

# **Bond Case Briefs**

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## **ZONING & PLANNING - MAINE**

### **Portland Pipe Line Corporation v. City of South Portland**

**Supreme Judicial Court of Maine - October 29, 2020 - A.3d - 2020 WL 6325858 - 2020 ME 125**

Pipeline operator and trade association brought action against city and city's code enforcement officer, challenging validity of city zoning ordinance that prohibited bulk loading of crude oil onto tankers in city harbor and building new structures for that purpose.

The United States District Court granted in part and denied in part defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment, and, after bench trial, dismissed plaintiffs' sole remaining claim. Plaintiffs appealed. The United States Court of Appeals certified question.

The Supreme Judicial Court held that:

- City ordinance was not in direct conflict with the Maine Department of Environmental Protection's (MDEP) exercise of the State's police power pursuant to the Coastal Conveyance Act;
- In a matter of first impression, license issued by the MDEP to pipeline operator, that authorized operator to reverse the flow of oil in one of its pipelines, was not an "order" within meaning of the Coastal Conveyance Act; and
- The Coastal Conveyance Act did not preempt city ordinance by implication.

City ordinance intended to limit air pollution by prohibiting the bulk loading of crude oil onto any marine vessel in city's harbor was not in direct conflict with the Maine Department of Environmental Protection's (MDEP) exercise of the State's police power pursuant to the Coastal Conveyance Act; the Ordinance did not purport to require the MDEP to do anything that the Act said it could not do, nor did it bar the MDEP from doing what the Act says that it could do, and it was not impossible to comply with both the ordinance and the license issued to pipeline operator by the MDEP, where the license permitted, and the ordinance did not forbid, transporting oil from city's harbor via pipeline to Canada, as operator had always done.

License issued by the Maine Department of Environmental Protection's (MDEP) to pipeline operator, that authorized operator to reverse the flow of oil in one of its pipelines, was not an "order" within meaning of the Coastal Conveyance Act; while the words "Department Order" appeared on the first page of the renewal license, the license did not command, direct, or instruct the operator to do anything other than fill rodent burrows and remove soil from the base of storage tanks before it conducted permitted activities.

The Coastal Conveyance Act did not preempt city ordinance intended to limit air pollution by prohibiting the bulk loading of crude oil onto any marine vessel in city's harbor by implication; the Act unambiguously declared that municipal ordinances concerning oil terminal facilities were valid unless they directly conflicted with the Act or rules or orders made pursuant to it, and the city's home rule authority to enact the ordinance was expressly recognized and affirmed by the Act.

