

MAINE STATE LEGISLATURE

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L.D. 1792

DATE: 3/18/94

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HUMAN RESOURCES

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

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 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 department 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 department pursuant to a bilateral agreement between the department 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 department against a public water system in violation of federal or state drinking water laws, regulations or rules.

COMMITTEE AMENDMENT

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

4-A. Notice of noncompliance. "Notice of noncompliance" means a formal written complaint or a notice of violation of federal or state drinking water laws, regulations or rules.

9-A. Violation. "Violation" means noncompliance with federal or state drinking water laws, regulations and rules regardless of whether that noncompliance is intentional, negligent or otherwise.

Sec. 2. 22 MRSA §2617, sub-§1, as amended by PL 1993, c. 410, Pt. DD, §3, is further amended to read:

~~1. Violation of section 2616. Any person willfully violating section 2616 or subchapter VII, on conviction, must be punished by a fine of not more than \$500.~~ A person that violates section 2616 or subchapter VII commits a civil violation for which a penalty not to exceed \$5,000 may be adjudged. Each day of operation in violation of section 2616 or subchapter VII constitutes a separate offense violation. The District Court or the Superior Court has jurisdiction over violations of section 2616 or subchapter VII.

Sec. 3. 22 MRSA §2617, sub-§3 is enacted to read:

3. Administrative remedies. The department may seek and impose administrative remedies as provided in subchapter II-A for a violation of federal or state drinking water laws, regulations and rules.

Sec. 4. 22 MRSA c. 601, sub-c. II-A is enacted to read:

SUBCHAPTER II-A

SAFE DRINKING WATER ADMINISTRATIVE ENFORCEMENT

§2618. General authorization

In accordance with the process outlined in section 2619, the department may impose one or more of the administrative remedies provided in this subchapter when a violation of this chapter, or rules adopted pursuant to this chapter, occurs or if the department determines that administrative remedies are necessary and appropriate to ensure compliance with federal and state drinking water laws, regulations and rules.

§2619. Administrative remedy process

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1. Notice of noncompliance. Except as otherwise provided in this subchapter, the department shall issue a notice of noncompliance to a public water system within 30 days after the department has determined that the public water system has committed a violation. The notice of noncompliance must contain the following information:

10 A. Identification of the violation;

12 B. A compliance deadline; and

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

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

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3. Administrative compliance order. If the public water system and the department fail to reach an agreement under subsection 2, the department may issue an administrative compliance order to the public water system to correct the violation in a manner and within a time frame that the department determines appropriate. The administrative compliance order must contain a schedule that the public water system must follow to bring it into compliance. An administrative compliance order may include an administrative penalty that takes effect as early as the day that the parties ceased negotiating in good faith under subsection 2. The administrative compliance order must specify an administrative penalty that takes effect if the public water system fails to comply with the administrative compliance order.

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4. Administrative penalty. If the public water system and the department fail to reach an agreement under subsection 2, the department may impose an administrative penalty that takes effect as early as the day that the parties ceased negotiating in good faith under subsection 2. If the public water system fails to

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2 comply with an administrative compliance order by the deadline in
3 the compliance schedule, an administrative penalty may be
4 assessed. A notice of penalty assessment may be issued in
5 conjunction with or separate from an administrative compliance
6 order, and must contain the following:

- 7 A. Identification of the violation for which it is issued;
- 8
- 9 B. A citation of the law, rule or order being violated;
- 10
- 11 C. The amount of the penalty;
- 12
- 13 D. Notice of the right to an adjudicatory hearing pursuant
14 to the Maine Administrative Procedure Act; and
- 15
- 16 E. The procedure for paying the penalty.

17 **§2620. Provisions governing administrative penalties**

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

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

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

- 27 A. The nature and duration of the violation;
- 28
- 29 B. The level of assessment necessary to ensure immediate
30 and continued compliance;
- 31
- 32 C. Whether steps were taken by the public water system to
33 prevent the violation;
- 34
- 35 D. Whether steps were taken by the public water system to
36 remediate or mitigate damage resulting from the violation;
- 37
- 38 E. Whether the public water system has a history of
39 violations;
- 40
- 41 F. The financial condition of the public water system;
- 42
- 43 G. Whether or not compliance is less costly than committing
44 the violation;
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H. Deterrence of future noncompliance; and

I. The best interest of the public.

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

4. Enforcement. Further prosecution of a person who fails to pay the full penalty imposed pursuant to this chapter must be referred to the Attorney General for appropriate action. A 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.

§2620-A. Appeals

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

1. Due process generally. The department shall comply with the Maine Administrative Procedure Act when imposing administrative penalties and issuing administrative compliance orders. A public water system against which an administrative 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.

2. Effect on penalties. A public water system has 30 days from the date an administrative penalty is issued against it to pay the full amount of the penalty or to file a request for a hearing with the department. 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.

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

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

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

6 **§2620-B. Exception**

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

14 **§2620-C. Rules**

16 The commissioner shall adopt rules establishing procedures
17 regarding notice and the issuance, amendment and withdrawal of
18 administrative compliance orders and administrative consent
19 orders.

20 **Sec. 5. 22 MRSA §2660-C, sub-§4, ¶H,** as enacted by PL 1993, c.
21 410, Pt. DD, §4, is amended to read:

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

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

34 **§2660-D. Annual work plan on primacy**

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

46 **§2660-F. Public Drinking Water Fund**

48 The Public Drinking Water Fund is established as an
49 interest-bearing dedicated revenue account. All interest earned
50 by the account becomes part of the fund. All fees collected by

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the department 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 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 department 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 replaces the original bill. It gives the Department of Human Services administrative powers to enforce the drinking water laws, as did the original bill, but it differs from the original bill in the following ways.

1. It establishes a sequence of progressive remedies, beginning with an administrative consent order. This requires the Department of Human Services to attempt to negotiate an agreement with a violator before issuing compliance orders or levying penalties.

2. It makes penalties optional when a compliance order is issued. The original bill made penalties mandatory at that stage.

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

2 3. It suspends the accrual of penalties during an appeal
process, unless the appeal is found to be frivolous.

4 4. Current law allows a court to impose a penalty of \$500
per drinking water violation. The original bill increased that
6 amount to \$25,000; the amendment increases it to \$5,000. The
original bill proposed a maximum administrative penalty of
8 \$5,000; the amendment reduces the maximum to \$750.

10 5. Revenue from penalties is placed in the existing Public
Drinking Water Fund, and the statutory language creating the fund
12 is amended to clarify that the fund may be used to provide
education and technical assistance.

14 6. The Department of Human Services is required to report
to the Maine Public Drinking Water Commission regarding the use
16 of administrative remedies, and the commission is required to
include an evaluation of the administrative remedies in its
18 annual report to the department.

20 7. A fiscal note is added to the bill.