resource, any proposed mitigation, practicable alternatives that will have less visual impact, and the cumulative effects of frequent minor alterations on the scenic resource. *Id.*

36. The Board has not established rules governing review of impacts to recreation or navigation.

B. THE SITE LOCATION OF DEVELOPMENT ACT

37. In enacting the Site Location Law, the Legislature found that “many developments because of their size and nature are capable of causing irreparable damage to the people and the environment on the development sites and in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect the environment and quality of life in Maine.” 38 M.R.S.A § 481.

38. To obtain a permit under the Site Location Law, an applicant must demonstrate that it has “made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.” *Id.* § 484.

39. Pursuant to rule, the Department’s scope of review under the Site Location Law must include and the Department

shall consider the size, location, and nature of the proposed development in relation to:

- a. The potential primary, secondary, and cumulative impacts of the development on the character, quality, and uses of the land, air, and water on the development site and on the area likely to be affected by the proposed development; and
- b. The potential effects on the protection and preservation of the public's health, safety, and general welfare.

06-096 CMR, ch. 372, § (1).

40. Regarding scenic character, the Board’s rules state that “[t]he Board considers scenic character to be one of Maine's most important assets. The Board also feels that visual surroundings strongly influence people's behavior.” 06-096 CMR, ch. 375 § 14(A). To comply with the Site Law standards, permit applications “shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area,” and must include, for example, plans for lighting, buffer zones, and vegetative screening. *Id.* § 14(B)-(C).

41. Regarding air quality, the Board’s rules state that “[t]he Board recognizes that point source emissions from certain types of ... industrial developments ... and non-point source emissions deriving from industrial ... developments can have an unreasonable adverse effect on air quality.” *Id.* ch. 375, § 1(A). The mandatory scope of review for Site Law applications includes air pollution from non-point sources. Specifically, the rules require that applications “shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on air quality, including ... [e]vidence that increased traffic generated by the development will not significantly effect the ambient air quality.” *Id.* §§ 1(B)-(C).

42. Regarding noise, the Board’s rules state that “[t]he Board recognizes that the construction, operation and maintenance of developments may cause excessive noise that could degrade the health and welfare of nearby neighbors.” *Id.* ch. 375, § 10(A). Permit applicants for industrial and commercial developments must provide their “plan and intent to make adequate provision for the control of sound,” *id.* § 10(D)(2), including, among other items,

- a. A description of major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed development, including their locations within the proposed development.
- b. A description of the daytime and nighttime hourly sound levels and, for short duration repetitive sounds, the maximum sound levels expected to be

produced by these sound sources at protected locations near the proposed development;

- c. A description of proposed major sound control measures, including their locations and expected performance.

Under the Board's rules, *but not under statute*, registered and inspected vehicles "which enter the development to make a delivery or pickup" are exempt if they are parked in the development for less than 60 minutes. *Id.* § 10(C)(5)(c)(ii).

V. THE FINAL AGENCY ACTION TO BE REVIEWED

43. Department Order #L-25359-26-A-N and #L-25359-TG-B-N was issued pursuant to NRPA and the Site Location Law to DCP Midstream Partners, LP, on Oct. 24, 2011. The permit authorizes construction of a \$40 million LPG shipping terminal, bulk storage facility, and truck and rail loadouts on 48 acres adjacent to the existing Mack Point Intermodal Cargo Terminal in Searsport, Maine.

A. PROJECT DESCRIPTION

44. The Terminal would be located on a 24-acre site and would consist of ship unloading facilities, a mile long pipeline to a 22.7 million gallon LPG bulk storage tank, four truck loading stations, an eight-car train loading station, four ethyl-mercaptan storage tanks, LPG fuel storage tank, three propane-fired outdoor heaters, a 75-foot tall emergency propane flare, an emergency diesel-fueled generator and fire water pump, a fire water storage tank, administration building, compressor and motor control center buildings, five electric compressors, an electric air fin cooler, four electric loading pumps, and miles of additional above-ground pipes and valves, security fencing, roads and drives.

45. The Terminal will utilize the existing Sprague Energy Dry Cargo Pier on Mack Point. The Terminal will be capable of receiving four to eight ships per year carrying approximately 410,000 barrels (“bbl”) of liquid propane stored at -40 degrees Fahrenheit (°F). A portable marine unloading manifold will connect LPG discharge piping onboard the tanker ships with a mile-long, 16-inch, above ground insulated pipe that will transfer the LPG to the Terminal’s bulk storage tank. An insulated 10-inch vapor return line will transfer vapors displaced from the storage tank during filling back to the vessel. Each vessel will be at the dock approximately 36 to 48 hours for unloading.

