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July 9, 1974

William R. Adams, Jr. Commissioner

Environmental Protection

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Attorney General

Request for Opinion on Damage Claims under Coastal Conveyance Fund

SYLLABUS:

The Board of Environmental Protection may consider claims against the Maine Coastal Protection Fund (38 M.R.S.A. § 551) for damages to a Maine citizen occurring in Maine waters as a result of an oil spill which occurred outside of Maine waters.

FACTS:

The Department of Environmental Protection has received a claim under 38 M.R.S.A. § 551 for damages in Maine waters resulting from an oil spill in New Hampshire waters.

QUESTION:

May the Board of Environmental Protection consider claims under Maine Coastal Protection Fund for third party damages to a Maine resident, who received oil pollution damage in Maine waters of the Piscataqua River as a result of an oil spill occurring in New Hampshire waters?

ANSWER:

Yes.

DISCUSSION:

Interpreting and upholding 38 M.R.S.A. § 551, et seq. "The Oil Conveyance Act" the Maine Supreme Court noted:

"Two of the prime purposes of the Act are the speedy settlement of third party claims and the immediate clean-up of spills." Portland Pipe Line Corp. v. Environmental Improvement Commission, Me., 307 A.2d 1, 19.

The Court in its holding also recognized that not all damages paid from the fund need arise from spills from licensed or licenseable oil terminal operations. The use of the fund to pay claims from "mystery spills" was allowed, even if reimbursement to the fund might not be possible, Portland Pipeline, supra, at 22.

If the spills in these cases were "mystery spills" the Department of Environmental Protection could thus consider the claims presented because the alleged damages occurred in Maine waters. This would be so even if reimbursement for any payments from the fund were not possible.

In this case, the identity of the cause of the oil spill is known, thus through state action in a court of appropriate jurisdiction there may be reimbursement to the Coastal Protection Fund for claims which may be paid. To disallow such a claim because the origin of the spill is known to be in New Hampshire waters might discourage future claimants from trying to identify the source of the spill. They might simply report damage from "mystery spills," reducing the chances of reimbursement to the fund. The legislature could not have intended this result.

Further, the policy articulated by the Court, of speedy settlement of third party claims, is supported by this interpretation. Without allowing consideration of such claims, there may be long delays while factual determinations, perhaps impossible to reach, are made as to where spills actually occurred.

This opinion is in no way a judgment on the merits of the claims presented. It is limited to the ability of the Board of Environmental Protection to consider such claims.



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