

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

May 2, 1979

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

Re: Discharges to Class A Waters

Dear Commissioner Warren:

You have posed the following questions for a legal opinion:

1. Can you discharge to Class A [fresh surface] water when the quality of the discharge is equal to or better than the quality of the receiving water?
2. Is there any condition under which there can be a [new] discharge to Class A water?

Answer:

Assuming that the questions include the terms shown in brackets above, and that the discharge would contain "wastes," the answer to both questions is "no."

Discussion:

The pivotal fact is that the proposed receiving waters are classified as Class A waters. 38 M.R.S.A. §363, as amended by P.L. 1977, c. 376, §6, specifically provides that "no new discharges will be permitted [into Class A waters] after the effective date of this section." The amendment inserting this language became effective October 24, 1977. A copy of the statute is appended.

The first sentence of the same paragraph containing the quoted prohibition also provides that "[t]here shall be no discharge of sewage or other wastes into water of this classification. . ." subject to a temporary exception for "existing licensed discharges." Prior to the adoption of P.L. 1977, c. 376, this sentence prohibited such discharges "unless specifically licensed by the board upon finding that no degradation will result to the quality of such waters."

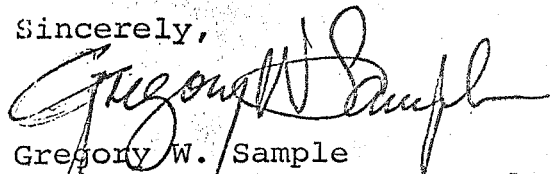
Taken alone, the "no new discharges" language added in 1977 might be read to prohibit the addition of any water or effluent to

Class A waters, whether or not the discharge contained "sewage or other wastes." However, given the statutory definition of "discharge," the better reading would be that any addition of pollutants to Class A waters is prohibited, unless licensed before the effective date of the amendment. Since the Department has construed the term "waste" as used in the water statutes to mean "pollutant," ^{2/}this reading would make the first and last sentences of the paragraph consistent, in spite of their slightly different phrasing.

The second question answers itself, since it uses the term "discharge." Assuming instead that the question is whether any water or effluent may be added to Class A waters under any circumstances, it appears that it would be permitted only if the added water contained no pollutants.

I hope this will be of assistance to you.

Sincerely,



Gregory W. Sample
Assistant Attorney General

GWS:jg

Enc:

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- 1/ "'Discharge' means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State." 38 M.R.S.A. §361-A(1).
- 2/ See §§10-12 of the Department's legislation introduced in the 109th Legislature as L.D. 1071, and the accompanying statement of fact.

search and experimentation conducted under this section shall be subject to such terms and conditions as the department deems necessary in order to protect the public's health, safety and general welfare, and may be terminated by the department at any time upon 24 hours' written notice.

1973, c. 423, § 3.

§ 363. Standards of classification of fresh waters

The board shall have 4 standards for the classification of fresh surface waters.

Class A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, and for public water supplies after disinfection. The dissolved oxygen content of such waters shall not be less than 75% saturation or as naturally occurs, and contain not more than 20 fecal coliform bacteria per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which would impart color, turbidity, taste or odor other than that which naturally occurs in said waters, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters or contain chemical constituents which would be harmful or offensive to humans or which would be harmful to animal or aquatic life. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no discharge of sewage or other wastes into water of this classification and no deposits of such material on the banks of such waters in such a manner that transfer of the material into the waters is likely, except that existing licensed discharges into water of this classification will be allowed to continue until practical alternatives exist, but no new discharges will be permitted after the effective date of this section.

Class B, the 2nd highest classification, shall be divided into 2 designated groups as B-1 and B-2.

