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STATE OF MAINE

Inter-Departmental Memorandum Date Nov. 22, 1974

To William R. Adams, Jr. Commissioner

Dept. Environmental Protection

From John M. R. Paterson, Assistant

Dept. Attorney General

Subject Liability of Licensed Terminal Operators for Oil Transfer Fees

Your memorandum of October 22, 1974, sets forth ten separate fact situations and requests our advice with respect to each fact situation as to which licensee is responsible for the filing of appropriate transfer reports and payment of fees resulting from transfers of oil in coastal waters of the State of Maine. We have not reproduced all the facts stated in your request for opinion. Because this matter is still in litigation we have elected to answer your request in an informal manner.

1. Section 551(4) (A) of Title 38 M.R.S.A. provides that:

"Annual license fees shall be determined on the basis of one half cent per barrel of oil, petroleum products or their by-products transferred by the applicant during the licensing period"

Although that section uses the term "applicant" it seems apparent that the statute meant to refer to "licensees" since, pursuant to §543 no person may operate an oil terminal without a license from the Department. As a condition of obtaining a license, the applicant must pay a fee to the Department over the course of the licensed period on the basis of one half cent per barrel for each barrel of oil transferred in coastal waters. The use of the term "applicant" in § 551(4) (A) appears to be interchangeable with the term "licensee".

In the first fact situation the transfers from ship to shore or shore to ship must be reported and fees paid by the licensed operator actually transferring the oil. It makes no difference that the licensee was transferring oil for the benefit of or as a service for another licensee, since §551(4) (A) clearly contemplates that the fee is to be paid by the person actually undertaking the transfer. In this case, if Mobil performs a service for Chevron (i.e., the service of transferring oil from ship to shore or vice versa) Mobil is responsible for the reporting of such transfer and the payment of fees. Mobil should not be relieved of such obligations merely because it is performing a service for Chevron, but rather, should seek reimbursement from Chevron for fees incurred in the course of providing a service for Chevron. It is up to the corporations involved to allocate such fees between themselves in whatever fashion they believe best serves their mutual business interest. In any event, however, Mobil is liable for payment of oil transfer fees in connection with all transfers undertaken by it.

2. Section 545 provides that no person may "operate" a terminal facility without a license. Section 542(8), for unknown reasons, defines "operate" to include "owning or operating an oil terminal facility whether by lease, contract or any other form of agreement". In the instant case such definition can be confusing since Mobil apparently leases the facility from the owner, thereby, becoming an operator, and in turn hires R. H. Foster to "operate" the facility.

In order to make sense of §§ 545 and 542(8) we believe that the statute meant to provide that the person actually responsible for the functioning of the terminal, whether in the capacity of owner or lessor, should obtain a license. In this case R. H. Foster operates the facility, albeit on behalf of Mobil. We, therefore, believe that Foster should obtain a license for "operation" of the terminal. Insofar as Foster has operated the terminal in the past without a license it is at least liable for payment of fees. As noted in response to question #1, Foster may obtain reimbursement from Mobil pursuant to their business relationship.

3. The answer to this situation is the same as that in paragraph 1, supra. The licensee actually undertaking the transfer operation is responsible for reporting and payment of fees.

4. King Resources Company, as the operator and licensee of the facility, is responsible for reporting and payment of fees.

5. Each company is responsible for reporting and payment of fees with respect to transfers undertaken by that licensee.

6. As noted above, §551(4)(A) requires the payment of one half cent per barrel fee for the transfer of any oil. Under §542(10) "transfers" include those transfers of oil from vessel to shore based facilities and from vessel to vessel. Section 542(7) includes a vessel within the definition of "oil terminal facility" but

"only in the event of a ship to ship transfer of oil petroleum products and their by-products, and only that vessel going to or coming from the place of [ship to ship] transfer and the [shore based] oil terminal facility."

Section 545(4) provides that "licenses issued to any [shore based] terminal facility shall include vessels used to transport oil, petroleum products and their by-products between the [shore based] facility and vessels within State waters."

When read together, we believe §542(10), § 542(7) and §545(4) provides that a ship may be an oil terminal in case of ship to ship transfers. In the event that the ship is included within the operation and control of the shore-terminal it does not require a separate license. We do not believe § 545(4) was meant to grant an automatic license to any ship not under the control of or appurtenant to the shore based facility. Rather, we read the Act as requiring that, in circumstances such as this, the independant barge operator

obtain an oil terminal license for its operations. In this case Boston Fuel Transportation is not part of the operation of either shore based licensee Chevron or Northeast Petroleum. It is clear that the Boston Fuel barge is an oil terminal. Since it does not fall within the license of either Chevron or Northeast, Boston Fuel requires an oil terminal license for its barge and ship to ship transfers. Insofar as Boston Fuel has undertaken unlicensed ship to ship transfers of oil in the waters of the State of Maine, Boston Fuel Transportation Company is, at least, liable for the payment of fees for all such ship to ship transfers which have taken place since the effective date of the Act to date. In addition Boston Fuel Transportation Company must, prior to undertaking any further transfer operations, obtain a license from the Board as required by §545.

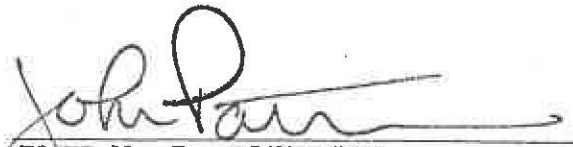
Chevron is the proper party for reporting and paying fees with respect to ship to shore or shore to ship transfer.

7. As stated above, the licensee actually undertaking the transfer operation is responsible for the payment of fees. In this case it would be Cities Service.

8. As stated above, the licensee actually undertaking the transfer of oil, in this case American, is responsible for the payment of fees.

9. As stated above, Getty, as the licensee undertaking transfer of oil is responsible for the payment of fees with respect to all transfers in or out of its shore based terminal.

10. As stated above the licensee actually undertaking the transfer operation, apparently Northeast Petroleum, is responsible for the payment of fees.


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