

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

April 6, 1982

Henry E. Warren, Commissioner
Department of Environmental Protection
State House Station #17
Augusta, Maine 04333

RE; Soil Evaluations for Septic Tank Sludge Disposal on Land

Dear Mr. Warren:

Mr. Hollis McGlaufflin, the Director of the Bureau of Land Quality Control for our agency, has asked whether it is illegal for a person, licensed only as a site evaluator by the Department of Human Services pursuant to 22 M.R.S.A. § 42(3-A), to investigate, evaluate and report to the Board of Environmental Protection concerning soil conditions for septic tank sludge disposal on land. In our opinion, such activity would be illegal since it would constitute the practice of soil science without requisite certification by the State Board of Certification for Geologists and Soil Scientists and would therefore be a violation of 32 M.R.S.A. § 4903.

The practice of soil science includes identification and mapping of soils and interpretation of soil properties. 32 M.R.S.A. § 4902(8). No person may practice or offer to practice soil science in Maine unless certified to do so by the State Board of Certification for Geologists and Soil Scientists unless he comes within a specific statutory exemption from that requirement.

Certainly the work which you have described to be done for the Board of Environmental Protection is the practice of soil science. Land to be used as a disposal site for septic tank sludge is a waste facility requiring a Board permit for operation. See 38 M.R.S.A. §§ 1303, 1306. The Board has adopted regulations which set forth criteria for review of site applications for such disposal; among

those criteria are evaluations of the physical and chemical characteristics of soil types at the site. See Regulations of the Board of Environmental Protection, Chapter 420(1). 1/ Because the gathering and assessment of such information constitutes the practice of soil science, an individual must be properly certified to do so or statutorily exempted.

In your inquiry, you have alluded to the only pertinent statutory exemption, that provided by 32 M.R.S.A. § 4906-A:

"Persons who have been licensed by the Department of Human Services pursuant to Title 22, section 42, subsection 3-A, to evaluate soil for subsurface sewage disposal are exempt from the certification requirement if their soil evaluation work relates solely to subsurface sewage disposal systems." 2/

(emphasis supplied). To come within this exception to the broad certification requirement of section 4903, an individual

1/

For several years it has been the Board's policy to accept information on soils at the proposed application site from site evaluators licensed by the Department of Human Services. See "Bureau of Land Quality Control Police Number 6." In that statement the Board concedes that "Licensed Site Evaluators are licensed by the Department of Human Services to only describe soil for subsurface waste water disposal (septic) systems." By way of explanation it continues,

"The DEP staff has recognized the soil information provided by Licensed Site Evaluators, despite the fact that the license was created to qualify persons in a very specific function, by acknowledging that a competence in identifying soil characteristics and conditions was proven by passing the rigorous Site Evaluators' Examination."

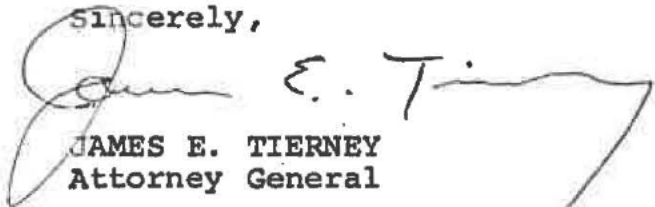
2/

Section 4906-A was enacted by P.L. 1981, c. 401, §76. The Statement of Fact provided that several sections of the bill, including section 76, were designed to ". . . make it clear that only certified geologists and certified soil scientists may practice geology or soil science, respectively, as defined." Statement of Fact of L.D. 1597, An Act to Update and Clarify Legislation Concerning Agencies Within or Affiliated with the Department of Business Regulation.

must be: (1) licensed by the Department of Human Services, and, (2) engaged in soil evaluation which is concerned only with subsurface sewage disposal systems. Septic tank sludge disposal on land, as licensed by the Board of Environmental Protection, involves spreading septage uniformly on an approved site at specified rates and allowing it to degrade. Because that process is a surface disposal method rather than a subsurface sewage disposal system, persons who provide the services of a soil scientist in evaluating application site soil types should be licensed by the State Board of Certification for Geologists and Soil Scientists even if they have been licensed by the Department of Human Services.

In view of our conclusion in this matter, you may wish to suggest to the Board of Environmental Protection that it amend its policy to require that site evaluations be made only by a certified soil scientist. However, we cannot say that the Board is required by law to depend solely upon information received from licensed soil scientists. It may continue to receive data and analysis supplied by whomever it deems reliable, according to what weight it determines is appropriate.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/kc

cc: Michael R. Petit

Commissioner, Department of Human Services

Patricia Boudin

Board Secretary

Board of Certification for Geologists and Soil Scientists