B-1. Waters of this class shall be considered the higher quality of the Class B group and shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treatment and for a fish and wildlife habitat. The dissolved oxygen of such waters shall be not less than 75% of saturation, and not less than 5 parts per million at any time. The fecal coliform bacteria shall not exceed 60 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substances shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

B-2. Waters of this class shall be acceptable for recreational purposes including water contact recreation, for industrial and potable water supplies after adequate treatment, and for a fish and wildlife habitat. The dissolved oxygen of such waters shall not be less than 60% of saturation, and not less than 5 parts per million at any time. The fecal coliform bacteria is not to exceed 200 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to

humans, animal or aquatic life, or which adversely affect any other water use in this class. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. No radioactive matter or substance shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

Class C waters, the 3rd highest classification, shall be of such a quality as to be satisfactory for recreational boating and fishing, for a fish and wildlife habitat and for other uses except potable water supplies and water contact recreation, unless such waters are adequately treated.

The dissolved oxygen content of such waters shall not be less than 5 parts per million, except in those cases where the board finds that the natural dissolved oxygen of any such body of water falls below 5 parts per million, in which case the board may grant a variance to this requirement. In no event shall the dissolved oxygen content of such waters be less than 4 parts per million. The fecal coliform bacteria is not to exceed 1,000 per 100 milliliters.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion content of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the hydrogen-ion concentration or "pH" of these waters to fall outside of the 6.0 to 8.5 range. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or

which adversely affect any other water use in this class. No radioactive material or substance shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

Class D waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes. Waters of this class may be used for power generation, navigation and industrial process waters after adequate treatment. Dissolved oxygen of these waters shall not be less than 2.0 parts per million. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the board, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters to impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification. Treated

wastes discharging to these waters shall not create a public nuisance as defined in Title 17, section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance conditions.

With respect to all classifications hereinbefore set forth, the board may take such actions as may be appropriate for the best interest of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.

R.S.1954, c. 79, § 2; 1955, c. 425, § 5; 1959, c. 295, § 2; 1961, c. 305, § 3; 1963, c. 274, § 1; 1967, c. 475, § 4; 1969, c. 431, §§ 1, 2; 1971, c. 461, § 2; 1971, c. 618, § 12; 1973, c. 450, §§ 5, 6; 1973, c. 788, § 207, eff. April 1, 1974; 1977, c. 373, §§ 1 to 5.

Historical Note

This section, as it originally appeared in the 1964 Revision, read:

"The commission shall have 4 standards for the classification of fresh surface waters.

"Class A shall be the highest classification and shall be of such quality that it can be used for bathing and for public water supplies after disinfection, and the dissolved oxygen content of such waters shall not be less than 75% saturation and contain not more than 100 coliform bacteria per 100 milliliters.

"There shall be no discharge of sewage or other wastes into water of this classification and no deposits of such material on the banks of such waters in such a manner that transfer of the material into the waters is likely. Such waters may be used for log driving or other commercial purposes which will not lower its classification.

"Class B, the 2nd highest classification, shall be divided into 2 designated groups as B-1 and B-2.

"B-1. Waters of this class shall be considered the higher quality of the Class B group and shall be acceptable for recreational purposes and after adequate treatment for use as a potable water supply. The dissolved oxygen of such waters shall be not less than 75% of saturation and contain no more than 300 coliform bacteria per 100 milliliters.

"There shall be no disposal of sewage or industrial wastes in such waters except those which have received adequate treatment to prevent lower-

ing of the standards for this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

"B-2. Waters of this class shall be acceptable for recreational boating, fishing, industrial and potable water supplies after adequate treatment. The dissolved oxygen of such waters shall not be less than 60% of saturation and contain no more than 1,000 coliform bacteria per 100 milliliters.

"There shall be no disposal of sewage or industrial waste in such waters to lower its classification nor shall such disposal of sewage or waste be injurious to aquatic life or dangerous for human consumption.

"Class C, the 3rd highest classification, shall be of such a quality as to be satisfactory for recreational boating, fishing and other uses except potable water supplies and swimming, unless adequately treated to meet standards.

"Waters of this classification shall be free from scums, slicks, odors and objectionable floating solids, and shall be free from chemicals and other conditions inimical to aquatic life. The dissolved oxygen content of such waters shall not be less than 5 parts per million for trout and salmon waters and not less than 4 parts per million for non-trout and non-salmon waters.

"The commission may take such action as may be appropriate for the best interests of the public when it

finds that a 'C' classification is temporarily lowered due to abnormal conditions of temperature and stream flow for that season involved.

