

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date July 17, 1975

To Maynard F. Marsh, Commissioner

Dept. Inland Fisheries and Game

From John M. R. Paterson, Assistant

Dept. Attorney General

Subject Deposit of slash in streams

In your memorandum of May 7, 1975, you have inquired whether the deposit of "slash" in streams is prohibited by Title 38 MRSA §417(A). Your memorandum describes "slash" as the tops and branches from trees cut during forestry operations. Slash is usually removed from logs in the woods prior to the transportation of logs to a lumber or other manufacturing facility.

Section 417 provides that no "slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse" shall be placed, deposited or discharged directly or indirectly into the inland waters or tidal waters of the State or on the ice thereof or on the banks thereof in such a manner that the same may fall or be washed into such waters. The term "slash" is not included as one of the enumerated items in §417(A).

As originally written, Maine statutes prohibited the depositing in State waters of any "slabs, edgings, sawdust, chips, bark or shavings created in the manufacture of lumber or other wood products" R.S. 1954, C.79, §11. In 1955, this provision was amended to include "slash" among the enumerated items. P.L. 1955, C.425, §8. When the Revised Statutes were recodified in 1964, the prohibition was placed in 38 MRSA §416. In 1969, the Legislature deleted the term "slash" from §416. Finally, in 1971, the Legislature again amended §416. P.L. 1971, c. 458. This time, however, the Legislature rewrote §416 to apply only to oil and included a new prohibition relating to wood products in §417. While "slash" was still not included among the specifically enumerated items in §417, the general prohibition was expanded to cover "forest products refuse" rather than wastes "created in the manufacture of lumber or wood products." Other subsequent amendments have occurred with respect to §417 but none affect this question.

An examination of legislative history sheds no light on the intended scope of the current language of §417. We are, therefore, compelled to construe the meaning of the section from the statute on its face, and in light of the predecessor statutes.

The numerous changes in the statutes on this subject indicate several shifts in State policy on the scope of this prohibition. The statutes originally appeared to contemplate wastes from a manufacturing operation. Since "slash" is not generally a waste from a manufacturing operation but rather, is a waste from a timber harvesting operation, its deletion in 1969 seems consistent with the then scope of §416. However, when the Act was amended in 1971, the substitution of the phrase "forest products refuse" resulted in a broadened application of the prohibition. Rather than applying only to waste resulting from the conversion of logs into a product, "forest products refuse" appeared to also apply to waste generated as a result of harvesting operations.

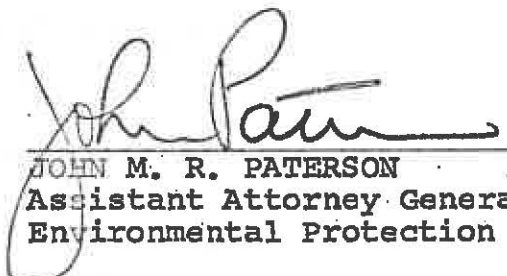
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For examples of the meaning of "forest products" albeit in a somewhat different context, see Burchfield v. Hodges, 29 Tenn. App. 488, 197 S.W. 2d 815 (1946) (reference to "forest products" does not mean manufactured items but rather means timber on the land); and Edgcomb v. Clough, 275 Pa. 90, 118 A. 610 (1922) ("forest products" means standing timber.) Since "forest products" does not mean only commodities manufactured from wood, "forest products refuse" would not be limited to waste from the manufacturing process. Consistent with this view, the Society of American Foresters defines "forest products" as "any raw material yielded by a forest." Terminology of Forest Science Technology Practice and Products, S.A.F. (1971). Further, the Society of American Foresters defines "refuse" as

"those portions of a tree or log whose removal from the forest or utilization at the mill cannot be justified economically, i.e., the (currently) worthless residue"

Moreover, to conclude that slash was not a substance prohibited in streams under §417, would create an anomaly. Since under §418 whole logs are prohibited in inland waters of the State, and under §417 chips, bark, sawdust, etc. are prohibited in inland waters of the State, it hardly makes sense to permit tops of branches in inland waters. Indeed, chips, bark and sawdust are nothing more than the constituent elements of the tree and slash.

Your request for opinion also requests our advice with respect to enforcement. Enforcement options are set forth in Section 453 and 458. Any combination of those options may be used as deemed appropriate to the circumstance of each case.

  
JOHN M. R. PATERSON  
Assistant Attorney General  
Environmental Protection Division

JMRP/bls

cc: Stephen W. Groves  
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