

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1257

S. P. 434

In Senate, March 10, 1971

Referred to Committee on Natural Resources. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Schulten of Sagadahoc.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Revise the Environmental Improvement Commission Laws.

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

Sec. 1. R. S., T. 30, § 4953, sub-§ 9, ¶ A, amended. Paragraph A of subsection 9 of section 4953 of Title 30 of the Revised Statutes is amended by adding after the first sentence a new sentence to read as follows:

The building inspector shall not issue any permit for a building, or use for which the applicant is required to obtain a license pursuant to Title 38, section 413 until the applicant has obtained such license.

Sec. 2. R. S., T. 38, § 363, amended. The 4th paragraph of section 363 of Title 38 of the Revised Statutes, as repealed and replaced by section 4 of chapter 475 of the public laws of 1967, is amended to read as follows:

There shall be no discharge of sewage or other wastes into water of this classification **unless specifically licensed by the commission upon finding that no degradation will result to the quality of such waters**, 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~~, **if such use will not lower its classification quality.**

Sec. 3. R. S., T. 38, § 364, amended. The last paragraph of section 364 of Title 38 of the Revised Statutes, as repealed and replaced by section 5 of chapter 475 of the public laws of 1967, is amended to read as follows:

The classification adopted pursuant to this subchapter shall apply without regard to seasonal, climatic, tidal or other natural variations which may alter

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

Sec. 4. R. S., T. 38, § 413, repealed and replaced. Section 413 of Title 38 of the Revised Statutes, as amended by section 9 of chapter 499 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 413. New purchase clause

1. License required.

A. No person, firm, corporation, municipality or quasi-municipal corporation or agency thereof, shall, directly or indirectly, discharge or cause to be discharged any waste, refuse, effluent or sewage in any waters or water-courses of this State, whether classified or unclassified, without first obtaining a license therefor from the commission.

B. No license from the commission shall be required for any municipality, sewer district or other quasi-municipal corporation, in existence prior to September 1, 1959 for any such discharge into unclassified waters as the same existed on that date, such license being hereby granted. No license from the commission shall be required for any other discharge in existence on August 8, 1953 not significantly different in quality or quantity from that which was discharged immediately prior to that date, such license being hereby granted.

On October 1, 1976 any license granted by this section is extinguished and void and the discharger shall seek a new license under section 414 for any discharge after that date.

In the event that licensee shall transfer ownership of a facility which is the source of a discharge licensed by this section, the license shall be extinguished and the new owner shall seek a license under section 414.

2. Conditions for license.

A. Classified waters. The commission shall issue a license to an applicant seeking to discharge into classified waters upon a finding that his discharge will be receiving the best practicable treatment, and that either of itself or in combination with existing discharges to the waterway, such discharges will not lower the quality of any receiving body of water or tidal waters below classification.

B. Unclassified waters. The commission shall issue a license to an applicant seeking permission to discharge into unclassified waters upon a finding that his discharge will be receiving the best practicable treatment, and that either of itself or in combination with existing discharges to the waterway, such discharge will not lower the quality of any receiving body of water or tidal waters below the classification which the commission expects to recommend in accordance with section 365.

C. Waters of higher quality than classification. Where the existing quality of any receiving body of water or tidal waters, or segment thereof, is higher than its classification, the commission shall issue a license for a new discharge which would lower the existing quality of such waters, but not below classification, only upon an affirmative showing that the new discharge will be receiving the best practicable treatment and is justifiable as a result of necessary economic or social development.

D. Best practicable treatment. "Best practicable treatment" as used in this subchapter shall mean the methods of reduction, treatment and handling of waste best calculated to protect or improve the quality of receiving waters. In determining the best practicable treatment for a particular discharge the commission shall consider:

- (1) The then existing state of technology;
- (2) The effectiveness of the available alternatives for treatment of the type of discharge being considered;
- (3) Their economic feasibility for the type of establishment involved.

3. Registration of grandfathered discharge. Any discharge for which no license is required, such license having been granted under subsection 1, paragraph B, shall be registered with the commission by the owner or maintainer thereof by January 1, 1972 showing the location, source, nature and amount of such discharge. Any discharge not so registered shall be unlawful and shall be considered an unlicensed discharge under subsection 4.

4. Unlicensed discharge. If after investigation the commission finds any unlicensed discharge, it may notify the Attorney General of the violation without recourse to the hearing procedures of section 451, subsection 2. The Attorney General shall proceed immediately under section 454.

