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Oil Pollution License Fees for Oil Transferred Twice
38 M.R.S.A. 551 (4)

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To: Marc Guerin, Chief
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Bureau of Water Quality Control
Department of Environmental Protection

From: Cabanne Howard, Assistant Attorney General

Subject: License fees for a vessel transferring oil from
another vessel to an oil terminal facility.

You have asked whether a vessel transferring oil from another vessel to an oil terminal facility, but not under the direction and control of such facility, is obliged to pay a license fee pursuant to Section 551(4) of the Oil Discharge Prevention and Pollution Control Act, 38 M.R.S. §541 et seq. Under the 1977 Amendments to the Act, vessels operating in this capacity are required to obtain a license, Laws of Maine of 1977, c. 375, §7 (1977), amending 38 M.R.S. §545(4). Our answer is that vessels of this kind are required to pay such fees, in the same manner as any holder of a license.

The basis for this conclusion derives from the original purpose of the Act. That purpose was to protect the citizens of the State against the hazard of oil spills, particularly those occasioned by the "transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels . . ." 38 M.R.S. §541 (emphasis added). Thus, each person operating an oil terminal facility in the state was required to obtain a license from the Board of Environmental Protection, and to pay a license fee, through which the program to prevent oil spills and to compensate their victims was to be financed. 38 M.R.S. §545. The size of this fee was expressly made contingent on the volume of "oil, petroleum products or their by-products transferred by the applicant during the licensing period . . ." 38 M.R.S. §551(4) (A) (emphasis added). It was, therefore, clearly the Legislature's

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intention that a fee be paid each time oil was "transferred," which term is defined to include both vessel to vessel and vessel to terminal activities 38 M.R.S. §542(10). Indeed, this legislative emphasis on the transfer itself for the fixing of the fee (rather than, for example, on the value of the oil) provided the basis for the sustaining of the entire scheme by the Supreme Judicial Court against a challenge that it constituted an import or duty in violation of the Import-Export Clause of the United States Constitution. Portland Pipe Line Corp. v. Environmental Improvement Commission, 307 A.2d 1, 31-36 (Me. 1973).

Please note that in view of the conclusion that a fee must be paid upon each transfer of oil by a licensee, it follows that in the case where a licensee undertakes two transfers of the same barrel of oil (e.g. from a sea-going vessel to one under its direction or control and from that vessel to its shore facility), it must pay a licensee fee on that barrel twice. Such a result, in addition to comporting with the legislative intention outlined above, would be required to avoid a finding of an unconstitutional discrimination between independently owned transfer vessels and those owned by shore facilities. See State v. Stinson Canning Co., 161 Me. 320, 322 (1965), quoting Laughlin v. City of Portland, 111 Me. 486, 489 (1914).

I hope this answers your question.



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CH/bls