

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2002

This subsection applies to an area with vegetation composed primarily of shrubs, trees or other woody vegetation without regard to whether the area was previously cut or cleared;

24. Existing lawns and gardens. Maintenance, but not enlargement of, lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B; and

25. Existing agricultural fields and pastures. Maintenance, but not enlargement of, agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 3, 2002.

CHAPTER 619

H.P. 1119 - L.D. 1488

An Act to Require Major Water Users to Provide Public Information About Their Annual Water Withdrawals from Public Water Resources

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA c. 3, sub-c. I, art. 4-B is enacted to read:

Article 4-B

WATER WITHDRAWAL REPORTING PROGRAM

§470-A. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Nonconsumptive use. "Nonconsumptive use" means any use of water that results in the water being discharged back into the same water source within 1/4 mile upstream or downstream from the point of withdrawal such that the difference between the volume withdrawn and the volume returned is no more than the threshold amount per day. This also includes withdrawals from groundwater that are discharged to a subsurface system or to a hydraulically

connected surface water body such that no more than the threshold amount is consumed.

2. Water source. "Water source" means any river, stream or brook as defined in section 480-B, any lake or pond classified GPA pursuant to section 465-A or groundwater located anywhere in the State.

3. Water withdrawal; withdrawal of water. "Water withdrawal" or "withdrawal of water" means the removal, diversion or taking of water from a water source. All withdrawals of water from a particular water source that are made or controlled by a single person are considered to be a single withdrawal of water.

§470-B. Threshold volumes for reporting

Except as otherwise provided in this article, a person making a water withdrawal in excess of the threshold volumes established in this section shall file a water withdrawal report in accordance with section 470-D covering the 12 months ending on the previous September 30th. The threshold volumes for reporting are as follows.

1. Withdrawals from river, stream or brook. The threshold volume for reporting on withdrawals from a river, stream or brook or groundwater within 500 feet of a river, stream or brook is 20,000 gallons on any day or, if the watershed area at the point of withdrawal exceeds 75 square miles, a volume in gallons per day for any day that is:

A. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on historical flows for rivers, streams or brooks with an adequate record of gauge data;

B. One percent of the estimated low-flow volume of water to occur for 7 days once in 10 years based on an estimated low-flow value for a river, stream or brook below a dam where flow is limited by gate settings or leakage; or

C. If paragraphs A and B are not applicable, then a threshold volume calculated using the formula $V=168.031 \text{ times } A \text{ to } 1.1 \text{ power}$, where V is the volume in gallons per day and A is the watershed area in square miles.

2. Withdrawals from GPA lake or pond or certain groundwater sources. The threshold volume for reporting on withdrawals from a Class GPA lake or pond or groundwater within 500 feet of the lake or pond is determined from the following table:

Lake area in acres	gallons/ week
< 10	30,000
10-30	100,000
31-100	300,000

<u>101-300</u>	<u>1,000,000</u>
<u>301-1000</u>	<u>3,000,000</u>
<u>1001-3000</u>	<u>10,000,000</u>
<u>3001-10,000</u>	<u>30,000,000</u>

3. Withdrawals from other groundwater sources. The threshold volume for reporting on withdrawals from groundwater greater than 500 feet from a river, stream, brook or GPA classified lake or pond is 50,000 gallons on any day, unless the person making the water withdrawal demonstrates to the department's satisfaction that the withdrawal will not impact any adjacent surface water body.

§470-C. Exemptions

The following are exempt from the reporting requirements of this article:

1. Nonconsumptive uses. Nonconsumptive uses. Dams are explicitly exempt as nonconsumptive uses, including hydropower dams licensed by the Federal Energy Regulatory Commission, storage dams and dams subject to a water level setting order pursuant to sections 840 to 843;

2. Household uses. A water withdrawal for ordinary household uses;

3. Public water systems. A public water system that is regulated by the Department of Human Services pursuant to Title 22, chapter 601;

4. Subject to existing reporting requirements. Water withdrawals subject to water withdrawal reporting requirements established in any state permitting or licensing program prior to the effective date of this article, including, but not limited to, the site location of development laws, natural resources protection laws, Maine Land Use Regulation Commission laws and Maine waste discharge laws, provided that the water user files a notice of intent to be covered by this exemption on a form to be provided by the department;

5. Public emergencies. A water withdrawal from surface or groundwater for fire suppression or other public emergency purposes;

6. Commercial or industrial storage ponds. A water withdrawal from a storage pond or water supply system in existence prior to the effective date of this article provided that the withdrawal is for a commercial or industrial use, the water user has filed a water use plan as part of a state license application and the water user files a notice of intent to be covered by this exemption on a form to be provided by the department;

7. Off-stream storage ponds. A water withdrawal from an artificial storage pond that does not

have a river, stream or brook as an inlet or outlet, constructed for the purpose of storing water for crop irrigation or other uses;

8. In-stream storage ponds. A water withdrawal from an artificial pond constructed in a stream channel provided that it is subject to a minimum-flow release requirement in an existing permit, and the water user files a notice of intent to be covered by this exemption on a form to be provided by the department; and

9. Duplication of reporting. A water withdrawal that is reported to any other state agency under any program requiring substantially similar data provided that the other agency has entered into a memorandum of agreement with the department for the collection and sharing of that data.

