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Shoreland Zoning Application to Pipeline
12 MRS 4811 et seq

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To: Richard Rothe, State Planning

From: Cabanne Howard, Assistant Attorney General

Subject: Application of Shoreland Zoning Ordinances to Tenneco Pipeline

You have asked whether the term "public utilities" which appears in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances adopted pursuant to the Shoreland Zoning Act, 2 MRS §4811 et seq., as a type of land use to be regulated, would include a natural gas pipeline, such as the one currently proposed by the Tenneco Company, which would run through numerous municipalities in the State.

In response to this we would observe first that the interpretation of a particular local shoreland zoning ordinance would be made in the first instance by the municipality concerned. To the extent that this office's opinion would be helpful in this regard, however, it is our view that the pipeline would be considered a public utility. The reason for this is that the Tenneco Company does have certain characteristics in common with other entities, such as electricity and telephone companies, which are commonly thought of as utilities. First, the company is regulated by a government agency, the Federal Energy Regulatory Commission, the approval of which is required before such pipeline may be constructed. Second, if this approval is obtained, the company will then acquire the power of eminent domain, a power ordinarily exercised only by the government, to assist it in completing the project. These factors would appear to clearly make the company a public utility as that term is ordinarily understood.

Cabanne Howard

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CH/bls