STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

December 29, 1967
Water and Air Environmental
Improvement Commission

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Questions arising by virtue of new, greater discharge of polluting waste at site of "grandfathered" processing establishment.

FACTS:

A laundry service existed in Buckfield prior to August 8, 1953 and continued in operation until 1961 or 1962. This service operated four washing machines and discharged its laundry waste directly through a private outfall into an adjoining river. Sometime in 1961 or 1962 the proprietor of the laundry service sold out, and the new owner now operates a self-service laundromat on the premises, utilizing thirteen washing machines, which discharge their waste through the existing outfall. The laundromat operator has no waste discharge license. A prospective buyer of the laundromat has been denied mortgage financing because of this non-licensure.

In view of the foregoing, you have posed six questions which will be answered in the order in which they were presented:

QUESTION: NO. 1:

Should the Commission hold a license hearing for the prospective buyer?

ANSWER NO. 1:

Yes. Even if the present owner were licensed, such license is non-transferable of right and the Water and Air Environmental Improvement Commission is not empowered to transfer a license from the initial licensee to a subsequent party. *See* 1959-1960 Me. Att'y Gen. Rep. 120; *see generally* Me. Rev. Stat. Ann., Tit. 38, § 414 (1964).

QUESTION NO. 2:

Is the existing installation exempt from the license requirements of Me. Rev. Stat. Ann., Tit. 38, § 413 (1964) by virtue of the so-called "grandfather clause" in this section?

ANSWER NO. 2:

No. Me. Rev. Stat. Ann., Tit. 38, § 413 (1964) provides:

> "No license from the commission shall be required . . . for any manufacturing, processing or industrial plant or establishment, operated prior to August 8, 1953, for *any such discharge* at its present general location, such license being hereby granted." (Emphasis added.)

It is undisputed that a laundry was in existence on August 8, 1953 at the site presently occupied by the laundromat. This prior operation, however, discharged waste from but *four* washing machines. The present operation discharges waste from *thirteen* machines. The language emphasized above in section 413 relates back to the first sentence in the section which reads:

"No person . . . shall discharge into any . . . stream . . ., 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 therefor from the commission."

As we read the statute in its entirety, we interpret it to exempt from license only discharges of waste, refuse or effluent from manufacturing, processing or industrial plants or establishments, or discharges of sewage, *in the same volume and of the same general type as were discharged at the site prior to August 8, 1953.* Any change in discharge volume, or change in the nature of such discharge, so as to constitute a new source of pollution to the receiving body of water, must be licensed by the commission to be lawful.

We must emphasize, however, that for a valid order to issue from the WAEIC aimed at abating a violation of "Grandfather rights", or for the Attorney General to successfully maintain an injunction action for such violation, evidence must be presented showing the difference between the discharge complained of and the discharge prior to August 8, 1953, and that such difference constitutes a new source of pollution to the receiving body of water.

QUESTION NO. 3:

Does the present laundromat operator need a waste discharge license?

ANSWER NO. 3:

Such operator must obtain a license if (1) his present discharge differs in volume or in nature from the discharge existing at his present location on August 8, 1953; and, (2) such differing discharge constitutes a new source of pollution to the receiving stream.

QUESTIONS NOS. 4, 5, 6:

These questions make reference to a previous opinion of this office dated August 30, 1962 which interpreted Rev. Stat. Me., ch. 79, § 8 (1954), now Me. Rev. Stat. Ann., Tit. 13, § 413 (1964), to mean that no license could be required of a person whose pollution emptied into a man-made watercourse or municipal sewer rather than directly into a natural watercourse. This interpretation applies only to situations where the pollution goes into a man-made system *and* enters a treatment plant, the final effluent of which does not pollute the receiving body of water. *See* opinion of this office dated October 5, 1967. All new connections to an existing "grandfathered" direct outfall must be licensed if such connection changes the volume or nature of the discharge from the outfall and results in the addition of new pollution to the receiving body of water. *See* Answer No. 2, *supra.* We believe this exposition answers your last three questions.

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