Sec. 5. R. S., T: 38, § 414, repealed and replaced. Section 414 of Title 38 of the Revised Statutes, as repealed and replaced by section 10 of chapter 499 of the public laws of 1969 and as amended, is repealed and the following enacted in place thereof:

§ 414. Applications for licenses

1. Applications for licenses shall be submitted to the commission in such form and containing such information as the commission may by regulation require, and shall be signed by the applicant.

The commission may reject applications which are not in accord with applicable law and regulations. In such event, written notice of such rejection shall be given to the applicant within 30 days of receipt of the application, and such notice shall be accompanied by a statement indicating the information deemed necessary by the commission in order for the application to conform to applicable law and regulations. Within 30 days of such notice and statement, or within such other time as the commission may allow, the applicant shall file the required information, otherwise the application shall be deemed withdrawn. Nothing in this section shall be construed to require an

applicant to disclose any secret formulae, processes or methods used in any manufacturing operation carried on by him or under his direction.

Applications found to be in order by the commission shall be dealt with as provided in this section.

A. If the commission determines as a result of its own investigation, that such discharge will meet the requirements of section 413, subsection 3, it may issue a license to the applicant, or hold a public hearing on said application as provided in paragraph B. In the event that either the applicant shall object to terms or conditions of the license, or the commission has knowledge of objection to the granting of such license it shall:

B. Hold a public hearing upon the application as follows: The commission shall set a time and place for a hearing on the application, which hearing shall be held within 45 days of receipt by the commission of the application and shall give notice of the hearing to the applicant by certified mail, return receipt requested, and by publication in a newspaper circulated in the area of the proposed discharge or in a newspaper having state-wide circulation and distribution in the said area once a week for 3 successive weeks, the last publication being at least 3 days prior to the date of hearing. The hearing shall be held by not less than 3 members of the commission. Evidence taken and received, which may include but not be limited to the applicant's financial ability to meet the state's water pollution control standards, shall have the same effect as though taken and received by the full commission and shall authorize action by the full commission as though so taken and received.

If, after hearing, the commission shall determine that such discharge will meet the requirements of section 413, subsection 2, it shall issue such license to the applicant.

2. Terms and conditions of licenses. Licenses shall be issued by the commission for a term of not less than 3 years nor more than 10 and may contain such terms and conditions as the commission deems reasonably suited to carry out the purposes of this subchapter. With respect to licenses granted by the commission prior to the effective date of this Act which have been in effect for more than 3 years, other than those licenses which have been granted under section 413, subsection 1, paragraph B, the commission may upon 60 days notice to the licensee order him to reapply for a new license under this subchapter.

3. Inspection and records. Authorized representatives of the commission and the Attorney General shall have access to the premises of a licensee at any reasonable time for the purposes of inspection, testing and sampling. The commission may order a licensee to produce any records relating to the handling, treatment or discharge of waste and may require any licensee to keep such records relating thereto it deems necessary.

4. Schedule of fees for discharge licenses. The commission shall establish, after public hearing, a schedule of annual fees for discharge licenses. The fees shall be set in relation to the reasonable costs of inspection, testing, en-

forcement and record keeping by the commission. In establishing the schedule of fees the commission shall give due consideration to:

- A. The nature of the facilities involved;
- B. The composition of the discharge;
- C. The volume of the discharge; and
- D. Any seasonal variations in the volume or composition.

License fees collected under this subsection shall be retained by the commission.

5. Unlawful to violate license. After the issuance of a license by the commission it shall be unlawful to violate the terms or conditions of the license, whether or not such violation actually lowers the quality of the receiving waters below the minimum requirements of their classification.

6. License violation procedure. If the commission finds a violation of the terms and conditions of a license, it may notify the licensee in writing of the nature of the violation and direct the licensee to appear at a hearing not less than 7 days thereafter to show cause why its license should not be suspended pending compliance. The commission upon a finding of noncompliance may notify the Attorney General of the violation, suspend the license in full or in part and make such other orders as it deems proper to obtain compliance. During suspension of its license, the licensee shall not discharge any waste, refuse, effluent or sewage in violation of the commission's orders. The licensee may appeal such suspension or any order issued in connection therewith as provided in section 415, but the taking of such appeal shall not stay the suspension. Any discharge during such suspension in violation of commission's order shall be treated as an unlicensed discharge under section 413, subsection 2.

