

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

Henry Warren

Solid Waste Disposal Areas; Location. 38 M.R.S.A. § 421 (P.L., 1971 c.440).

*SYLLABUS:*

The Solid Waste Disposal Area Law, 38 M.R.S.A. § 421 (P.L. 1971, c. 440) prohibits the disposal of solid waste closer than 300 feet to any classified body of water. Solid waste disposal areas located within the prohibited area as of the effective date of the law, September 23, 1971, may continue to be used until November 30, 1972, but may not be expanded beyond the physical boundary of the area actually being used for solid waste disposal as of September 23, 1971. While these "grandfathered areas" must be discontinued prior to December 1, 1973, this statute does not require the reclamation of such areas. The Environmental Improvement Commission has no authority to permit the location of solid waste disposal areas closer than 300 feet to any classified body of water. It may act to determine that a solid waste disposal area is "suitably removed from a classified body of water" only as to areas established after September 23, 1971. Finally, a determination by the E.I.C. that a solid waste disposal area is "suitably removed from a classified body of water" will not prevent the E.I.C. from enforcing other statutes upon new evidence or upon discovering its earlier decision was based upon inadequate, misleading or false evidence, or a decision involving an erroneous conclusion of fact or law, or the existence of changing conditions.

*QUESTIONS:*

1. What does the term "boundary" mean in 38 M.R.S.A. § 421?
2. Does 38 M.R.S.A. § 421 authorize the E.I.C. to permit the location of a solid waste disposal area whose boundary is closer than 300 feet to a classified body of water?
3. Does 38 M.R.S.A. § 421 require a party to remove refuse he has deposited on a solid waste disposal area whose boundary is closer than 300 feet to any classified body of water prior to December 1, 1973, or is such a party simply required to discontinue using the area for solid waste disposal after December 1, 1973?
4. Does Paragraph 4 of 38 M.R.S.A. § 421 allow a party who at the effective date of the law maintained a dump less than 300 feet from a body of water to move the boundary of that dump even closer to the body of water prior to December 1, 1973?
5. If the E.I.C. pursuant to Paragraph 3 makes a determination that the boundaries of a proposed dumping area are "suitably removed from any classified body of water", is the E.I.C. later prohibited from enforcing any of the other water pollution statutes for which it is responsible as to that dumping area and that body of water if it is later determined that the dumping area is resulting in water pollution?
6. Does the third paragraph of 38 M.R.S.A. § 421 apply to current solid waste disposal areas as well as future areas?

*ANSWERS:*

1. The term "boundary" in 38 M.R.S.A. § 421 means the physical boundary of the area upon which solid waste is being disposed as established by the actual location of the solid waste, and not the legal boundary of the parcel of land upon which solid waste disposal is occurring.
2. No.
3. 38 M.R.S.A. § 421 simply requires the discontinuance of the use of areas located within 300 feet of a classified body of water after December 1, 1973 and does not require the removal of solid waste legally deposited there prior to December 1, 1973.
4. No.
5. No, but see reasoning.
6. The third paragraph of § 421 is applicable only to solid waste disposal areas established after September 23, 1971.

*REASONING:*

38 M.R.S.A. § 421 (P.L. 1971, c. 440) states:

"No boundary of any public or private solid waste disposal areas shall lie closer than 300 feet to any classified body of water.

"If the Environmental Improvement Commission shall determine that soil conditions, groundwater conditions, topography or other conditions indicate that any boundary of any such area should be further than 300 feet from any classified body of water, it may, after notice to and a hearing with the affected party, order the relocation of such boundaries and the removal of any solid waste, previously deposited within the original boundaries, to the confines of the new boundaries.

"Any person, corporation, municipality or state agency establishing a solid waste disposal area after the effective date of this Act may apply to the commission for a determination that the boundaries of the proposed area are suitably removed from any classified body of water.

"Any solid waste disposal area whose boundary is closer than 300 feet to any classified body of water shall be discontinued in conformity with this section prior to December 1, 1973."

1. If the term "boundary" were read to mean the legal boundary of the parcel of land upon which solid waste disposal is occurring, then § 421 would have to be read as permitting solid waste disposal after September 23, 1971, the effective date of the law, but prior to December 1, 1973, within 300 feet of a classified body of water upon land not being used for solid waste disposal prior to September 23, 1971, so long as any part of the parcel was used for solid waste disposal prior to September 23, 1971. In other words, we would have to assume that while the Legislature recognized that solid waste disposal within 300 feet of a classified body of water presented a high degree of likelihood of water pollution, it not only allowed a temporary continuation of water pollution by those persons using solid waste disposal areas in the prohibited zone as they existed on September 23, 1971, but further, that the Legislature intended to allow increased pollution during the interim period. In our opinion, to attribute to the Legislature the intention of permitting expansion of pollution activities would be wholly erroneous. In addition, the grandfather clause of § 421 is an exception to the general prohibition against solid waste disposal in the prohibited zone, and as such, should be narrowly construed. 82 C.J.S. *Statutes* § 382.C.