46. The LPG bulk storage tank will be a vertical, insulated domed tank 202 feet in diameter and 138 feet tall, and will rise to 198 feet elevation above sea level. Propane will be stored at -44°F to -42°F. Boil-off vapors will be collected and returned to the tank via a multi-stage refrigeration system including three first stage electric compressors, two second stage electric compressors and a third-stage electric air fin cooler. There is no emergency backup to this grid-tied electric refrigeration system. The compressors will be located in a metal, acoustically treated building 60-feet long, by 40-feet wide, by 50-feet tall. During grid failures, process upsets, and emergencies a control valve will route tank boil-off vapors to a multi-stage 75-foot tall flare that is expected to operate approximately 500 hours per year, including during periods the electrical grid is shut down. In the event of catastrophic failure, additional emergency valves will vent vapors to the atmosphere.

47. To prepare the LPG for loading into either trucks and/or rail cars, it will be heated and pressurized by three outdoor propane-fired heaters. Methyl-mercaptan will be injected at the loading stations for odorization as a truck or rail car is filled. The truck loading station will have three loading racks. One future rail car loading rack is also planned, which will be able to load

up to four rail cars at a time. Each loading rack will be fed by a 500 gallon per minute (“gpm”) electric loading pump located near the bulk storage tank. The LPG that remains in the couplings connecting the fill pipes to the trucks and rail car will be allowed to vaporize in a vapor return line and be routed for re-liquefaction and re-collection in the bulk storage tank.

48. The typical loading schedule during the winter heating season is estimated to be 40 to 50 trucks and eight rail cars per day; with a maximum throughput of 144 trucks and 8 rail cars per day. Currently, existing truck traffic servicing the Mack Point cargo terminal is approximately 50 trucks per day.

49. The project will require clear cutting 24.1 acres of all vegetation, and replacing it with gravel, grass or low-growing shrubs. The property will be surrounded by a security fence of unknown height and material. The center of the facility, including the bulk storage tank and pump stations will be surrounded by 20-foot-tall earthen containment dyke. To accommodate the truck loading facility, a circular drive will be constructed between Station Avenue and Route One. The Route One exit is immediately adjacent to the Anglers Restaurant. Although the facility is proposed for operation 24 hours per day, seven days per week, no lighting plan was submitted with the application. Nor did the applicant submit a security plan or describe the applicable federal safety and exclusion zones for the Terminal or for the LPG tanker ships that will service the Terminal.

50. Currently the existing project site consists of forested wetlands and uplands ranging from 12 to 80 feet in elevation bordering Long Cove (part of Penobscot Bay). Adjacent properties include the Angler’s Restaurant and Bait Motel located on Route One, several private residences and the Mack Point intermodal cargo terminal. Sears Island, which is described as one of the town’s scenic resources in the Searsport comprehensive plan, is located immediately

opposite the proposed terminal. Other scenic resources within the project viewshed include approximately half of Route One within a mile of the facility, historic Searsport, Mossman Town Park, and most of the town's shoreline, as well as Moose Point State Park, the Sears Island causeway, Cape Jellison, Stockton Harbor, Long Cove, the Turtle Head preserve on Islesboro, and much of Penobscot Bay and the surrounding shoreline. Depending upon the lighting and illumination plan, the facility may be visible at night from as far away as Castine, Blue Hill, Camden State Park and beyond.

51. A VIA was submitted as part of the DCP project application, however the applicant's statement of qualifications did not list any consultants trained in visual assessment procedures and the VIA did not follow standard professional practices. For example, the VIA limited its review to a 1-mile APE (historic structures) and 3-mile viewshed analysis, even though the project will be visible from much greater distances. The VIA did not describe existing landscape and scenic attributes, nor did it provide a narrative description of visual components of the proposed activity or cross sectional profiles showing the project components and the screening effect of vegetation and topography. The VIA provided a single photosimulation, taken from the shore of Sears Island, however, the image failed to include major project components (such as the train loadout) and failed to account for the planned permanent removal of screening vegetation. No other photosimulations were provided even though the facility will be highly visible from Route One and other locations; nor is there a lighting plan or description of the tank color, mitigation proposals, cumulative impacts, or alternatives with less visual impact.

