

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date December 12, 1974

To Ron Dearborn

Dept. Environmental Protection

From Donald G. Alexander, Assistant

Dept. Attorney General

Subject Ocean Dumping of Wastes

This opinion amends and replaces the one dated November 20, 1974, on the same subject.

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

Question 1: Are the waters surrounding Monhegan classified?

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. However, pursuant to 38 M.R.S.A. § 364, classification authority is limited to 3 nautical miles from any land area of the state.

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.

The Ocean Dumping Act, 33 U.S.C. § 1401, et seq. grants the Environmental Protection Agency authority to issue permits for ocean dumping of materials other than dredge spoils. Section 1416(d) of that law then preempts the states from regulating such ocean dumping activities except where the state has developed a plan for regulation which has been approved by E.P.A. While this Federal preemption of the state police power to protect health and welfare may be questionable constitutionally, it enjoys a presumption of validity until tested.

Ron Dearborn
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Thus, conceivably, Monhegan, or anyone else, could receive a permit from E.P.A. for ocean dumping activities to which the state could not object, despite the fact that dumping of refuse into waters is prohibited by 38 M.R.S.A. § 417. However, the law (33 U.S.C. § 1412(a)) specifically provides that:

"No permit shall be issued for a dumping of material which will violate applicable water quality standards."

In Maine, all water quality classifications, except class SD, specifically prohibit the dumping of refuse. Class SD prohibits "solid waste" in the waters. (See 38 M.R.S.A. § 364)

Thus, no dumping of refuse could be approved in any state waters subject to classification.

DONALD G. ALEXANDER
Assistant Attorney General

DGA:mfe

enc.

cc: John M. R. Paterson

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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?

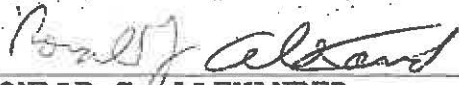
Answer: I do not know if the specific waters surrounding Monhegan Island are classified. However, for the purposes of this opinion, it makes no difference as 38 M.R.S.A. § 414-A-1-b requires that before the Board issue a discharge license for any unclassified waterway it must assign a classification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

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