

MAINE STATE LEGISLATURE

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March 13, 1974

David Tudor

Air Bureau, DEP

Cabanne Howard, Assistant

Attorney General

Notice of Violation of Visible Emission Regulation

You have asked several questions regarding a proposed form for citing violations of the visible emissions regulation. The answers to these questions are all based upon one central fact. While the issuance of a citation may be of significant assistance in bringing about compliance with the law without a lawsuit, it is of no legal significance should a lawsuit eventually be brought, even for the same violation. Thus, the procedures to be followed in preparing and serving the citation (which you ask in question 1, 2, 4 and 5) have no legal ramifications, and you can do pretty much whatever you think will impress the recipient of the citation with the gravity of the situation. I would have only two comments regarding questions 3 and 4. While it does not matter whether a citation is served or not if a case is ultimately brought, I would recommend not serving one in the unusual case where the violator is likely to depart from the jurisdiction (e.g., the case of a polluting ship). And, as to your conduct of investigations, I would also recommend that, in case the matter does get into court, a photograph of the offending smoke be taken. This is not absolutely necessary (the testimony of the licensed smoke reader is enough), but, it can be used to make an impression on the judge.

CABANNE HOWARD
Assistant Attorney General

CH/bls

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