

MAINE STATE LEGISLATURE

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yes ✓
May 19, 1966

Raeburn W. Macdonald, Chief Engineer

Water Improvement Commission

Phillip M. Kilmister, Assistant

Attorney General

Pasturage of Cattle on Land Proximate to a Class "A" Stream

FACTS:

In your memorandum of April 26, 1966 you state that certain interests plan to pasture a large number of cattle within the shed of the Ashland water supply source which is the Machias River, a class A stream. You indicate that the effect of pasturage upon the town water supply may be inconsequential because of the fact that the water supply intake for the town is approximately 10 miles from the area where the pasturage will take place. You express some fear that there may be a considerable amount of pollution to the stream in the immediate area of pasturage however. We interpret your memorandum as asking in effect the following question:

QUESTION:

Could the seepage or draining of waste matter into a class A stream, resulting from the pasturage of cattle on land contiguous thereto, constitute an actionable violation of the classification of said stream?

ANSWER:

See opinion.

OPINION:

38 M.R.S.A. § 363 of our Water Improvement Laws provides for the classification of fresh surface waters and reads in part:

"Class A shall be the highest classification and shall be of such quality that it can be used for bathing and for public water supplies after disinfection, and the dissolved oxygen content of such waters shall not be less than 75% saturation and contain not more than 100 coliform bacteria per 100 milliliters.

"There shall be no discharge of sewage or other wastes into water of this classification and no deposits of such material on the banks of such waters in such a manner that transfer of the material into the waters is likely. Such waters may be used for log driving or other commercial purposes which will not lower its classification." (Emphasis supplied)

It is clear that a landowner or person in possession of land abutting a class A stream cannot place manure or other agricultural wastes related to the raising of cattle upon the banks of such a stream so as to cause portions of the deposited waste matter to enter said stream without causing a degradation of the stream classification. Where no method of collection or disposal of waste is undertaken by a person who raises cattle, and waste matter is allowed to drain into a class A stream, a violation of said classification just as surely takes place.

We believe that the end result of pollution, and not the method of entry by which waste material finds its way into a body of water, is controlling.

A person who proximately causes the degradation of a classified body of water should be held accountable for his acts. Where the degradation of a stream results from the drainage of waste material from cattle raising, the responsibility for such pollution rests squarely upon the person engaged in the enterprise of raising cattle. This is true whether the entry of the pollutant matter into the stream is caused through the action or inaction of the cattle raiser.

Raeburn W. Macdonald

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May 19, 1966

In closing, it should be noted that this opinion represents a liberal construction of the above-quoted statutory section. It is entirely possible that a court might determine the factual situation described above to be outside the scope of the language of 38 M.R.S.A. § 363.

Furthermore, we fear that when a violation of a stream classification results from the drainage of waste matter resulting from the grazing of animals on land abutting streams, that inadequate statutory authority presently exists for abating said violation.

38 M.R.S.A. § 451 entitled Enforcement reads in part as follows:

"After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other waste, . . ."

Where no human agency intervenes to actually carry off or place the waste or refuse on the banks of a stream, we doubt whether any court would interpret the word "dispose" used in section 451 to include the pollution of a stream caused by the meandering of farm animals. What is probably needed is a statutory amendment, rather than an opinion of this office, in order to convince a court that the pollution activity described in this opinion can be abated pursuant to the language of 451.

Phillip M. Kilmister
Assistant Attorney General

PMK/sll