"Class D waters, the lowest classification, shall be considered as primarily devoted to the transportation of sewage and industrial wastes without causing a public nuisance as defined in Title 17, section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance condition and such waters shall contain dissolved oxygen at all times.

"During a period of temporary reduction in the dissolved oxygen content in this class water, due to abnormal conditions of temperature or stream flow for the particular season involved, the commission, provided a nuisance condition has not then been created in such water and in the opinion of the commission is not likely to be created during such season, shall take no action to reduce the amount of pollution from any source which is allowed in such class water under normal conditions.

"With respect to 'C' and 'D' classifications, the number of coliform bacteria or amounts of toxic wastes or chemicals discharged into said waters shall be only those amounts which will not, in the determination of the commission, be harmful to the public health."

The 1967 amendment repealed and replaced this section to read:

"The commission shall have 4 standards for the classification of fresh surface waters.

"Class A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, and for public water supplies after disinfection. The dissolved oxygen content of such waters shall not be less than 75% saturation or as naturally occurs, and contain not more than 100 coliform bacteria per 100 milliliters.

"These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which would impart color, turbidity, taste or odor other than that which naturally occurs in said waters, nor shall such matter or sub-

stance alter the temperature or hydrogen-ion concentration of these waters or contain chemical constituents which would be harmful or offensive to humans or which would be harmful to animal or aquatic life. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

"There shall be no discharge of sewage or other wastes into water of this classification and no deposits of such material on the banks of such waters in such a manner that transfer of the material into the waters is likely. Such waters may be used for log driving or other commercial purposes which will not lower its classification.

"Class B, the 2nd highest classification, shall be divided into 2 designated groups as B-1 and B-2.

"B-1. Waters of this class shall be considered the higher quality of the Class B group and shall be acceptable for recreational purposes, including bathing, for use as potable water supply after adequate treatment and for a fish and wildlife habitat. The dissolved oxygen of such waters shall be not less than 75% of saturation, subject, however, to normal natural variations, and not less than 5 parts per million at any time and contain no more than 300 coliform bacteria per 100 milliliters.

"These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life, and there shall be no disposal of any matter or substance which

would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

"There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

"B-2. Waters of this class shall be acceptable for recreational purposes including bathing, for industrial and potable water supplies after adequate treatment, and for a fish and wildlife habitat. The dissolved oxygen of such waters shall not be less than 60% of saturation, subject, however, to normal natural variations, and not less than 5 parts per million at any time, and contain no more than 1,000 coliform bacteria per 100 milliliters.

"These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters so as to render such waters harmful to fish or other aquatic life. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life, or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life, and there shall be no disposal

of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

"There shall be no disposal of sewage, industrial wastes or other wastes in such waters except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

"Class C waters, the 3rd highest classification, shall be of such a quality as to be satisfactory for recreational boating and fishing, for a fish and wildlife habitat and for other uses except potable water supplies and swimming, unless such waters are adequately treated.

"The dissolved oxygen content of such waters shall not be less than 5 parts per million for trout and salmon waters, subject, however, to normal natural variations, and not less than 4 parts per million for non-trout and non-salmon waters, subject, however, to normal natural variations. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the commission, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

"These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion content of the waters so as to render such waters harmful to fish

or other aquatic life. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans, animal or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

"There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or render such dangerous for human consumption.

"Class D waters shall be assigned only where a higher water classification cannot be attained after utilizing the best practicable treatment or control of sewage or other wastes. Waters of this class may be used for power generation, navigation and industrial process waters after adequate treatment. Dissolved oxygen of these waters shall not be less than 2.0 parts per million, subject, however, to normal natural variations, and shall always be present. The numbers of coliform bacteria allowed in these waters shall be only those amounts which will not, in the determination of the commission, indicate a condition harmful to the public health or impair any usages ascribed to this classification.