52. The DCP application also included a noise analysis. Based on modeling of some but not all of the project's major sound producing components, the study estimated the project

would result in noise levels of 59.6 decibels at the nearest protected location. The standard at that location is 60 decibels. The applicant, however, failed to provide a copy of the model, input parameters, margin of error, or any other data that would enable the Department or interested parties to verify its calculations.

53. The noise model also failed to include certain sound-producing components of the project that will be active during routine operations, including the fire water storage tank and pump, the truck loadout racks, trucks parked at the facility for more than 60 minutes, or truck loading and on-site truck and rail traffic. The typical sound emitted by a truck engine is 85 decibels. Between 50 to 144 truck loadouts are planned per day.

54. The DCP application failed to include any information about non-point source air pollution from truck and rail traffic serving the facility. This omission includes both direct and cumulative emissions.

55. The DCP application failed to include any information about impacts to recreation, navigation or other existing natural-resource dependent uses (e.g. tourism) due to marine safety and exclusion zones for LPG tankers or for the LPG facility itself, or due to visual and scenic impacts from the facility or the doubling of truck traffic on Mack Point.

56. The DCP application failed to include any information regarding potential secondary and cumulative impacts of the development on the character, quality, and uses of the land, air, and water on the development site and on the area likely to be affected by the proposed development; and the potential effects on the protection and preservation of the public's health, safety, and general welfare. 06-096 CMR ch. 371, § 1.

57. Normally the Department requires peer review of visual impact and noise assessments for large projects of this nature that have potentially significant impacts. In this

case, the Department did not require any sort of peer review; nor did the Department request or obtain copies of the input parameters and other data to conduct an internal review of the applicant's modeling results.

58. Additionally, normal Department practice is to prepare a basic visual impact assessment form and visual impacts of development matrix for *each scenic resource* affected by a project. The overall determination of impacts to scenic character and visual quality is then based on the aggregate score from each visual matrix form. In this case, the Department prepared a single visual impact matrix form for the single photosimulation provided by the applicant. As noted above, that simulation failed to include major elements of the project and incorrectly included screening vegetation that will be permanently removed during construction.

59. The Department issued a draft order approving the project as proposed on September 15, 2011. During the comment period on the draft (and before), the Department received extensive public comments regarding potential adverse impacts to the area's visual quality and scenic character, odor, air pollution, noise pollution, light pollution, impacts to recreation and navigation, economic impacts to existing natural-resource based uses, and other impacts. In particular, commenters requested that the Department require the applicant to provide additional information, including a peer review or independent analysis, of scenic, noise, recreation, and economic impacts.

60. Regarding scenic impacts, the Department did ask the applicant to provide additional photosimulations. The applicant declined, stating that it preferred to see how the issue was resolved on appeal.

61. In response to the public comments, the Department made some minor revisions to the draft permit; however, neither the Department nor the applicant provided any new information or data, or conducted any additional analysis.

62. The final Order was issued Oct. 24, 2011. The Order included the following findings:

- a. That the applicant has demonstrated that the sound is not likely to exceed the modeled level and the project will meet noise standards;
- b. That the visual impact of scenic and aesthetic local resources is acceptable without changes or compensation;
- c. That the project will not have an unreasonable adverse effect on the scenic character of the surrounding area; and
- d. That the Department did not identify any issues involving navigational uses.

63. The Order failed to discuss or make any findings regarding air quality, recreation, secondary or cumulative impacts, impacts to existing uses, or potential impacts to the protection and preservation of the public's health, safety, and general welfare.

VI. GROUNDS FOR THE APPEAL

COUNT ONE

PROJECT IMPACTS TO SCENIC AND AESTHETIC RESOURCES AND VISUAL CHARACTER WILL VIOLATE NRPA AND THE SITE LOCATION LAW.

64. Petitioners incorporate by reference the general allegations and statements made in paragraphs 1 through 63 above as if set forth in full herein.

65. The Order was issued in violation of law, without substantial evidence on the record and is arbitrary and capricious and an abuse of discretion because the applicant failed to demonstrate that the proposed construction of the DCP propane terminal “will not unreasonably

interfere with existing scenic [and] aesthetic ... uses” 38 M.R.S.A § 480-D(1) (NRPA) and “will not adversely affect existing uses [and] scenic character...” *Id.* § 484(1) (Site Location Law).