Further, if the term "boundary" were read to mean the "legal boundary", then the

sentence of § 421 would have to be read as requiring a party to wholly discontinue use for solid waste disposal, of a parcel, any part of which fell within the prohibited zone. Alternatively, such a party would be required to convey away that portion of the parcel falling within the prohibited zone so as to insure that the legal boundary did not fall within the prohibited zone. For example, a city owning a 100-acre parcel of land, a half acre of which was within 300 feet of a classified body of water would be unable to use any part of that parcel for solid waste disposal. This would be absurd and the Legislature is presumed not to intend an absurd result. *State v. Larrabee*, 156 Me. 115, 161 A.2d 855 (1960).

Finally, the second sentence of § 421 permits the E.I.C. to order the relocation of boundaries under certain circumstances. To read the term “boundaries” in this context as meaning “legal boundaries” would be to hold that the E.I.C. has the power to order the conveyance of real property. Not only would this result be absurd, but would most likely be violative of M.R.S.A. Const. Art I, § 1 which secures to all men the right to acquire and possess property.

2. Section 421 is an absolute prohibition against the disposal of solid waste within 300 feet of a classified body of water, with a temporary exception for solid waste disposal areas as they existed on September 23, 1971. This is clear from a reading of the first and last sentences of that section. That the E.I.C. has no power to permit the location of solid waste disposal areas in the prohibited zone is clear, not only from a plain reading of that section, but also because there are absolutely no standards set forth in the law against which the E.I.C. could measure a proposal to locate a solid waste disposal area in the prohibited zone. Without such standards, the statute, or the part of it being discussed, would be unconstitutional. *Stucki v. Plavin*, Me., –A.2d– (June 7, 1972.).

3. The term “discontinue” means “to interrupt the continuance of; to intermit, as a practice or habit; . . . to abandon” *Webster’s New International Dictionary* (2nd Ed., Unabridged, 1961). Words and phrases in statutes are construed according to common meaning. *Portland Terminal Co. v. Boston and Maine R.R.*, 127 Me. 428, 144A. 390 (1929). The last sentence of § 421 states that solid waste disposal areas located less than 300 feet from classified bodies of water shall be “discontinued” prior to December 1, 1973. The statute contains no language suggesting Legislative intent to require reclamation of those areas used for solid waste disposal in the prohibited zone prior to December 1, 1973. In addition, it is unlikely that the Legislature intended to designate “temporary solid waste storage areas”. Strained and forced construction of statutes are not looked upon with favor by the courts. *Pease v. Foulkes*, 128 Me. 293, 147 A. 212 (1929).

4. Section 421 was effective September 23, 1971. As of that date it became unlawful to dispose of solid waste closer than 300 feet to any classified body of water with the exception of waste disposal areas located in the prohibited zone as of September 23, 1971, which were grandfathered until December 1, 1973. To read the statute as permitting expansion of these non-conforming uses would necessitate construing the word “boundary” to mean the legal boundary of the parcel of land upon which the solid waste disposal area was located. This construction of the word “boundary” has been rejected for the reasons set forth in “1” above. In addition, as previously pointed out, grandfather clauses are to be narrowly construed.

5. If the E.I.C., upon proper application, determines on the basis of the facts before it, that a proposed solid waste disposal area would not be violative of the criteria set forth in that portion of the statute which allows the E.I.C. to order relocation of a solid waste disposal area to a position greater than 300 feet from a classified body of water, its

determination that the solid waste disposal area is “suitably removed from any classified body of water” will not prevent it from enforcing other statutes when new evidence is discovered or there is a later determination that the decision was based upon inadequate, misleading or false evidence or information or involved an erroneous legal conclusion, or where conditions have changed. An administrative agency may change its decision when that decision rests upon inadequate, misleading or false evidence, involves an erroneous conclusion of fact or law or where a change of conditions has occurred since its prior decision. 2 Davis, *Administrative Law Treatise* § 18.03.

6. A plain reading of the third paragraph of § 421 makes it clear that this third paragraph applies only to solid waste disposal areas established after September 23, 1971. That paragraph states:

“Any person . . . *establishing a solid waste disposal area after the effective date of this Act* may apply to the commission for a determination . . . .” (Emphasis supplied.)

E. STEPHEN MURRAY  
Assistant Attorney General

June 22, 1972  
Health and Welfare

J. L. Faulkner, Sanitary Engineering

The Minimum Lot Size Law; Reardon Subdivision in Freeport; your memo of June 16, 1972

*SYLLABUS:*

That section of the Minimum Lot Size Law, 12 M.R.S.A. § 4801-4806 (P.L. 1969, c. 365 § 1, as amended by P.L. 1971, c. 532) requiring a minimum frontage of 100 feet for any lot abutting on a public road, lake, pond, river, stream or seashore applies to all lots regardless of their size, and the Department of Health and Welfare has no power to waive this requirement of the statute as to lots located on lakes, ponds, rivers, streams or the seashore.

*FACTS:*

A developer desires to sell lots located on a river for residential use. While each lot would contain more than 20,000 square feet, some would have a river frontage of less than 100 feet.

*QUESTIONS:*

- (1) Does the 100 foot minimum frontage requirement of the Minimum Lot Size Law apply to lots of 20,000 square feet or more?
- (2) Does the Department of Health and Welfare have the power to waive this requirement as to lots located on rivers?