"These waters shall be free from sludge deposits, solid refuse and floating solids such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification, nor shall such matter or substance alter the temperature or hydrogen-ion concentration of the waters to

impair the usages of this classification. There shall be no disposal of any matter or substance that contains chemical constituents which are harmful to humans or which adversely affect any other water use in this class. No radioactive matter or substance shall be permitted in these waters which would be harmful to humans, animal or aquatic life and there shall be no disposal of any matter or substance which would result in radio-nuclide concentrations in edible fish or other aquatic life thereby rendering them dangerous for human consumption.

"There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents including, but not limited to, solids, color, turbidity, taste, odor or toxic material, such that these treated wastes will not lower the standards or alter the usages of this classification. Treated wastes discharging to these waters shall not create a public nuisance as defined in Title 17, section 2802, by the creation of odor-producing sludge banks and deposits or other nuisance conditions.

"With respect to all classifications hereinbefore set forth, the commission may take such actions as may be appropriate for the best interest of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow."

The 1969 amendment, in the sixth paragraph, substituted "water contact recreation" for "bathing", deleted "subject, however, to normal natural variations", deleted "and contains no more than 300 coliform bacteria per 100 milliliters", added "The total coliform bacteria count is not to exceed 300 per 100 milliliters. The fecal coliform bacteria shall not exceed 60 per 100 milliliters." and added the third sentence; in the seventh paragraph, substituted "No radioactive matter or substances shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drink-

ing water." for the former fourth sentence; in the ninth paragraph, substituted "water contact recreation" for "bathing", deleted "subject, however, to normal natural variations" deleted "and contain no more than 1,000 coliform bacteria per 100 milliliters", and added "The total coliform bacteria is not to exceed 1,000 per 100 milliliters. The fecal coliform bacteria is not to exceed 200 per 100 milliliters."; in the tenth paragraph, inserted the fourth sentence, and substituted "No radioactive matter or substance shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water." for the former fourth sentence; in the twelfth paragraph, substituted "water contact recreation" for "swimming"; in the thirteenth paragraph, deleted "subject, however, to normal natural variations", deleted the former second sentence, and added "In no event shall the dissolved oxygen content of such waters be less than 4 parts per million. The total coliform bacteria is not to exceed 5,000 per 100 milliliters. The fecal coliform bacteria is not to exceed 1,000 per 100 milliliters"; in the fourteenth paragraph, inserted the third sentence and substituted "No radioactive material or substance shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards as established by the United States Public Health Service as being acceptable for drinking water." for the former fourth sentence; and, in the sixteenth paragraph, deleted "subject, however, to normal natural variations, and shall always be present" from the third sentence.

Laws 1971, c. 461, § 2, inserted "unless specifically licensed by the commission upon finding that no degradation will result to the quality of such waters" in the first sentence of the fourth paragraph, and substituted "if such use" for "or other com-

mercial purposes which" in the second sentence of the fourth paragraph.

Laws 1971, c. 618, § 12, substituted "board" for "commission" in the first, sixteenth and final paragraphs.

Laws 1973, c. 450, § 5, substituted "The dissolved oxygen content of such waters shall not be less than 5 parts per million, except in those cases where the board finds that the natural dissolved oxygen of any such body of water falls below 5 parts per million, in which case the board may grant a variance to this requirement. In no event shall the dissolved oxygen content of such waters be less than 4 parts per million." for the former first sentence of the seventh paragraph.

Laws 1973, c. 450, § 6, added a last paragraph, to read:

"At such time as the State applies for and receives authority to issue permits under the appropriate provisions of the Federal Water Pollution Control Act, as amended, no person may serve as a board member who receives, or during the 2 years prior to his appointment has received, a significant portion of his income directly or indirectly from license or permit holders or applicants for a license or permit."

Laws 1973, c. 788, § 207, deleted the former last paragraph.

The 1977 amendment, in the second paragraph, substituted "20 fecal" for "100"; in the fourth paragraph, deleted "unless specifically licensed by the board upon finding that no degradation will result to the quality of such waters", inserted "except that existing licensed discharges into water of this classification will be allowed to continue until practical alternatives exist, but no new discharges will be permitted after the effective date of this section", and deleted the former last sentence; and deleted the former third sentences in the sixth, ninth and thirteenth paragraphs.

Law Review Commentaries

Effluent charge; a state approach. Orland E. Delogu, 23 Maine L.Rev. 281 (1971).

