

MAINE STATE LEGISLATURE

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Water Pollution: Vessels
Water Pollution: Public Property

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

August 26, 1976

E. A. Rodgers
Superintendent
Maine Maritime Academy
Castine, Maine 04421

Dear Superintendent Rodgers:

I am in receipt of your letter of June 7 requesting my opinion as to the applicability of the Maine Water Pollution Control Law, 38 M.R.S. §§361, et seq., to the training ship STATE OF MAINE, owned by the United States Maritime Administration, but operated on loan by the Maine Maritime Academy. I apologize for the delay in responding to your question, but I have wanted to give my Staff as much time as needed to study the complicated questions of federal-state relations which it raises.

Having completed that study, it is our opinion that the STATE OF MAINE is not subject to State licensing requirements. The basis for this opinion is not that the vessel is federally-owned (we are satisfied that it is being used exclusively for State purposes and that no federal purpose would be frustrated were it to be made subject to State requirements), but that the Congress, in enacting the Water and Environmental Quality Improvement Act of 1970, effectively pre-empted the states from regulating waste discharges from any vessel, regardless of ownership.

Section 18 of the 1970 Act, reenacted by the Congress as Section 312(f)(1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1322(f)(1), provides:

"After the effective date of the initial standards and regulations promulgated under this section, no state or political subdivision thereof shall adopt or enforce any statute or regulation of such state or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section."

August 18, 1976

The term "vessel" is further defined by Section 312(a)(2) of the Act to include:

" . . . every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters. . . "
(emphasis added) 33 U.S.C. §1322(a)(2)

Since the standards and regulations referred to in Section 312(f)(1) have been promulgated, 40 C.F.R. §140 (promulgated June 23, 1972) and 33 C.F.R. §159 (promulgated Jan. 30, 1975), and since the STATE OF MAINE, although serving as a dormitory when at Castine, is not only capable of use, but is in fact used as a "means of transportation on the navigable waters," it appears that the prohibitions of Section 312(f)(1) do apply, and that the vessel is not obligated to comply with State wastewater discharge requirements.

It should also be noted, however, that under Section 312(f)(3) and (4) of the Act, the State may apply to the Administrator of the Environmental Protection Agency to have discharges into any body of water completely prohibited if the quality of such waters is threatened. Thus, the Maine Board of Environmental Protection may make such application if it determines that the quality of the waters of the Bagaduce River, which bears the high quality classifications at various points of SA and SB-2, 38 M.R.S. §370 (Hancock County §5), are endangered. In this regard, I am sure the Board is happy to know that the Maritime Administration is planning to install a shipboard treatment plant and holding tank by June 30, 1977.

Please let me know if I can be of any further assistance.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB/bls

cc: William R. Adams, Jr.