

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 21, 1978

Henry E. Warren, Commissioner
Department of Environmental Protection
State House
Augusta, Maine 04333

Re: Responsibility for cleanup costs under the Coastal Conveyance Act, 38 M.R.S.A. §§541 et seq.

Dear Commissioner Warren:

Through Rich Baker of your Division of Oil Conveyance Services, you have requested a legal opinion as to the liability under the above law of the owner of a combination store and gas station for the costs of cleaning up gasoline pumped out of his tanks, onto the ground and ultimately into a brook, by vandals. This incident occurred in May of 1977. It is the opinion of our office that the store owner would be liable under the Act for such costs, regardless of whether he was negligent.

Moneys from the Coastal Conveyance Fund may properly be used to clean up such a spill (§§551(5)(B), 548 and 543), and reimbursement of the Fund for those expenditures is properly sought from "the person permitting the prohibited discharge." §551(6)(A).

Prior to amendment of the Act by the last Legislature (P.L. 1977, c. 375), there may have been some ambiguity about who would be liable and what the standard of liability would be in the event of a spill not attributable to a licensed terminal, since §552 answers these questions explicitly only as to licensees. As to non-licensees, these questions are raised by the facts of the case which prompted the request for this opinion (David Stubbs' General Store, Brooks, Maine), where the owner of the store and of the gasoline is not a licensed terminal, and is presumed here not to have "caused" the spill, at least in any direct sense.

Reimbursements to the Fund are governed by §551(6). While §551(6)(A) does not expressly designate the owner of the facility from which the discharge originated as the party responsible for the costs of clean-up, it is our opinion that that conclusion is the intention of the legislature, and is to be implied from the fact that the only person referred to in that provision is "the person permitting the prohibited discharge." The word "permitting" is passive, and does not imply that

liability is limited to cases of direct or active causation. This conclusion is reinforced by the waiver of reimbursement provisions of the immediately following subsection, when the application of this strict liability standard may seem unconscionable as a result of intervening acts of war, government or God. Other intervening human causes are not mentioned.

It is my understanding that both the Department of Environmental Protection and this office have consistently applied this interpretation since the inception of the law.

Sincerely,

Gregory W. Sample
Assistant Attorney General

GWS:ldp

cc: Marc Guerin