Effluent charges; a method of enforcing stream standards. 19 Maine L.Rev. 29 (1967).

Library References

Waters and Water Courses ⇨115. C.J.S. Waters §§ 2, 112.

Notes of Decisions

I. Construction

Statute creating the water improvement commission and granting it certain powers in the regulation of the disposal of industrial waste and

municipal and domestic sewage is in derogation of the common law and therefore must be strictly construed. *Stanton v. Trustees of St. Joseph's College* (1967) Me., 233 A.2d 718.

§ 363-A. Standards of classification of great ponds

The board shall have 2 standards for the classification of great ponds.

Class GP-A shall be the highest classification and shall be of such quality that it can be used for recreational purposes, including bathing, and for public water supplies after disinfection. Such waters shall have a Secchi disk transparency of not less than 2.0 meters or as naturally occurs, and contain not more than 20 fecal coliform bacteria per 100 milliliters. Total phosphorus concentration shall not exceed 15 parts per billion, and chlorophyll A concentration shall not exceed 8 parts per billion as measured in samples taken at or near the surface of the water.

These waters shall be free from sludge deposits, solid refuse, floating solids, oils, grease and scum. No radioactive matter or substance shall be permitted in these waters other than that occurring from natural phenomena.

There shall be no discharge of sewage or other wastes into waters of this classification except as provided in section 371-A and no deposits of materials on the shores or banks thereof in a manner that could permit drainage or leaching from the material into the waters.

Class GP-B, the 2nd highest classification, shall be acceptable for recreational purposes, including water contact recreation, for use as potable water supply after adequate treatment, and for a fish and wildlife habitat. The fecal coliform bacteria count is not to exceed 60 per 100 milliliters. The total phosphorus concentration shall not exceed 50 parts per billion as measured in samples taken at or near the surface of the water.

These waters shall be free from sludge deposits, solid refuse and floating solids, such as oils, grease or scum. There shall be no disposal of any matter or substance in these waters which imparts color, turbidity, taste or odor which would impair the usages ascribed to this classification nor shall such matter or

substance alter the temperature or hydrogen-ion concentration of these waters so as to render such waters harmful to fish or other aquatic life. There shall be no discharge to these waters which will cause the "pH" of these waters to fall outside of the 5.5 to 8.5 range. There shall be no disposal of any substance that contains chemical constituents which are harmful to humans, animals or aquatic life or which adversely affect any other water use in this class. No radioactive matter or substances shall be discharged to these waters which will raise the radio-nuclide concentrations above the standards established by the United States Public Health Service as being acceptable for drinking water. These waters shall be free of any matter or substance which alters the composition of bottom fauna, which adversely affects the physical or chemical nature of bottom material, or which interferes with the propagation of fish.

There shall be no disposal of sewage, industrial wastes or other wastes in such waters, except those which have received treatment for the adequate removal of waste constituents, including, but not limited to, solids, color, turbidity, taste, odor and toxic material, such that these treated wastes will not cause any violation of water quality standards or alter the usages of this classification, nor shall such disposal of sewage or waste be injurious to aquatic life or cause it to be dangerous for human consumption. There shall be no additional discharge of phosphorus to waters of this classification, which discharge does not employ the best available technology for phosphorus removal.

1977, c. 373, § 6.

Library References

Health and Environment ⇐28.

C.J.S. Health and Environment §§
91, 93, 94, 96 to 113, 126, 127,
130, 131, 134 to 138, 140 to 155.

§ 364. —tidal or marine waters

The board shall have 5 standards for classification of tidal waters:

Class SA, shall be suitable for all clean water usages, including water contact recreation, and fishing. Such waters shall be suitable for the harvesting and propagation of shellfish and for a fish and wildlife habitat. These waters shall contain not less than 6.0 parts per million of dissolved oxygen at all times. The median numbers of coliform bacteria in any series of samples representative of waters in the shellfish growing area or non-shellfish growing area shall not be in excess of 70 per 100 milliliters, nor shall more than 10% of the samples exceed 230 coliform bacteria per 100 milliliters.