

MAINE STATE LEGISLATURE

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DATE: 3/28/94

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1329, L.D. 1792, Bill, "An Act to Authorize Use of Civil Administrative Penalty Authority and Administrative Order Authority Against Violation of Federal and State Drinking Water Laws, Regulations and Rules"

Amend the amendment by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

'Sec. 1. 22 MRSA §2601, sub-§§1-A, 1-B, 1-C, 1-D, 4-A and 9-A are enacted to read:

1-A. Administrative compliance order. "Administrative compliance order" means an administrative order that is issued by the commissioner against a public water system in violation of federal or state drinking water laws, regulations or rules.

1-B. Administrative consent order. "Administrative consent order" means an order issued by the commissioner pursuant to a bilateral agreement between the commissioner and a public water system in violation of federal or state drinking water laws, regulations or rules.

1-C. Administrative penalty. "Administrative penalty" means a fine imposed by the commissioner against a public water system in violation of federal or state drinking water laws, regulations or rules.

1-D. Administrative remedy. "Administrative remedy" means an administrative compliance order, an administrative consent order or an administrative penalty.

HOUSE AMENDMENT

2 noncompliance to a public water system within 30 days after the
3 commissioner has determined that the public water system has
4 committed a violation. The notice of noncompliance must contain
5 the following information:

6 A. Identification of the violation;

8 B. A compliance deadline; and

10 C. The possible consequences of noncompliance if the
11 requirements of the notice are not met by the specified date.

12 2. Administrative consent order. If the public water
13 system has failed to correct the violation as specified in the
14 notice of noncompliance by the date specified in the notice, the
15 commissioner and the public water system shall make a good faith
16 effort to agree upon a settlement and, if agreement is reached,
17 the commissioner shall issue an administrative consent order. An
18 administrative consent order may not be changed without written
19 consent by all parties to the agreement. An administrative
20 consent order must include, but is not limited to, compliance
21 schedules and milestones. If the public water system and the
22 commissioner fail to reach an agreement, the commissioner may
23 issue an administrative compliance order under subsection 3 or
24 may refer the case to the Attorney General for relief under
25 section 2617.

26 3. Administrative compliance order. If the public water
27 system and the commissioner fail to reach an agreement under
28 subsection 2, the commissioner may issue an administrative
29 compliance order to the public water system to correct the
30 violation in a manner and within a time frame that the
31 commissioner determines appropriate. The administrative
32 compliance order must contain a schedule that the public water
33 system must follow to bring it into compliance. An
34 administrative compliance order may include an administrative
35 penalty that takes effect as early as the day that the parties
36 ceased negotiating in good faith under subsection 2. The
37 administrative compliance order must specify an administrative
38 penalty that takes effect if the public water system fails to
39 comply with the administrative compliance order.

40 4. Administrative penalty. If the public water system and
41 the commissioner fail to reach an agreement under subsection 2,
42 the commissioner may impose an administrative penalty that takes
43 effect as early as the day that the parties ceased negotiating in
44 good faith under subsection 2. If the public water system fails
45 to comply with an administrative compliance order by the deadline
46 in the compliance schedule, an administrative penalty may be
47 assessed. A notice of penalty assessment may be issued in
48 the compliance schedule, an administrative penalty may be
49 assessed. A notice of penalty assessment may be issued in
50 the compliance schedule, an administrative penalty may be

conjunction with or separate from an administrative compliance order, and must contain the following:

A. Identification of the violation for which it is issued;

B. A citation of the law, rule or order being violated;

C. The amount of the penalty;

D. Notice of the right to an adjudicatory hearing pursuant to the Maine Administrative Procedure Act; and

E. The procedure for paying the penalty.

§2620. Provisions governing administrative penalties

Administrative penalties imposed under this subchapter are governed by the following provisions.

1. Maximum penalty. An administrative penalty may not be greater than \$750 for each violation. Each day that a violation remains uncorrected may be counted as a separate violation.

2. Schedule of penalties. The commissioner shall adopt rules in accordance with Title 5, chapter 375 establishing a schedule of administrative penalties. Factors that may be considered include but are not limited to:

A. The nature and duration of the violation;

B. The level of assessment necessary to ensure immediate and continued compliance;

C. Whether steps were taken by the public water system to prevent the violation;

D. Whether steps were taken by the public water system to remediate or mitigate damage resulting from the violation;

E. Whether the public water system has a history of violations;

F. The financial condition of the public water system;

G. Whether or not compliance is less costly than committing the violation;

H. Deterrence of future noncompliance; and

I. The best interest of the public.

2 3. Payment of penalty. Administrative penalties must be
4 paid within 30 days of the issuance of notice of administrative
6 penalty or, if appealed, within 30 days of the appeal decision.
 The commissioner shall deposit administrative penalties received
 into the Public Drinking Water Fund established in section 2660-F.

8 4. Enforcement. Further prosecution of a person who fails
10 to pay the full penalty imposed pursuant to this chapter must be
12 referred to the Attorney General for appropriate action. A
14 person who fails to pay the full penalty imposed pursuant to this
 chapter is liable for all fines and penalties allowed under this
 subchapter and all costs, interest and fees incurred by the
 State, including attorney's fees.

