

MAINE STATE LEGISLATURE

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Interpretation of "License from the Commission" requirement of the Site Location Law. 38 M.R.S.A. § 481 et seq.

SYLLABUS:

A facility exempted by Section 488 does not lose that exemption simply because a project must be constructed at such facility in order to obtain a license from the Board of Environmental Protection.

FACTS:

A summer camp exempted from the Site Location Law is constructing, on its property, a waste treatment facility in order to meet the requirements of a waste discharge license (38 M.R.S.A. §§ 413 and 414). Construction of the waste treatment plant would be exempt from the Site Location Law except for the "license from the commission" requirement, since it meets none of the other Site Location jurisdiction requirements (e.g. 20 acres, 60,000 square foot structure).

QUESTION:

What is the effect of the "license from the commission" requirement in section 482(2) of the Site Location Law upon projects required by such licenses at facilities that would be exempt from the Site Location Law under section 488 except for the "license from the commission" requirement?

ANSWER:

The granting of licenses by the Board, under provisions of law separate from the Site Location Law, to a facility exempt from that Law under section 488 does not, by itself, make a project requiring such licensure a "development which may substantially affect the environment" under section 482(2) of the Site Location Law.

REASONS:

The Legislature in enacting the Site Location Law (38 M.R.S.A. § 481 et seq.) was fully cognizant of other laws administered by the Board which required licenses for continued operation of existing facilities, (e.g. air pollution permits, R.S. 1969, c. 474). With knowledge of these other laws the legislature adopted the so-called "grandfather" clause (38 M.R.S.A. § 488) exempting from the Site Location Law, developments in existence or entirely approved as of January 1, 1970, plus certain other specified later developments.

From this background, it appears that it was not the intent of the legislature to exempt existing facilities under section 488, only to subject those same facilities to the Site Location Law under the "license from the commission" requirement of section 482(2). Adequate protection

is provided regarding major new developments at exempted facilities through application of other attributes of the "Development" definition (e.g. 20 acres, or 60,000 square feet). If a waste treatment plant, or other project constructed pursuant to a license at an exempted facility, meets one of the other specified conditions, it would be reviewable under the Site Law--not because it requires a license, but because it otherwise falls within the "development" definition. This interpretation protects both the policy that major developments should receive approval and the policy that existing (as of January 1, 1970) developments are exempt.

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