

# MAINE STATE LEGISLATURE

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JAMES E. TIERNEY  
ATTORNEY GENERAL



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

May 17, 1982

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

Dear Speaker Martin:

I am writing in response to your inquiry of April 8, 1982 as to whether the Town of Island Falls may engage in open burning at a new solid waste disposal facility which it proposed to operate. The answer is in the affirmative.

It is my understanding that the Town of Island Falls has maintained a solid waste disposal site for some time which serves fewer than 1,000 persons and at which open burning has occurred. It is my further understanding that the town wishes to operate a new site which would still serve fewer than 1,000 persons and would continue the practice of open burning. The question is, therefore, whether or not the provisions of 38 M.R.S.A. §599(1)(C) would apply to the new site to be opened by the town or whether this statute only applies to those sites that were in existence in 1975. It is my opinion that the clear meaning of the statute is that 38 M.R.S.A. §599(1)(C) does apply to the proposed new site and that open burning is permissible unless the Board of Environmental Protection is able to show that such burning is in violation of the ambient air quality standards.

The relevant sections of the statute read:

"Open burning of solid waste material at a municipal solid waste disposal site serving less than 1,000 persons shall only be prohibited where the Board of Environmental Protection, after investigation and hearing, shows that the continuance of open burning at a specifically municipal site is in violation of air quality standards. (38 M.R.S.A. §599(1)(C))."

specific

On its face, the statute clearly applies to the factual situation outlined in the Town of Island Falls and no other interpretation is possible.

This clear meaning is fully buttressed by the legislative intent. In 1973, the Maine Legislature enacted 38 M.R.S.A. §599 which included a provision banning the open burning of waste of any kind after July 1, 1975. Laws of Maine of 1973, c. 438, enacting 38 M.R.S.A. §599(1)(B). However, by early 1975, it became apparent that a significant number of municipalities were going to be unable to comply with the July 1 deadline. 1975 Maine Legislative Record at 719-20, 791-92. To alleviate this burden, the Legislature enacted various amendments to §599, including among them a provision that open burning at municipal solid waste disposal sites serving fewer than 1,000 persons shall be prohibited only if the Board of Environmental Protection finds that such burning is actually causing violations of ambient air quality standards. Laws of Maine of 1975, c. 483, enacting 38 M.R.S.A. §599(1)(C).

Since the Legislature appears to have made the judgment that such burning is of such little consequence to air pollution that it should be made legal, it is difficult to see how it would have objected, had it been presented with the question, to the transferring of the location of the site of such open burning from one place in a town of fewer than 1,000 persons to another. Consequently, we cannot conclude that the conduct of open burning at a new solid waste disposal facility in a town of fewer than 1,000 persons is prohibited by the statute. Indeed, only an express legislative exception could lead to an alternate conclusion.

This literal interpretation should not be construed, however, to allow circumvention of the Legislature's intent. No municipality can conclude from this opinion that it might operate two or more sites, all of which serve fewer than 1,000 persons, and thereby be allowed to conduct open burning. To the contrary, an examination of the legislative history of the 1975 amendment reveals that the Legislature clearly thought it was exempting municipalities and not particular sites. The Statement of Fact of the bill which became the 1975 amendments, Legislative Document 1502 of the 107th Maine Legislature, states:

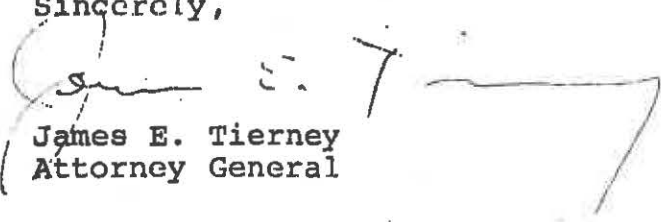
"This bill will exempt municipalities of less than 1,000 in population from applying for a variance for their open burning dumps, unless they are found to be in violation of air quality standards."

In addition, Representative Peterson, the House Chairman of the Joint Committee on Natural Resources which drafted Legislative Document 1502, indicated on the floor of the House of Representatives that a Senate Amendment to the bill did not alter the provision regarding municipalities of fewer than 1,000 in population and that "those communities will be exempted." 1975 Maine Legislative Record at 719. It seems clear, therefore, that the Legislature understood that, under the bill, open burning was going to occur in municipalities of less than 1,000 in population. By the same token, it understood it would be flatly prohibited in municipalities with a population over 1,000.

Nothing in this opinion allows the Town of Island Falls or any other town to conduct open burning in such a way as to violate the air quality standards. Presumably, the Board of Environmental Protection will continue to monitor the Island Falls sites and others for such potential violations at which time remedial action would be taken.

I hope this answers your question. Please feel free to reinquire if any further clarification is needed.

Sincerely,



James E. Tierney  
Attorney General

JET/kc

Encl.

cc: Representative Carl B. Smith  
Commissioner Henry E. Warren