Oil Spills Liability
Oil Terminals Liability
State Jurisdiction

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JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

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To: Henry A. Warren, Commissioner — Environmental Protection
Howard M. Trotsky, Senate Chairman — Committee on Natural Resources
William B. Blodgett, House Chairman — Committee on Natural Resources

From: Joseph E. Brennan — Attorney General

Subject: Liability for Oil Terminal Facilities and Vessels Under Coastal Conveyance Act.

You have jointly asked three questions regarding the interpretation of the Oil Discharge Prevention and Pollution Control Act (hereinafter "Coastal Conveyance Act"), 38 M.R.S.A. §§541 et seq. These questions are:

1. Is there a limit to the liability for damages of vessels or terminal licensees under the Act?

2. What is the area of jurisdiction to which the Act applies?

3. May the Coastal Conveyance Fund be used to purchase liability insurance to make additional funds available for the same purposes as those of the Fund itself?

The answers to these questions are:

1. The Act imposes no legal limit to the liability of licensees to the Fund or to the State of Maine for damages to its resources from an oil spill, regardless of whether such damage was caused by the licensee itself or by a vessel servicing it. The liability of a vessel for such damages, however, may be limited by federal law to its value. In addition, there may be a practical limit as to liability to the Fund even as to licensees since the Fund has a fixed ceiling of $10 million and the fastest rate at which it can accumulate upon depletion is approximately $1 million per year.

2. The area of jurisdiction of the Act is twelve miles from the coastline of the State.

3. The Fund may be used to purchase insurance to provide additional funds to "extend or implement the benefits of the fund," such as the payment of clean-up costs and third party claims.

I. Limitation of Liability

Th liability of vessels and licensees for discharges of oil into the waters of the State is fixed by Section 552 of the Coastal Conveyance Act, 38 M.R.S.A. §552. After first providing that all licensees shall be vicariously liable for the acts of vessels destined for or leaving from their facilities, the section further provides that both entities shall be strictly liable (that is, liable regardless of whether they were negligent) for such discharges, and that this liability shall be "to the State of Maine for all disbursements made by it [from the Fund for the purposes of abating the spill, paying third party claims against the Fund, and arbitrating such claims] or other damage incurred by the State." Thus, the strict liability provision of the Act exposes vessels and, vicariously, licensees to two possible types of damages: (1) reimbursements to the Fund and (2) "other damage incurred by the State."

As to whether there is a limit to liability for the first category, the first point to be made is that there is , of course, a limit to the size of the Fund itself. Section 551 of the Act provides that the fund shall be limited to $4 million until July 1, 1978 and thereafter shall be allowed to accumulate to a total of $6 million. In addition, the Legislature has also provided, and the voters of the State have approved, the creation of authority in the Governor to cause the issuance of bonds in the amount of an additional $4 million for the purpose of abating discharges of oil and paying third party claims against the Fund. Laws of Maine of 1971, P & S. c. 239 (1970). Thus, the Fund will have available to it $10 million to discharge its responsibilities after July 1, 1978.

This is not to say, however, that the Board of Environmental Protection could not obligate the Fund in excess of that amount. Indeed, the terms of the Act, its legislative history , and its interpretation by the Supreme Judicial Court of Maine seem to contemplate such action. Section 551(6) of the Act provides that "[t]he Board shall seek recovery to the use of the fund all sums expended therefrom, <u>including overdrafts</u>, . . ." (emphasis added).

In addition, the sponsor of the original Act, Representative Harrison Richardson, in describing its general features on the floor of the House, stated that "liability is unlimited." 1969 Maine Legislative Record, 678 (1970). Finally, in passing upon the constitutionality of the Act, the Supreme Judicial Court of Maine assumed that there was "no limit on the amount of clean-up costs recoverable by the State" and that "the Legislature has not created a conflict with Federal Water Quality Improvement Act by failing to so limit liability under the Act." Portland Pipe Line Corp. v. Environmental Improvement Commission, 307 A. 2d 1, 44, 45 (Me. 1973). */ Thus, it would appear that there is no legal barrier to the Boards obligating the Fund in excess of $10 million. In saying this, however, it should be borne in mind that at present rates, the Fund can accumulate at a rate no greater than approximately $1 million per year. We would not venture to predict whether the Board would in fact authorize payment above $10 million if claims against the Fund were made which were far in excess of that amount, since such claims could not actually be paid in full for many years.

As to the second type of damages to which the Act exposes vessels and terminals to liability ("other damage incurred by the State"**/), it appears clear that there is also no limit.

