

MAINE STATE LEGISLATURE

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Yes ✓

June 4, 1965

Robert H. Smith Water Improvement Commission

Phillip M. Kilmister, Assistant Attorney General

The Discharge of Industrial Waste Through a Municipal Sewer Outlet and License Requirements Therefor.

In answer to your letter of May 28, 1965, it is the opinion of this office that the Brunswick Resources Corporation may not discharge its waste materials through the outfall of the Brunswick sewer system without prior approval of the Water Improvement Commission.

Title 38, § 413 of M.R.S.A., 1964, sets forth as a prerequisite for the discharge of industrial waste into a body of water by a firm, the obtaining of a license from the Water Improvement Commission. The applicable section of the statute reads as follows:

"No person, firm, corporation or municipality or agency shall discharge into any stream, river, pond, lake or other body of water or watercourse or any tidal waters, whether classified or unclassified, any waste, refuse or effluent from any manufacturing, processing or industrial plant or establishment or any sewage so as to constitute a new source of pollution to said waters without first obtaining a license therefore from the commission. . . ." (Emphasis supplied.)

The purpose of the statute is clearly to restrict pollution. The legislature did not distinguish between direct or indirect discharge of industrial wastes in the wording of the above-quoted statute. A new source of pollution is created whether the polluter discharges waste either directly or indirectly into any given body of water.

The facts of the instant problem indicate that the corporation involved seeks to discharge its waste through the outfall of a municipal sewer system but not through its planned treatment plant. In other words, the waste will be discharged in an untreated condition through a municipal sewer outlet rather than directly from the plant into the river. The effect of the discharge is the same on the body of water receiving such discharge. Only the route of the proposed discharge is



different. It would be an unreasonable interpretation of the statute to allow a polluter to do indirectly that which cannot be done in a direct manner without a license.

Were the industrial waste to be first properly treated by a municipal sewage plant and then discharged into a body of water, arguably no new source of pollution would occur. Such a situation might be properly referred to as merely an increase in the amount of pollution already being discharged by an existing source into said body of water.

In the absence of a decision by our Court on the license requirements for the indirect pollution of a body of water by an industrial firm, this subject has led to some conflict of opinion in the past. Although certain previous opinions of this office tend to substantiate this opinion, a fairly recent opinion has indicated that waste materials from a laundromat may be discharged into a municipal sewer system and thence to a body of water without the necessity of obtaining a license to so discharge. The opinion held that "No license can be required of any person whose pollution empties into a municipal sewer or other man-made watercourse rather than directly into a natural watercourse." 1961-62 Attorney General Report 166.

No one denies that statutory interpretation can lead to a difference of opinion as to the meaning of any given statute. Until our Court interprets the above-quoted statute, however, or the legislature sees fit to further clarify by amendment its present provisions, this office takes the position that the statute means that industrial wastes may not be discharged into any natural body of water either directly or indirectly, thereby causing a new source of pollution to said water, unless the industry discharging such waste is properly licensed to do so by the Commission.

Respectfully submitted;

Phillip M. Kimister
Assistant Attorney General

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