

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date November 20, 1974

To Ron Dearborn

Dept. Environmental Protection

From Donald G. Alexander, Assistant

Dept. Attorney General

Subject Ocean Dumping of Wastes — *minuted & replaced by opinion of*  
*December 12, 1974*

Your memorandum, received by this office November 5, 1974, and attached hereto, poses several questions:

Question 1: Are the waters surrounding Monhegan classified, and if so, to what distance to sea?

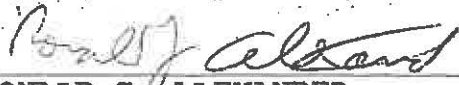
Answer: I do not know if the specific waters surrounding Monhegan Island are classified. However, for the purposes of this opinion, it makes no difference as 38 M.R.S.A. § 414-A-1-b requires that before the Board issue a discharge license for any unclassified waterway it must assign a classification to that waterway and then treat the proposed discharge as a discharge into a waterway of the assigned classification.

Question 2. To what distance to sea does classification authority extend?

Answer: The "waters of the State" over which regulatory authority and thus capacity for classification extends, are defined by 38 M.R.S.A. § 361-A-7 to include the marginal and high seas. For the purposes of imposing state regulations backed by criminal sanctions, this regulatory authority would extend to any point within at least 12 miles of any land area of the state, including islands such as Monhegan or Matinicus.

Question 3. Is there any mechanism available to the Board to allow ocean dumping by the residents of Monhegan?

Answer: There is no such mechanism available to the Board within the area of its regulatory domain. There is no provision to allow the dumping of such refuse in waterways of the state pursuant to 38 M.R.S.A. § 414 and 414-A. Further, it should be noted that the dumping of refuse into any inland or tidal waters of the state is absolutely prohibited under 38 M.R.S.A. § 417. Tidal waters of the state includes all portions of the Atlantic Ocean within the jurisdiction of the State (38 M.R.S.A. § 361-A-5).

  
DONALD G. ALEXANDER  
Assistant Attorney General

DGA:mfe