*/ It is important to point out that the Supreme Judicial Court did hold, following the United States Supreme Court's decision in Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973), that the Coastal Conveyance Act cannot be read to violate the Federal Limitation of Liability Act, 46 U.S.C. §189. Portland Pipe Line Corp. v. Environmental Improvement Commission, supra at 45-46. Thus, a vessel which succeeds in limiting her liability under the Federal Act cannot be liable to the Fund (or the State) for damages in excess of her value, even if liability is otherwise unlimited under the Coastal Conveyance Act. This conclusion as to vessels, however, would not relieve the licensees for which they are bound from their vicarious liability under the Coastal Conveyance Act. Thus, existing federal law does not affect the ultimately unlimited nature of the liability of licensees for the acts of their vessels imposed by the Coastal Conveyance Act.

**/ This identical phrase appears in the Florida statute which was before the United States Supreme Court in the Askew case, where it was described by that Court as encompassing damage to the State's property as well as its natural resources. Askew v. American Waterways Operators, supra at 332-33. The Federal District Court has held that these latter damages can be recovered by the State, parens patriae, for the use of its citizens. State of Maine et al. v. M/V Tamano, et al.,357 F. Supp. 1097 (D. Me. 1973).

Because there is no qualification attached to this phrase in the Act, and in view of the statement of Representative Richardson and the assumption of the Supreme Judicial Court just mentioned, it would seem clear that the liability of vessels and licensees to the State for this kind of damage would be identical to that which exists for damages to the Fund. The only point to be added here is that if the State has a claim for damages to its property or resources which the Fund is unable to pay, */ it is our opinion that it could proceed directly againstthe person causing the discharge for the excess and that, unlike the situation for private claimants, such liability would remain strict and without limit, and could be found vicariously against a licensee. The reason why the State is in a different position from private claimants here is the statute makes no provision for private damages which may go uncompensated from the Fund, but it specifically lists "other damage incurred by the State" as a separate type of liability to which the rules of Section 552 apply. To hold that the State could not proceed strictly and vicariously if the Fund were exhausted would be to deny any effect to the presence of this phrase in the Act.

II. Area of Jurisdiction

By its own terms, the Coastal Conveyance Act entends "to a distance of 12 miles from the coastline of the State." 38 M.R.S.A. §544(1). In addition, the discharge of oil is prohibited by the Act into any of the "waters of the State" 38 M.R.S.A. §543. "Waters of the State" are defined for purposes of any statute administered by the Department of Environmental Protection as including the "marginal and high seas." 38 M.R.S.A. §361-A(7). These latter terms are further defined for the entire Maine Code as including those areas of the sea for which jurisdiction has been asserted by the United States government or recognized by international treaty to which the United States is a party. 1 M.R.S.A. §2. In the Federal Water Pollution Control Act, the United States Congress prohibited the discharge of oil into waters of the United States or its "contiguous zone" 33 U.S.C. §1321(b)(1). "Continguous zone" is further defined by this Act to mean the entire zone established by Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, to which the United States is a party. 33 U.S.C. §1321(a)(9). The zone established by this article is 12 miles from the coastline. 15 U.S.T. 1612. The Supreme Judicial Court has also concluded that the Act's assertion of 12 miles of jurisdiction is not unconstitutional. Portland Pipe Line Corp. v. Environmental Improvement Commission, supra at 47. By any reckoning, therefore, the Act's area of jurisdiction is 12 miles from the coastline.

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*/ Prior to 1977, the State was not a "person" within the meaning of the Act and thus could not file a claim against the Fund. This situation was changed by an amendment to the definition of "person" set forth in 38 M.R.S.A. §542(9). Laws of Maine of 1977, c. 375 §4 (1977).

III. Issurance

Section 551(5)(F) of the Coastal Conveyance Act provides that moneys from the Fund may be disbursed for the "payment of costs of insurance by the State to extend or implement the benefits of the fund." 38 M.R.S.A. §551(5)(F). The legislative history of the Act is silent as to the intention of the Legislature in enacting this provision. It would appear, however, that the intention is clear from its plain language. The principal benefits of the Fund are the provision of moneys to insure prompt clean-up of oil spills and prompt settlement of damage claims arising from such spills. The phrase "extension of [such] benefits" can only mean extension beyond the financial limits of the Fund. Thus, the Legislature must have intended, in enacting this provision, to authorize the Board to purchase insurance against damages to the Fund caused by oil spills, and thereby permit the Board in effect to raise the amount of funds available to satisfy such claims above the existing $10 million limit.

I hope this answers your questions.

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

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