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Septic Waste Disposal
38 M.R.S.A. §1320-22
38 M.R.S.A. §343

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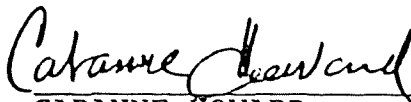
SUBJECT: Regulation of Fluid Hazardous Materials Facilities

You have asked several questions regarding the interpretation of the Septic Tank, Cesspool Waste and Other Waste Materials Act (the "Act"), 38 M.R.S.A. §§1320-22. First you have inquired into the general scope of the authority of the Board of Environmental Protection to regulate the disposal of fluid hazardous wastes under the Act. In 1977, the Legislature amended this act to provide for the regulation of the disposal of "fluid hazardous wastes." The first step in the regulatory scheme is for the Board to designate, after opportunity for a public hearing, "any element, compound, substance, or material...as being a hazard to the public health, safety, or welfare." 38 M.R.S.A. §1321(2). Once such a material has been designated, it then becomes illegal for any person to "dispose" wastes containing such material on any land or soil or at any site or place within the State other than sites approved by the Board. 38 M.R.S.A. §1321(1). The Board is empowered to grant permits for fluid hazardous waste disposal sites by Section 1320(2) of the Act.

Next you ask to what extent the Board may adopt rules to implement the Act. The general answer to this would appear to be that the Board may, pursuant to its general powers to adopt rules "necessary for the proper administration, enforcement, implementation and interpretation of any provisions of law that the department is charged with the duty of administering," 38 M.R.S.A. §343(1), promulgate rules to aid it and the department in determining the general characteristics of an approvable fluid hazardous waste disposal sites under Sections 1320(2). The Board may not, however, adopt rules which would regulate anything other than the disposal of such wastes, since the Act does not contemplate the regulation of such activities as use, transportation or storage of fluid hazardous materials. The Act's focus is on waste disposal alone; a person handling fluid hazardous materials would not be within its purview until he undertook to dispose of the material finally.

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Thus, the Board could not seek to regulate such things as facilities for the manufacturing, handling and storage of fluid hazardous materials. This means that the Board is powerless under the Act to protect against the accidental leaking of such materials from facilities in which they are being temporarily stored; in order to take any action at all, it must wait until some other environmental violation has occurred, such as the entry of the material into the waters of the state in violation of 38 M.R.S.A. §413, and then bring an appropriate enforcement action. But to the extent that the Board wished to reach these situations before such damage occurred, further legislation would be required.



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