66. The applicant failed, as a matter of law, to meet its burden under NRPA and the Site Location Law because it did not submit the even basic evidence necessary to determine the level of scenic and aesthetic impact to protected scenic resources and to existing uses and scenic character. For example, even though the project is proposed for round the clock operation and will be visible for many miles across Penobscot Bay, the application failed to include the mandatory lighting plan. The visual impact assessment and project description never discuss viewer expectations, the existing landscape, or the color, form, line and texture of the tank or other visible structures. Impacts to all scenic resources beyond three miles distance are arbitrarily omitted even though the project will be clearly visible from scenic resources such as Turtle Head on Islesboro, the waters of Penobscot Bay, and from other locations – particularly at night. Even within three miles, there is no narrative or illustrative description of impacts to many important scenic resources such as the Sears Island trails, the Sears Island Causeway, Long Cove, Stockton Harbor and the Atlantic Ocean, public beaches and intertidal areas on the mainland and Cape Jellison, the Route 1 corridor, or to the scenic character of the Searsport area. The Architectural Survey Report and accompanying photosimulations, if any, are omitted. Although a three-dimensional model showing the project in relation to the existing landscape was allegedly created, no profiles or cross sections were provided. No data or input parameters were provided that would enable the Department of an independent party to verify the model. Nor was the author of the study, and their training and qualifications identified. The MDEP Visual Evaluation Field Survey is incorrect, and the description of existing scenic character and existing visual quality and landscape characteristics is inaccurate and incomplete. The one

photosimulation provided, from a single data point on the shore of Sears Island, is inaccurate because it includes extensive vegetative screening that will be removed during project construction and fails to depict such major project elements as the train loadout and most of the project buildings, tanks, and pipelines. Moreover, it also fails to depict worst-case scenario during winter leaf-off conditions. There is no assessment of the project's contrast with the existing landscape based upon the visual elements of landscape compatibility (color, form, line and texture), scale, and spatial dominance. There is no description of impacts to viewer expectations, or secondary or cumulative impacts. The application assumes existing trucking, shipping and other industrial activity on Mack Point as part of the baseline visual quality and scenic character, yet utterly fails to describe the impact of doubling levels of trucking on future visual quality and scenic character. Indeed, the application fails altogether to include a narrative description of the entire activity relative to its location and scale within the viewshed. Likewise, there is no discussion of cumulative impacts, practicable alternatives, or mitigation.

67. Given the extent of these omissions and the inaccuracy of information that was submitted, Petitioners assert that, as a matter of law, the applicant has failed to meet its burden to affirmatively demonstrate that the proposed activity does not unreasonably interfere with existing scenic and aesthetic uses, 38 M.R.S.A § 480-D(1), or scenic character, *id.* § 484(1), and that the permit was issued in violation of statute and must be vacated and remanded to the Department, pursuant to 5 M.R.S.A § 11007(4)(C)(1).

68. In the alternative, in light of the omissions and inaccuracies, Petitioners assert that the Department's finding that the proposed LPG Terminal will not unreasonably interfere with existing scenic and aesthetic uses or adversely affect existing scenic character is unsupported by

substantial evidence in the record and is arbitrary, capricious and an abuse of discretion. 5
M.R.S.A § 11007(4)(C)(5)-(6).

COUNT TWO

PROJECT IMPACTS TO RECREATION AND NAVIGATION WILL VIOLATE NRPA AND IMPACTS TO EXISTING USES, PUBLIC SAFETY AND WELFARE WILL VIOLATE THE SITE LOCATION LAW.

69. Petitioners incorporate by reference the general allegations and statements made in paragraphs 1 through 68 above as if set forth in full herein.

70. The Order was issued in violation of law, without substantial evidence on the record and is arbitrary and capricious and an abuse of discretion because the applicant failed to demonstrate that the proposed construction of the DCP propane terminal “will not unreasonably interfere with existing ... recreational and navigational ... uses” 38 M.R.S.A § 480-D(1) (NRPA) and “will not adversely affect existing uses...” *Id.* § 484(1) (Site Location Law).

71. The waters of upper Penobscot Bay are among the premier recreational boating and fishing locations in the U.S. and are extensively used by sailors, kayakers, motorboaters, tourists, anglers and commercial fishermen, including by many Petitioners. Because of the inherent risk of catastrophic fire and/or explosion from LPG operations, federal safety and security requirements impose exclusion and safety zones around both traveling and stationary LPG tankers. Those requirements will interfere with and at times will prevent these existing recreational and navigational uses. In addition, the presence of the LPG terminal and the potential for fires, leaks and explosions may deter existing recreational and navigational uses beyond the federal safety zones due to individual concerns over health and safety. Despite

extensive public comment on this issue, the Department's Order illegally and wrongfully failed to consider the effect of exclusion and safety zones on recreation, navigation and existing uses, in violation of both NRPA and the Site Location Law.

