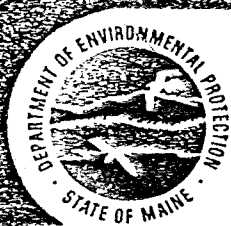


MAINE STATE LEGISLATURE

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Municipal Dumps

STATE OF MAINE

38 M.R.S.A. 417
38 M.R.S.A. 421

Department of Environmental Protection

MAIN OFFICE: RAY BUILDING, HOSPITAL STREET, AUGUSTA
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WILLIAM R. ADAMS, JR.
COMMISSIONER
289-2811

ADMINISTRATIVE SERVICES:
289-2691

August 16, 1976

BUREAUS:

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REGIONAL OFFICES:

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PORTLAND 04101
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MAIN STREET
BLUE ISLE 04769

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40 COMMERCIAL STREET
PORTLAND
773-6491

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CITIZENS' ENVIRONMENTAL
ASSISTANCE SERVICE
239-2591
(TOLL FREE) 1-800-452-1942

TO: William R. Adams, Jr., Commissioner

FROM: Gregory W. Sample, Assistant Attorney General

SUBJECT: Camden, Rockport, Hope and Lincolnville dump;
38 M.R.S.A. Sections 421 and 417.

In requesting an opinion of this office concerning the above dump operation and the cited sections of the statutes, you have provided the following facts:

1. The four towns dispose of solid waste generated from within their boundaries at a common site in the Town of Rockport.
2. The disposal site is in effect, a waterfilled quarry, since municipal refuse is either dumped directly into the quarry or is deposited on the edge of the quarry and periodically pushed by bulldozer over the edge into the quarry.
3. The quarry used as a dump site has a surface water outlet (which may or may not be dry at certain seasons of the year) from a low point in the quarry lip at one end of the quarry.
4. This outlet stream flows to a marsh at one end of Lilly Pond and thus into Lilly Pond.
5. Lilly Pond has an outlet stream that flows directly to the tide waters of Rockport Harbor.

Assuming the correctness of these facts, there is no doubt in my mind that both sections of the statutes referred to above are being violated.

DISCUSSION

Section 421 (the "300 foot law") prohibits the use of any area within 300 feet of a classified body of water for the disposal of solid waste after December 1, 1973. The question to be answered here is whether the waters of the quarry being used as a dump site are classified waters. In my opinion, the waters of that quarry are classified waters under the portions of 38 M.R.S.A. section 369 relating to Rockport. Since section 369 merely requires that the waters in question "drain directly or indirectly into tidewaters," rather than that there be a direct and continuous surface flowage, the intermittance of a connecting stream or the interposition of a classified Great Pond (Lilly Pond) is of no legal significance. The only exception to the definition of classified waters under section 369 is for "those streams draining to inland waterways as defined under section 368." None of the inland waterways classified under section 368 are involved in this problem as presented.

Section 417 does not depend upon the waters into which refuse is deposited being classified. Rather, it applies to "the inland or tidal waters of this State." Consequently, the proper reference is to the definitions of "tidal waters" and "waters of the State" found at 38 M.R.S.A. section 361-A(6) and (7). Since surface or subsurface waters within the boundaries of the State are involved, and the facts presented stipulate that they drain and connect with both a Great Pond and ultimately the tidewaters of Rockport Harbor, the deposit of refuse directly or indirectly into the quarry would constitute a violation of section 417.

Gregory W. Sample
Assistant Attorney General

cc: Arthur Day
Solid Waste Division