7. Conduct of hearings. The commission may make reasonable rules and regulations relating to the conduct of hearings held under this section. All testimony at such hearings shall be taken by a stenographer and a complete record of the hearing shall be kept.

Sec. 6. R. S., T. 38. § 415, amended. The next to the last sentence of section 415 of Title 38 of the Revised Statutes and the last sentence of section 415 of Title 38 of the Revised Statutes, as amended by section 3-B of chapter 431 of the public laws of 1969, are further amended to read as follows:

The proceedings shall not be de novo. The court shall receive in evidence in any proceeding hereunder a transcript of the proceedings before the commission and a copy of the commission's order and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability and to the physical and economic feasibility of securing abatement of any pollution in violation of this chapter, may enter a judgment affirming or nullifying such order or decision, in whole or in part, or remanding the cause to the commission upon such terms as the court may

~~direct.~~ If the court finds that the commission acted regularly and within the scope of its authority, and that the order was not clearly erroneous, it shall affirm the decision of the commission.

Sec. 7. R. S., T. 38, § 451, amended. The first paragraph of section 451 of Title 38 of the Revised Statutes as repealed and replaced by section 6 of chapter 431 of the public laws of 1969 and the 2nd and 3rd paragraphs of section 451 of Title 38 of the Revised Statutes, as enacted by section 6 of chapter 431 of the public laws of 1969, are amended to read as follows:

After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other waste, either alone or in conjunction with another or others, in such manner as will, ~~after due consideration for seasonal, climatic, tidal and natural variations and~~ after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere ~~within mixing zones reasonably established by the commission in the manner provided by this section, lower the quality of said waters, outside such zones, below the minimum requirements of such classification, and lower the quality of said waters below the minimum requirements of such classifications, or where mixing zones have been established by the commission, so lower the quality of said waters outside such zones, notwithstanding any licenses which may have been granted or issued under sections 413 to 415.~~

The commission may establish a mixing zone with respect to any discharge at the time application for license for such discharge is made pursuant to section 414, and when so established shall be a condition of and form a part of the license issued. The commission may, after 30 days' notice to and a hearing with the affected party, establish by order a mixing zone with respect to any discharge for which a license has heretofore been issued pursuant to section 414, or for which ~~no~~ a license is ~~required~~ has been granted by virtue of ~~the last sentence of section 413, subsection 1, paragraph B.~~ Prior to the issuance of any order, or commencement of any enforcement action to abate a classification violation, the commission shall establish, in the manner above provided, a mixing zone with respect to the discharge sought to be thereby affected.

The purpose of a mixing zone is to allow a reasonable opportunity for dilution and diffusion of wastes before the receiving waters below or surrounding a discharge will be tested for classification violations. In determining the extent of any mixing zone to be by it established under this section, the commission ~~shall solicit and receive~~ may require from the licensee testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway and their effect upon the ability of the waterway to achieve its classification standards; the size of the waterway and the rate of flow therein; any relevant seasonal, climatic, tidal and natural variations in such size, flow, nature and rate and the effect of such variations upon the ability of the waterway to achieve its classification standards; the uses of the waterways in the vicinity of the discharge, and such other and further evidence as in the commission's judgment will enable it to establish a reasonable

mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof shall vary in order to take into account seasonal, climatic, tidal and natural variations in the size and flow of, and the nature and rate of discharges to, the waterway.

Sec. 8. R. S., T. 38, § 451, amended. The 4th paragraph of section 451 of Title 38 of the Revised Statutes, as enacted by section 6 of chapter 431 of the public laws of 1969, is repealed.

Sec. 9. R. S., T. 38, § 454, amended. Section 454 of Title 38 of the Revised Statutes is amended to read as follows:

§ 454. Injunctions, civil and criminal actions

In the event of ~~the~~ any violation of any ~~of the provisions~~ provision of this subchapter, or of any order or decision of the commission or decree of the court as the case may be, the Attorney General may institute injunction proceedings to enjoin the further violation thereof, **a civil or criminal action** under sections 416, 417 or 453 or any appropriate combination thereof.