§470-D. Filing of reports by users; aggregation of data

Unless exempted under section 470-C, a person withdrawing more than the threshold volume of water established in this article must file an annual water withdrawal report on December 1, 2003 and on every December 1st thereafter as provided in this section.

Water withdrawal reports must be submitted to either the Commissioner of Environmental Protection, the Commissioner of Conservation, the Commissioner of Human Services or the Commissioner of Agriculture, Food and Rural Resources in a form or manner prescribed by that commissioner. No later than January 1, 2003, those commissioners shall jointly publish a list indicating which classes of users are to report to which department. The form and manner of reporting must be determined by each commissioner, provided that the required information is collected from each user above the threshold and in a manner that allows that data to be combined with data collected by the other commissioners. The reports must include information on actual and anticipated water use, the identification of the water source, the location of the withdrawal including the distance of each groundwater withdrawal from the nearest surface water source, the volume of the withdrawals that might be reasonably anticipated under maximum high-demand conditions and the number of days those withdrawals may occur each month and the location and volume of each point of discharge. The reporting may allow volumes to be reported in ranges established by the commissioners and reported volumes may be calculated estimates of volumes. The board, the Department of Agriculture, Food and Rural Resources, the Department of Conservation and the Department of Human Services may adopt routine technical rules as defined in Title 5, chapter 375, subchapter II-A as necessary to implement the reporting provisions of this article.

Individual water withdrawal reports filed under this article are confidential and are not public records as defined in Title 1, section 402, subsection 3.

§470-E. Water use standards

The board shall adopt rules by January 1, 2005 that establish water use standards for maintaining in-stream flows and GPA lake or pond water levels that are protective of aquatic life and other uses and that establish criteria for designating watersheds most at risk from cumulative water use. Standards adopted under this section must be based on the natural variation of flows and water levels, allowing variances if use will still be protective of water quality within that classification. Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. Those rules must be provisionally adopted by January 1, 2005 and submitted for consideration to the joint standing committee of the Legislature having jurisdiction over natural resources matters in the First Regular Session of the 122nd Legislature. This section is repealed 90 days after adjournment of the First Regular Session of the 122nd Legislature.

§470-F. Local water use policies encouraged

The department shall encourage and cooperate with state, regional or municipal agencies, boards or organizations in the development and adoption of regional or local water use policies that protect the environment from excessive drawdown of water sources during low-flow periods. The department shall encourage those entities, in developing those policies, to review previously adopted low-flow policies, including any such policies adopted by the Aroostook Water and Soil Management Board established in Title 7, section 332.

§470-G. Report to Legislature

The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on January 15, 2003, and annually thereafter, on all aspects of water use reporting, data aggregation and the development of water use standards required by this article. That report must summarize water use reporting data on a regional basis and in a manner that does not allow for the identification of any individual user. The report must compare cumulative water use and availability of water in watersheds and assess water use issues and priorities on a watershed basis. The report must also identify any impediments to implementing any of the requirements of this article and must include recommendations for addressing those impediments and may include recommendations on any other aspect of the reporting or water use standards provisions of this article. In preparing these reports, the commissioner

shall encourage and assist in establishing regional task forces with cooperating agencies to assess regional water use issues and options for addressing those issues. The commissioner shall also solicit input from the Commissioner of Agriculture, Food and Rural Resources, the Commissioner of Conservation and the Commissioner of Human Services on all aspects of the requirements of this article and shall include in the report all comments and recommendations received from those departments on these requirements.

See title page for effective date.

CHAPTER 620

H.P. 1501 - L.D. 2004

An Act to Phase Out the Availability of Mercury-added Products

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1661-C, sub-§5 is enacted to read:

5. Mercury-added thermostats. After January 1, 2006, a person may not sell or offer to sell or distribute for promotional purposes a mercury-added thermostat except for a thermostat used for manufacturing or industrial purposes and except for a thermostat used by a blind or visually impaired person. A manufacturer of mercury-added thermostats may apply to the commissioner prior to January 1, 2003 for an exemption from the provisions of this subsection for one or more specific uses of a mercury-added thermostat. The Commissioner of Environmental Protection may grant an exemption with or without conditions upon finding that:

A. The manufacturer has demonstrated that a system exists for the proper collection, transportation and processing of the mercury-added thermostat at the end of its life; and

B. The specific use or uses of the mercury-added thermostat provide a net benefit to the environment, public health or public safety when compared to available nonmercury alternatives.

Sec. 2. Report. The Commissioner of Environmental Protection shall submit a report by January 1, 2003 to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the information submitted pursuant to the Maine Revised Statutes, Title 38, section 1661-A. That report must include: