

MAINE STATE LEGISLATURE

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Gen *JB* *JE* ✓ ✓
September 1, 1971

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Commission powers re safety measures for quarry operators.

SYLLABUS:

The Maine Mining Commission may, as a condition of approval of a mining plan, require the operator of a surface quarry in bedrock to include safety measures, with respect to the area of land affected, which are, in the judgment of the Commission, appropriate.

The Commission may also require such operators to carry out safety measures with respect to areas of land affected both before and after the date of the Mining Conservation and Rehabilitation of Land Act, so-called (10 M.R.S.A. c. 451), if, in the Commission's judgment, such action is appropriate.

The Commission may not require appropriate safety measures of an owner of an abandoned or inactive surface quarry in bedrock, nor of an operator of such a quarry, absent filing of a mining plan with respect thereto.

QUESTION #1:

May the Maine Mining Commission (hereafter called "commission"), in the exercise of its authority under 10 M.R.S.A. § 2205(2), require operators of surface quarries in bedrock to carry out appropriate safety measures during periods of active mining or must such mining activity first be completed?

ANSWER #1:

The Commission may require the operator to include in a mining plan, safety measures with respect to the area of land affected which are, in the judgment of the Commission, appropriate.

OPINION #1:

With respect to operators of surface quarries in bedrock, we interpret 10 M.R.S.A. § 2205 (1) and (2) to require such operators to file, after the date that the regulations contemplated by 10 M.R.S.A. § 2205 (5) become effective, mining plans which designate the area of land affected by their operations after October 1, 1969. See our Opinion dated February 24, 1971, Answer #3.

We further read these subsections to require the operator to include in the plan safety measures with respect to the area of land affected which are, in the judgment of the Commission, appropriate. We would read the last clause of the last sentence of subsection 2 to include by implication the words "as a condition of approval of such plan" between the existing words "may" and "require".

QUESTION #2:

May the Commission, in the exercise of its authority under 10 M.R.S.A. § 2205 (2), require operators of surface quarries in bedrock to carry out appropriate safety measures not only as to land areas affected from and after October 1, 1969 but also as to land areas affected prior to that date where:

A. The latter affected land is contiguous to land affected after October 1, 1969 and the safety measures, deemed appropriate by the Commission with respect to the area of land affected as set forth in the mining plan, would not be effective unless they were to extend to the pre-October 1, 1969 affected land; or

B. The latter affected land is not connected to any post-October 1, 1969 affected land.

ANSWER #2:

A. Yes.

B. Yes, if the safety measures deemed appropriate by the Commission with respect to the area of land affected by the mining plan would be ineffective unless extended to such land.

OPINION #2:

We view the overriding consideration of the "safety measures" requirement of 10 M.R.S.A. § 2205 (2) to be protection of the public. Accordingly, we deem the effective date of 10 M.R.S.A. c. 451 to be immaterial for purposes of Commission determination as to whether the safety measures, proposed by an operator of a surface quarry in bedrock in his mining plan, are appropriate. If the Commission determines that such safety measures so proposed are inappropriate (that is to say, that they afford inadequate protection of the public) unless they are extended to pre-October 1, 1969 land, it would be in order for the Commission to withhold approval of the mining plan until the defects are cured to its satisfaction. Whether the safety measures proposed by such an operator in his plan are appropriate is a question of fact committed by law to administrative determination on the part of the Commission.

QUESTION #3:

May the Commission, in the exercise of its authority under 10 M.R.S.A. § 2205 (2), require "appropriate safety measures" by operators of surface quarries in bedrock, or owners of such quarries, who are not actively engaged in mining, and therefore have filed no mining plan, where:

A. Such quarries have not been actively mined from or after October 1, 1969; or

B. Such quarries have been actively mined from or after October 1, 1969?

ANSWER #3:

A. No.

B. Yes, if a mining plan has been filed with respect thereto.

OPINION #3:

A. We construe subsection 2 as empowering the Commission to require appropriate safety measures of operators of surface quarries in bedrock as a condition of approval of the mining plan. See Opinion #1, supra. The statute makes no reference to "owners". Further, if no mining plan is filed because there is no mining activity, there is no occasion for the Commission to exercise jurisdiction over the quarry. In substance, then, we do not view subsection 2, or indeed any portion of the chapter, to endow the Commission with power to require the owners and operators of surface quarries in bedrock which have fallen into disuse or have been abandoned, to provide "appropriate safety measures" without filing of a mining plan applicable to such quarry.

B. We reiterate the first sentence of Opinion #1, supra and our opinion of February 24, 1971, Answer #2. Accordingly, when the mining plan with respect to such operation is filed, the Commission may require appropriate safety measures of the operator.

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