

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE

FIRST REGULAR SESSION

January 5, 1977 to July 25, 1977

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PORTLAND LITHOGRAPH COMPANY
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND EIGHTH LEGISLATURE

1977

Any person making application for site location of development approval pursuant to section 481, et seq., for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to section 483, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or a transmission line by registered mail, postage prepaid at the land owner's last known address as contained in the applicable tax assessor's records and shall file with the town clerk of each municipality through which the pipeline or a transmission line is proposed to be located, a map demonstrating the intended approximate location of the pipeline or a transmission line within the municipality. The applicant shall not be required to provide notice of his intent to construct a gas pipeline or a transmission line other than as set forth in this paragraph. The board shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of subsections 1 to 4 have been met, the board, in the case of such transmission line or pipelines, shall consider whether any proposed alternatives to the proposed location and character of such transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The board may approve or disapprove all or portions of such proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs thereby caused.

Sec. 4. 38 MRSA § 488, as last amended by PL 1973, c. 423, § 10, is further amended to read:

§ 488. Applicability

This Article shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970, or to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, or to public service corporation transmission lines, except transmission lines carrying 125 kilovolts or more, nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972, nor to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

Effective October 24, 1977

CHAPTER 375

AN ACT to Amend the Oil Pollution Control and Discharge Prevention Laws.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 38 MRSA § 416, as last amended by PL 1973, c. 450, § 16, is repealed.

Sec. 2. 38 MRSA § 542, sub-§ 6, as enacted by PL 1969, c. 572, § 1, is amended to read:

6. Oil. ~~Oil, petroleum products and their by-products~~ "Oil means oil, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

Sec. 3. 38 MRSA § 542, sub-§ 7, as enacted by PL 1969, c. 572, § 1, is amended to read:

7. Oil terminal facility. "Oil terminal facility" means any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil, ~~petroleum products and their by-products~~ or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than 500 barrels, nor any facility not engaged in the transfer of oil ~~petroleum products or their by-products~~ to or from tidal waters of the State. A vessel shall be considered an oil terminal facility only in the event of a ship to ship transfer of oil, ~~petroleum products and their by-products~~ and but only that vessel going to or coming from the place of ship to ship transfer and ~~the~~ a permanent or fixed oil terminal facility.

Sec. 4. 38 MRSA § 542, sub-§ 9, as enacted by PL 1969, c. 572, § 1, is repealed and the following enacted in its place:

9. Person. "Person" shall mean any natural person, firm, association, partnership, corporation, trust, the State of Maine and any agency thereof, governmental entity, quasi-governmental entity, the United States of America and any agency thereof and any other legal entity.

Sec. 5. 38 MRSA § 543, 1st ¶, as enacted by PL 1969, c. 572, § 1, is amended to read:

The discharge of oil ~~petroleum products or their by-products~~ into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into any river, stream, sewer, surface water drain or other waters ~~that drain into the coastal waters~~ of the State is prohibited.

Sec. 6. 38 MRSA § 545, sub-§ 1, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

1. Expiration of license. Licenses shall be issued upon application and shall be for a period of not less than 12 months to expire no later than 24 months after the date of issuance. The board may issue a temporary license for a shorter period of time if it finds that the applicant has substantially complied but has failed to comply with one or more provisions of existing regulations. Licenses shall be issued subject to such terms and conditions as the board may determine as necessary to carry out the purposes of this subchapter.

Sec. 7. 38 MRSA § 545, sub-§ 4, as enacted by PL 1969, c. 572, § 1, is amended to read:

4. Certain vessels included. Licenses issued to any fixed or permanent oil terminal facility shall include vessels under the direction or control of such facility and used to transport oil, ~~petroleum products and their by-products~~ between the such fixed or permanent facility and vessels within state waters. Any person operating or causing to be operated a vessel used to transport oil between a permanent or fixed oil terminal facility and vessels within state waters, which vessel is not subject to the direction or control of that permanent oil terminal facility, shall obtain a license as required by this section.

Sec. 8. 38 MRSA § 546, sub-§ 1, ¶ C, as last amended by PL 1971, c. 618, § 12, is repealed.

Sec. 9. 38 MRSA § 550, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

§ 550. Enforcement; penalties

Any person who causes or is responsible for a discharge in violation of section 543 shall not be subject to any fines or civil penalties if such person promptly reports and removes such discharge in accordance with the rules, regulations and orders of the board.

Sec. 10. 38 MRSA § 551, 1st ¶, as amended, is repealed and the following enacted in its place:

The Maine Coastal Protection Fund is established to be used by the board as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund shall be limited to \$4,000,000 until July 1, 1978. Thereafter the fund shall be limited to \$6,000,000 and the Board of Environmental Protection shall collect fees in accordance with subsection 4. To this fund shall be credited all license fees, penalties and other fees and charges related to this subchapter, and to this fund shall be charged any and all expenses of the board related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, and 3rd party damages covered by this subchapter.

Sec. 11. 38 MRSA § 551, sub-§ 2, as last amended by PL 1973, c. 625, § 278, is repealed and the following enacted in its place:

2. Third party damages. Any person, claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil, prohibited by section 543, hereinafter called the claimant, may apply within 6 months after the occurrence of such discharge to the board stating the amount of damage alleged to be suffered as a result of such discharge. The board shall prescribe appropriate forms and details for the applications. The board may, upon petition and for good cause shown, waive the 6 months' limitation for filing damage claims.