72. Historic Belfast, Searsport and surrounding towns and businesses are deeply dependent upon the Route 1 tourist trade, which includes a large number of visitors heading to more northerly and easterly attractions that have the option to bypass the area by traveling on Interstate 95. This tourist activity depends upon recreational opportunities and the scenic character of the Searsport area and nearby protected scenic resources and is a significant existing use pursuant to the Site Location Law. Interested persons, including many Petitioners here, raised concerns about potential erosion of this tourist business due to visual and aesthetic impacts, safety concerns, exclusion zones, and traffic and poor road conditions caused by the DCP Terminal and the 80 to 288 truck trips per day the terminal will generate. Despite these timely raised public concerns, the Department's Order illegally and wrongfully failed to consider impacts to these existing uses.

73. In direction violation of the rules, and despite and in blatant disregard of public concerns and comments, the application also failed to provide any evidence regarding secondary and cumulative impacts, or the protection and preservation of the public's health, safety, and general welfare. 06-096 CMR ch. 372, § 1.

74. Accordingly, because it was issued in violation of law and without any evidence in the record regarding impacts to recreation and navigation or secondary and cumulative impacts, impacts to existing uses and the preservation of the public's health safety and general welfare, the Order must be vacated and remanded back to the Department for consideration of these impacts consistent with NRPA, the Site Law, and the Board's rules.

COUNT THREE

AIR POLLUTION FROM NON-POINT SOURCES WILL VIOLATE NRPA.

75. Petitioners incorporate by reference the general allegations and statements made in paragraphs 1 through 72 above as if set forth in full herein.

76. The Order was issued in violation of law, without substantial evidence on the record and is arbitrary and capricious and an abuse of discretion because the applicant failed to demonstrate and the Department failed to determine that the proposed construction of the DCP propane terminal “will not adversely affect ... air quality...” 38 M.R.S.A § 484(1). Although the applicant must still obtain a minor source air permit for point-source emissions, that permit will not address non-point source emissions. The DCP terminal is designed to accommodate filling of between 40 to 144 LPG tanker trucks and 8 LPG rail cars per day – which will approximately double daily truck traffic serving the Mack Point intermodal terminal. Much of this activity may involve idling of vehicles and trains for long periods of time. Accordingly, pursuant to the Board’s rules, the Applicant must address impacts to air quality from non-point sources and provide “evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on air quality, including ... [e]vidence that increased traffic generated by the development will not significantly effect the ambient air quality.” 06-096 CMR ch. 375, §§ 1(B)-(C).

77. Increased truck traffic and air pollution was a major concern raised by interested parties, including several Petitioners here. Yet the Order is completely silent on this issue. Accordingly, because it was issued in violation of law and without any evidence in the record regarding emissions of pollutants from non-point sources, the Order must be vacated and

remanded back to the Department for consideration of impacts to air quality consistent with the Site Law and the Board's rules.

COUNT FOUR

NOISE POLLUTION FROM THE TERMINAL AND ASSOCIATED TRUCK AND RAIL TRAFFIC WILL VIOLATE THE SITE LOCATION LAW.

78. Petitioners incorporate by reference the general allegations and statements made in paragraphs 1 through 77 above as if set forth in full herein.

79. The Order was issued in violation of law, without substantial evidence on the record and is arbitrary and capricious and an abuse of discretion because the applicant failed to demonstrate that noise from standard operations, including tanker truck and tanker rail car loading operations, will not adversely affect existing uses and the surrounding environment. 38 M.R.S.A § 484(3).

80. The proposed facility immediately borders a popular local restaurant, motel, and several residences and businesses – all designated protected sites with a maximum nighttime sound standard of 60 decibels. The Applicant's noise study estimated that at the closest protected site, sound from routine operations would not exceed 59.6 decibels; however this model excluded certain sound-producing components of the facility, including the emergency fire tank and pump, truck and rail loading facilities, and trucks present at the facility for more than 60 minutes. The Applicant also failed to provide the data and input parameters used in the study, a description of the methodology and statistical relevance of the results, the margin of error, or other data necessary to evaluate or validate the noise model. Additionally, the applicant failed to provide its plan to control sound or a description of proposed major sound control measures, including their locations and expected performance.

81. Given the extent of these omissions and the inability to validate information that was submitted, Petitioners assert that, as a matter of law, the applicant has failed to meet its burden to affirmatively demonstrate that the proposed activity will fit harmoniously into the existing natural environment and that noise from the development will not adversely affect existing and adjacent uses, 38 M.R.S.A § 484(3), and therefore the Order must be reversed and vacated as contrary to law, pursuant to 5 M.R.S.A § 11007(4)(C)(1).

82. In the alternative, in light of the omissions and inaccuracies, Petitioners assert that the Department's finding that noise from the development will not adversely affect existing and adjacent uses, 38 M.R.S.A § 484(3), is unsupported by substantial evidence in the record and is arbitrary, capricious and an abuse of discretion. 5 M.R.S.A § 11007(4)(C)(5)-(6).

83. In addition, the Applicant failed to submit any evidence regarding noise from operation of the truck and rail loadouts. The truck loadout includes three "racks" capable of loading 40 to 144 LPG tanker trucks per day (one truck every 10 to 36 minutes), with operations occurring round-the-clock. A single truck engine emits 85 decibels at 100 feet. The truck loadouts are within a few hundred feet of multiple protected locations. This was a significant concern raised during the public comment period. The sound from truck loading operations will likely be the loudest aspect of the project and will, without question, result in "excessive noise that could degrade the health and welfare of [these] nearby neighbors." 06-096 CMR ch. 375, § 10(A). Indeed, Petitioners believe that noise from truck loading operations (as well as future rail loading operations) will be so great as to completely negate the ability of affected neighbors to live in their homes and continue to operate their businesses. Although the Board's rules exempt "[r]egistered and inspected vehicles ... which enter the development to make a delivery or pickup and which are moving, starting or stopping, but not when they are parked for over 60

minutes in the development,” 06-096 CMR ch. 375, § 10(C)(5)(c)(ii), this is rule is intended to exempt the occasional or periodic delivery truck. There is no indication that this exemption applies to industrial truck loading facilities where the primary purpose of the development (and the primary noise-producing activity) is the loading of heavy-duty tanker trucks for commercial delivery of LPG. To the extent that the exemption is intended by the Board to apply to industrial truck and rail loadouts as here, Petitioners assert that the rule is *ultra vires* and contrary to the Site Location Law, 38 M.R.S.A § 484(3), since it would effectively prevent regulation of noise from industrial trucking or rail facilities no matter how substantial the noise impacts from loading operations. Accordingly, by failing to consider noise from the truck and rail loadouts, despite concerns raised by affected persons, the Order was issued in violation of law, is unsupported by substantial evidence, and is arbitrary and capricious and an abuse of discretion.

VII. Relief Requested

Wherefore, Petitioners respectfully pray that this Court

- a. Declare that the Order violates the Natural Resources Protection Act and the Site Location of Development Act;
- b. Reverse and vacate the Order and remand the matter back to the Department for processing consistent with the Acts; and
- c. Grant such other relief the Court deems just and appropriate to ensure that the proposed DCP LPG Terminal complies with Maine law and regulations, will not result in undue adverse impacts to protected natural resources and will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources.

Respectfully Submitted,

December ____, 2011

By: _____
Stephen F. Hinchman

Law Offices of Stephen F. Hinchman, LLC
537 Fosters Point Road
West Bath, ME 04350 | 207.837.8637
SteveHinchman@gmail.com
Maine Bar License # 009795
Counsel for Petitioners

I hereby certify that on Dec. ____, 2011, I served a copy of this PETITION FOR REVIEW OF FINAL AGENCY ACTION OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION IN THE MATTER OF via certified mail, return receipt requested upon the following:

Patricia Aho, Commissioner
Maine Dept. of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

William Schneider
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333-0006

DCP Midstream Partners, LP
Attn: Becky Malloy
370 17th St. Suite 2500
Denver, CO 80202

Steve Wallace, Project Manager
TRC Environmental Corporation
400 Southborough Drive
South Portland, Maine 04106

By: _____
Stephen F. Hinchman

Law Offices of Stephen F. Hinchman, LLC
537 Fosters Point Road
West Bath, ME 04350 | 207.837.8637
SteveHinchman@gmail.com
Maine Bar License # 009795
Counsel for Petitioners

ATTACHMENT A:

**DEPARTMENT OF ENVIROMENTAL PROTECTION ORDER IN THE MATTER OF
DCP MIDSTREAM PARTNERS, LP, PROPANE TERMINAL
#L-25359-26-A-N AND L-25359-TG-B-N**