

MAINE STATE LEGISLATURE

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January 10, 1966

Stephen C. DeWick

Water Improvement Commission

Phillip M. Kilmister, Assistant

Attorney General

The scope of the right of entry given to members and employees of the Water Improvement Commission

In your memorandum of November 19, 1965 you have set forth the following questions:

(1.) Is there anything in section 451 which inhibits the staff's right of entry as described in section 452, or which inhibits the Commission's right to "establish and enforce reasonable standards for the operation and maintenance of municipal treatment facilities," as stated in section 361?

(2.) Does section 451 imply that we may sample only watercourses and effluent pipes, but have no right to enter an establishment to collect data?

A discussion of the right of entry as set forth in 38 M.R.S.A. § 452 is determinative of the issues presented in both questions.

Pursuant to the terms of 452, it is mandatory and not permissive, that municipalities furnish the Commission with information relative to the methods of waste treatment used at their sewage collection and disposal systems. This does not mean that municipalities may deprive staff members of the Commission from entering the premises of their treatment plants for the purpose of obtaining additional information however.

The ability of the Commission "to establish and enforce reasonable standards for the operation and maintenance of municipal treatment facilities," as set forth in section 361 would be greatly weakened if the Commission had to depend solely upon information supplied by the various municipalities and could not utilize fully the services of its own staff as fact finders.

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By the same reasoning, the Commission would be effectively thwarted in its effort to enforce classification standards from violation by private industrial polluters if the latter could refuse any inspection of their waste treatment facilities by personnel of the Commission.

In order to obtain a license to discharge waste in the first instance, Commission approval of proposed treatment plans is necessary. 38 M.R.S.A. §§ 413-414. Once a license has been issued, it is equally important that the Commission possess a right to inspect existing treatment facilities and collect data pertaining thereto, in order to be able to determine whether the terms of licensure are being fulfilled by the licensee.

In the absence of an effective guideline to follow, either by way of statute or court decision, we make no effort to specify what constitutes "a reasonable request for information" as set forth in section 452. Reasonableness will depend upon all of the circumstances surrounding the particular request for information.

It would appear that a sampling of the watercourse into which a private industrial polluter discharges waste should be first undertaken as a condition precedent to any entry upon the premises of said polluter for the purpose of collecting data. The grounds for inspecting treatment facilities and gathering information in relation thereto should be predicated on something more than mere suspicion.

Phillip M. Kilmister
Assistant Attorney General.

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