A. If the claimant, the board and the person causing the discharge can agree to the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board can agree to the damage claim, the board shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Protection Fund.

B. If the claimant, the board and the person causing the discharge cannot agree as to the amount of the damage claim, or in the case where the person causing the discharge is not known after the board shall have exercised reasonable efforts to ascertain the discharger, if the claimant and the board cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

C. Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

D. Damage claims arising under this subchapter shall be recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

E. Awards from the fund on damage claims shall not include any amount which the claimant has recovered, on account of the same damage, by way of settlement with or judgment of the federal courts against the person causing or otherwise responsible for the discharge.

2-A. Exceptions; 3rd party damage claims. Subsection 2, 3rd party damages, shall not apply to waters of the State classified under sections 368, 369 and 371, except those waters below head of tide until July 1, 1978.

Sec. 12. 38 MRSA § 551, sub-§ 3, ¶ B, as amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

B. A party determined by the board to have caused a discharge shall appoint an arbitrator within such period of time as the board may by regulation prescribe. In the event that the party shall fail to select its arbitrator within 10 days after receipt of notice from the board that such selection is necessary, the board shall request the American Arbitration Association to select an arbitrator to represent the interest of the party in the arbitration proceedings.

In the case where the person causing the discharge is unknown, the board shall request the American Board of Arbitration to appoint an arbitrator to represent the interest of the unknown party.

Sec. 13. 38 MRSA § 551, sub-§ 4, as last amended by PL 1975, c. 379, §§ 1 and 2, is repealed and the following enacted in its place:

4. Funding.

A. License fees shall be determined on the basis of $\frac{1}{2}\text{¢}$ per barrel of oil transferred by the licensee during the licensing period and shall be paid monthly by the licensee on the basis of records certified to the board, provided that during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement shall be inadequate for such purpose, the license fee shall be determined on the basis of 1.0¢ per barrel. License fees shall be paid to the board and upon receipt by it credited to the Maine Coastal Protection Fund.

B. Whenever the balance in the fund has reached the limit provided under this subchapter, license fees shall be proportionately reduced to cover only administrative expenses and sums allocated to research and development, provided that the license fees shall continue without reduction during such time as any bonds issued pursuant to the private and special laws of 1969, chapter 239, shall remain outstanding and funds made available for interest and debt retirement thereunder shall be inadequate for such purpose.

C. All sums received by the board when the balance in the fund has reached \$4,000,000 shall, after deduction of administrative expenses and sums allocated to research and development, promptly be remitted to the Treasurer of State to be held distinct from all other moneys of the State for the payment of interest and debt retirement pursuant to the private and special laws of 1969, chapter 239, section 5. When there has been no interest or debt incurred pursuant to the private and special laws of 1969, chapter 239, section 5, or upon payment of all interest and debt so incurred, the Treasurer of State shall credit to the fund all sums received according to this subchapter.

Sec. 14. 38 MRSA § 551, sub-§ 6, as last amended by PL 1973, c. 625, § 279, is repealed and the following enacted in its place:

6. Reimbursements to Maine Coastal Protection Fund. The board shall seek recovery to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes, unless the board finds the amount involved too small or the likelihood of success too uncertain; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal Protection Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with a prohibited discharge;

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursement made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd party claims in excess of \$15,000, except to the extent that the costs are covered by payments received under any federal program;

C. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection; and

D. The board may file claims with appropriate federal agencies to recover for the use of the fund all disbursement from the fund in connection with a prohibited discharge.

Sec. 15. 38 MRSA § 551, sub-§ 7, 1st sentence, as last amended by PL 1971, c. 618, § 12, is repealed and the following enacted in its place:

Upon petition of any licensee the board may, after hearing, waive the right to reimbursement to the fund if it finds that the occurrence was the result of any of the following:

Sec. 16. 38 MRSA § 551, sub-§ 7, ¶ B, as enacted by PL 1969, c. 572, § 1, is amended to read:

B. An act of government, either State, Federal or municipal, except insofar as the act was pursuant to section 548;

Sec. 17. 38 MRSA § 552, sub-§ 2, as enacted by PL 1969, c. 572, § 1, is repealed and the following enacted in its place:

2. State need not plead or prove negligence. Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any person, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the State of Maine for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D and E, or other damage incurred by the State. In any suit to enforce claims of the State under this section, to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the person causing the discharge or the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter.

Sec. 18. 38 MRSA § 552-A is enacted to read:

§ 552-A. Detention of vessels

Whenever there is probable cause to believe that a vessel has violated or been the means of a violation of this subchapter or any other law which the Department of Environmental Protection is responsible for administering or any rule, regulation or order of the board or any official of the department made thereunder, the vessel shall be detained in any port of the State until payment of any fine or penalty assessable under the law has been paid or secured to the satisfaction of the Attorney General. Any justice or judge of the Superior Court or the District Court may issue such orders as are necessary to carry out the purposes of this section.

Effective October 24, 1977

CHAPTER 376

AN ACT to Provide for the Study of Transportation and Electric Power Alternatives and to Compile Maine's Energy Statutes.

Be it enacted by the People of the State of Maine, as follows: