

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

R. W. Macdonald, Chief Engineer

Performance bonds.

SYLLABUS:

The Water and Air Environmental Improvement Commission may not, as a condition precedent to issuance of a waste discharge license, require the applicant to post a bond for the performance of such acts as the Commission deems necessary to protect the classification of the waters affected by the proposed discharge.

FACTS:

Applicants for waste discharge licenses are quite often unprepared, at the hearings on their applications, to discuss in depth the effect of their proposed discharge on the classification of the receiving body of water. However, such applicants, with equal frequency, claim that after they are licensed they will take any remedial steps later found necessary by the Commission to protect the classification. The Commission wishes to know whether it may condition the issuance of a waste discharge license upon execution of a bond by the applicant binding him to perform such acts as the Commission deems necessary to protect the classification.

QUESTION:

May the Water and Air Environmental Improvement Commission require, as a prerequisite to issuance of a waste discharge license under 38 M.R.S.A. § 414 (1964), that the applicant post a bond conditioned upon such applicant's faithful performance of such acts as the Commission deems necessary to protect the classification of the receiving body of water?

ANSWER:

No.

OPINION:

38 M.R.S.A. § 414 (3) (1964) states in pertinent part:

“Any license to so discharge granted by the Commission may contain such terms and conditions *with respect to the discharge* as in the Commission's determination will best achieve the (classification) standards . . . ” (Emphasis supplied.)

This section admits of no other interpretation but that the Commission may, in granting a waste discharge license, impose *only* conditions relating to the discharge, such as volume, hydrogen-ion concentration and biochemical oxygen demand limitations, designed to maintain the classification of the receiving body of water.

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