16 **§2620-A. Appeals**

18 Appeal of actions authorized under this section is governed
20 by the following.

22 1. Due process generally. The commissioner shall comply
24 with the Maine Administrative Procedure Act when imposing
26 administrative penalties and issuing administrative compliance
28 orders. A public water system against which an administrative
30 penalty is assessed or an administrative compliance order is
 issued has a right to a hearing as provided under the Maine
 Administrative Procedure Act. The decision of a hearing officer
 is a final agency action subject to review in the Superior Court,
 as provided in Title 5, chapter 375, subchapter VII.

32 2. Effect on penalties. A public water system has 30 days
34 from the date an administrative penalty is issued against it to
36 pay the full amount of the penalty or to file a request for a
38 hearing with the commissioner. If the public water system waives
 the right to or fails to request a hearing within 30 days, the
 administrative penalty is considered final. If a request for a
 hearing is filed within the 30 days, the following provisions
 apply.

40 A. Violations or penalties do not accrue from the date that
42 the public water system files the request for a hearing to
 the date the hearing officer renders a decision.

44 B. Notwithstanding paragraph A, if the hearing officer
46 finds that the appeal is frivolous, the violations or
 penalties accrue throughout the appeal period.

48 C. If an administrative hearing is held and a penalty is
50 assessed at the conclusion of that hearing, the penalty
 becomes final 30 days after the decision.

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1329,
L.D. 1792

2 **§2620-B. Exception**

4 Notwithstanding section 2619, if a violation poses a serious
6 risk to public health, the commissioner may issue an
8 administrative compliance order immediately without having issued
 a notice of noncompliance or having attempted to negotiate an
 administrative consent order.

10 **§2620-C. Rules**

12 The commissioner shall adopt rules establishing procedures
14 regarding notice and the issuance, amendment and withdrawal of
 administrative compliance orders and administrative consent
 orders.

16 Sec. 5. 22 MRSA §2660-C, sub-§4, ¶H, as enacted by PL 1993, c.
18 410, Pt. DD, §4, is amended to read:

20 H. Submit to the department commissioner annually by August
22 1st a report that must include, but is not limited to, a
 performance evaluation of the program, including the
24 implementation of administrative remedies, and commission
 recommendations regarding, but not limited to,
26 administrative remedies, program operations, funding and
 staffing requirements, funding formulas and fee collection
28 and transfer schedules.

30 Sec. 6. 22 MRSA §§2660-D and 2660-F, as enacted by PL 1993,
 c. 410, Pt. DD, §4, are amended to read:

32 **§2660-D. Annual work plan on primacy**

34 Annually, by January 1st, the department commissioner shall
36 submit to the commission a work plan and budget, listing all
 funding sources including but not limited to appropriations from
38 the General Fund and allocations from the United States
 Environmental Protection Agency that are used for the purpose of
40 complying with federal requirements for maintaining primacy.
 The work plan must include goals and objectives relating to the
42 use of administrative remedies that are consistent with other
 parts of the work plan.

44 **§2660-F. Public Drinking Water Fund**

46 The Public Drinking Water Fund is established as an
48 interest-bearing dedicated revenue account. All interest earned
 by the account becomes part of the fund. All fees collected by
50 the department commissioner under this subchapter must be
 deposited into the fund. Any balance remaining in the fund at

the end of the fiscal year does not lapse but is carried forward
into subsequent fiscal years. The department commissioner may
use the fund only to support the program, including the cost of
salaries, benefits, travel, education, technical assistance,
capital equipment and other allowable expenses incurred by the
program.'

Further amend the bill by inserting at the end before the
statement of fact the following:

FISCAL NOTE

The Department of Human Services will experience an increase
in dedicated revenue if the commissioner imposes an
administrative penalty. The amount of additional dedicated
revenue will depend on the number of penalties assessed.

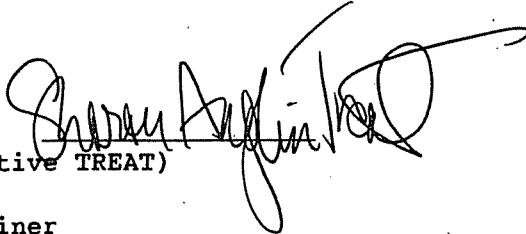
The additional costs to adopt an administrative remedy
process can be absorbed by the department utilizing existing
budgeted resources.

The Department of the Attorney General will incur some minor
additional costs to enforce certain provisions related to
nonpayment of administrative penalties. These costs can be
absorbed within the department's existing budgeted resources.

The additional workload and administrative costs associated
with the minimal number of new cases filed in the court system
can be absorbed within the budgeted resources of the Judicial
Department. The collection of additional fines may increase
General Fund revenue by minor amounts.'

STATEMENT OF FACT

This amendment incorporates Committee Amendment "A" except
that it replaces the word "department" with the word
"commissioner" to clarify that the commissioner has the authority
to administer civil penalties and administrative orders against
violation of federal and state drinking water laws, rules and
regulations.

SPONSORED BY: 
(Representative TREAT)

TOWN: Gardiner