Sec. 10. R. S., T. 38, § 482, sub-§ 2, amended. Subsection 2 of section 482 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

2. Development which may substantially affect environment. "Development which may substantially affect environment" means any municipal, educational, commercial or industrial development, including real estate subdivisions, which development requires a license from the ~~Environmental Improvement Commission~~ commission, or which occupies a land area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or sea, excluding borrow pits for sand, fill or gravel, regulated by the State Highway Commission and pits of less than 5 acres, or which occupies on a single parcel a structure or structures in excess of a ground area or a floor space of 60,000 square feet. **An extension of an already existing development is encompassed within the meaning of "development which may substantially affect environment," when the extension itself otherwise falls within the meaning of "development which may substantially affect environment."**

Sec. 11. R. S., T. 38, § 482, sub-§ 5, additional. Section 482 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended by adding a new subsection 5 to read as follows:

5. Subdivision. "Subdivision" means a tract of land in excess of 20 acres partitioned or divided into 10 or more lots for the purpose of sale. Any 2 or more separate parcels shall be considered a single tract if they comprise more than 20 acres and are separated by less than 100 feet.

Sec. 12. R. S., T. 38, § 483, amended. Section 483 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

§ 483. Notification required

Any person intending to construct or operate a development which may substantially affect local environment shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development, on a form prescribed by the commission together with such documents as the commission deems necessary. The commission shall, within 14 days of receipt of such notification, either approve the proposed location development, with or without such conditions as it may deem appropriate, or schedule a hearing thereon in the manner hereinafter provided.

Sec. 13. R. S., T. 38, § 484, sub-§ 2, amended. Subsection 2 of section 484 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

2. **Traffic movement.** The proposed development has made adequate provision or adequate provision exists for loading, parking and traffic movement from the development area onto public roads of all types of traffic, in the area surrounding the development, resulting from or connected with the development.

Sec. 14. R. S., T. 38, § 484-A, additional. Title 38 of the Revised Statutes is amended by adding a new section 484-A to read as follows:

§ 484-A. Certificate of operation or occupancy

No person, whose development has received the approval with conditions of the commission, shall operate or sell, lease, rent or otherwise occupy the development until the commission has ascertained that any conditions imposed by it upon the development have been complied with. Upon ascertaining that the conditions have been complied with, the commission shall issue to the developer a certificate of operation or occupancy. The commission shall either issue such certificate or deny its issuance within 7 days of the receipt of notification that the developer has complied with the conditions.

Sec. 15. R. S., T. 38, § 487, amended. Section 487 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

§ 487. Right to a hearing and judicial review

Any person, whose development the commission has approved with conditions pursuant to section 483, may in writing but within 30 days after notice of such approval request a hearing by the commission for the purpose of reviewing said conditions and modifying any of the terms where appropriate. Upon receipt of such request the commission shall schedule a hearing as provided in section 484.

Any person, with respect to whose development the commission has issued an order after hearing pursuant to this section or section 484 may within 30 days after notice of such order, appeal therefrom to the Supreme Judicial Court sitting as the Law Court. Notice of such appeal shall be given by the appellant to the commission. The proceedings shall not be de novo. Review shall be limited to the record of the hearing before and the order of the

commission. ~~The court shall decide whether the commission acted regularly and within the scope of its authority, and whether the order is supported by substantial evidence, and on the basis of such decision may enter judgment affirming or nullifying such determination.~~ If the court shall find that the commission acted regularly and within the scope of its authority, and that the order was not clearly erroneous, it shall affirm the decision of the commission.

Sec. 16. R. S., T. 38, § 488, amended. Section 488 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended by adding at the end thereof the following new sentence:

The exclusion of this section shall not apply to any development, otherwise subject to this subchapter, which is the result of putting a previously existing structure or development to a use substantially different than the use to which the previously existing structure or development was being put at the effective date of this amendment.

Sec. 17. R. S., T. 38, §§ 489 and 490, additional. Title 38 of the Revised Statutes is amended by adding 2 new sections to read as follows:

§ 489. Regulatory powers of commission

The commission shall from time to time adopt, amend, repeal and enforce rules and regulations necessary to carry out the intent of this article.

§ 490. Penalties

Any person who shall violate any provision of this article, or who shall fail, neglect or refuse to obey any order, rules or regulation of the commission lawfully issued, shall be punished by a fine of not less than \$200 nor more than \$1,000 for each day of such violation, failure, neglect or refusal.

STATEMENT OF FACT

This bill contains the changes in Maine's water pollution laws and in the Site Location Law, which have been recommended to this Legislature by the Legislative Research Committee pursuant to order of the 104th Legislature. The changes are intended to improve the administrative and enforcement provisions of the laws to better protect and improve the quality of our waters and our environment. The report of the Environmental Subcommittee of the Legislative Research Committee (which has been distributed to all members of the 105th Legislature) contains a brief background analysis showing the reasoning behind each of the recommended changes.