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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 12, 1978

Honorable John L. Martin
Speaker of the House
House of Representatives
Augusta, Maine 04333

Dear John:

Pursuant to your request of March 29, I have inquired into the applicability of the State's various environmental protection laws to a proposed waste oil storage and disposal facility in the Town of Oxford. My conclusion is that the Town officials who wrote to you are correct in describing the State as "powerless" to regulate construction of this facility.

The State's principal means of regulating land use in the organized towns, the Site Location of Development Law, 38 M.R.S.A. §§ 481 et seq., only applies to developments (a) which occupy "a land or water area in excess of 20 acres," or (b) which propose a building or buildings which occupy "a ground area in excess of 50,000 square feet," or (c) which propose "areas to be stripped or graded and not to be revegetated which causes a total project, including any buildings to occupy a ground area in excess of 3 acres," or (d) which involve drilling for or excavating natural resources "where the area affected is in excess of 50,000 square feet." It is plainly evident that the Legislature did not intend to have the State regulate every development. These thresholds of size are given in a definition of "development which may substantially affect the environment." 38 M.R.S.A. § 482 (2).

The Department of Environmental Protection has asked for and received from the developer sufficient information to satisfy itself that none of these thresholds have been crossed.

The expressed concern of the Town officials is with the risk of contamination of underground water supplies. Any escape of oil or any of its by-products from the proposed facility which reached the groundwater would constitute an unlawful discharge, unless the Board had authorized the same by issuance of a waste discharge license. See 38 M.R.S.A. §§ 413 (1) and 361-A. The D.E.P. has interpreted the law, reasonably in my opinion, to prohibit the discharge of any pollutant that may reach surface--or groundwaters within the State, but to require a license in advance only when such a discharge is anticipated. In this particular case, I understand that the Department is satisfied that there are sufficient precautions of both design and operation that no discharge to groundwater can be anticipated.

My review of other State environmental laws reveals no other authority which might require or enable State regulation of the facility proposed. It should be noted, however, that the existence of State environmental and land use laws does not in any way pre-empt or prevent local regulation to protect natural resources or to promote orderly development pursuant to zoning and "home rule" authority where local actions are not inconsistent with State law.

I trust this responds fully to your inquiry.

Sincerely,

JOSEPH E. BRENNAN
Attorney General

JEB:GS:we

cc: Henry Warren
Evan Thurlow
C. Tyner