

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1625

H. P. 1174

House of Representatives, March 17, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Whitson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Revising the Waste Discharge Licensing Procedures
of the Environmental Improvement Commission.

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

Sec. 1. R. S., T. 38, § 413, repealed and replaced Section 413 of Title 38 of the Revised Statutes, as amended by section 9 of chapter 499 of the public laws of 1969, is repealed and the following enacted in place thereof: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. Waste discharge licenses

1. License required. No person, firm, corporation, quasi-municipal corporation, municipality, state agency or other legal entity shall, directly or indirectly, discharge or cause to be discharged any waste, refuse, sewage or other effluent into any waters of watercourses of the State, whether classified or unclassified, without first obtaining a license therefor from the commission.

2. Exemptions. No municipality or quasi-municipal corporation shall require a license from the commission for any discharge, described in subsection 1, as the same existed on September 1, 1959. No other person, firm, corporation or other legal entity shall require a license from the commission for any discharge, described in subsection 1, emanating from a private home, a manufacturing, processing or industrial plant or other commercial establishment, as such discharge existed in composition and volume on August 8, 1953. Any person, firm, corporation, municipality, quasi-municipal corporation or other legal entity causing any change in the composition of volume of any discharge exempted from license under this section shall obtain license therefor from the commission.

3. **Expiration of exemptions; transfers.** On October 1, 1976 the exemptions from license conferred by this section shall expire absolutely and any person, firm, corporation, municipality, quasi-municipal corporation or other legal entity previously so exempted shall, if continuing to discharge as described in subsection 1, seek license therefor from the commission under section 414.

If any person, firm, corporation, quasi-municipal corporation, municipality, state agency or other legal entity, exempted from license under this section, or granted a license by the commission pursuant to section 414, shall transfer the ownership of a facility which is the source of a discharge described in subsection 1, such exemption shall upon such transfer expire absolutely notwithstanding Title 13, section 247, and the new owner shall apply for a license under section 414.

All licenses granted by the commission prior to the effective date of this Act shall expire absolutely one year after the effective date of this Act and the licensees shall seek new licenses from the commission under section 414.

Notwithstanding the absolute expirations of exemptions and former licenses described in this section, such exemptions and former licenses shall continue in force and effect pending final determination by the commission on the applications for license required as a result of such expirations.

4. **Registration.** Any person, firm, corporation, quasi-municipal corporation or municipality which is exempted under this section from license shall, by March 1, 1973 file with the commission, in such form and containing such information as the commission shall by regulation require, a statement relating to the volume and composition of its discharge as of January 1, 1973.

5. **Prohibitions.** The discharge of any waste, refuse, sewage or other effluent into any watercourse which has a drainage area above the point of discharge of 10 square miles or less is prohibited unless such discharge existed, and was receiving at least primary treatment, prior to October 1, 1971.

Sec. 2. R. S., T. 38, § 414, repealed and replaced. Section 414 of Title 38 of the Revised Statutes, as last repealed and replaced by section 10 of chapter 499 and as amended by chapter 567, both of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 414. Application for licenses

Applications for licenses shall be submitted to the commission in such form and containing such information as the commission may by regulation require, shall be signed by the applicant, and shall be accompanied by a nonrefundable application fee of \$50. Applications found to be in order by the commission shall be dealt with as provided in this section.

1. Discharge of 10,000 gallons or less per day of treated domestic sanitary sewage. In the event that the applicant proposes to discharge 10,000 gallons or less per day of treated domestic sanitary sewage, the commission may:

A. If it determines as a result of its own investigation that such discharge, either of itself or in combination with existing discharges to the waterway, will not lower the classification or the existing water quality of any classified waters, or, in the case of unclassified waters, the classification thereof which the commission expects to recommend in accordance with section 365, it shall issue such license to the applicant upon payment of such fee as the commission shall by regulation provide in accordance with subsection 4; or

B. Hold a public hearing upon the application in the manner provided in this section.

2. Other discharges. In the event that the applicant proposes to discharge other than 10,000 gallons or less per day of treated domestic sanitary sewage, the commission shall set a time and place for a hearing on the application, which 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, with return receipt requested, at least 21 days before the hearing, and to the public by publication in some newspaper circulated in the area of the proposed discharge and in a newspaper having state-wide circulation in the said area once a week for 2 successive weeks, the last publication being at least 3 days prior to the date of hearing. The hearing shall be held by a least one member of the commission or a designated commission or representative and shall have the same effect as though taken and received by the full commission and shall authorize action by the full commission as though by it taken and received.

3. Conditions of issuance.

A. Classified waters. If after hearing the commission shall determine that the proposed discharge will be receiving the best practicable treatment and that such discharge, either of itself or in combination with existing discharges, will not lower the existing water quality, or the classification, whichever is higher, of any waters, it shall issue a license to the applicant upon payment of the first year's fee prescribed by commission regulation in accordance with subsection 4.

If after hearing the commission shall determine that the proposed discharge will be receiving the best practicable treatment, but that such discharge may nonetheless either of itself or in combination with existing discharges, degrade the existing quality of any waters to but not below classification levels, but that social or economic considerations justify such degradation, it shall issue a license to the applicant upon payment of the first year's fee prescribed by commission regulation in accordance with subsection 4.

B. Unclassified waters. If after hearing the commission shall determine that the proposed discharge will be receiving the best practicable treatment and that such discharge, either of itself or in combination with existing discharges, will not lower the existing water quality, or the classification, whichever is higher, of any waters, below the classification which the commission expects to recommend in accordance with section

365, it shall issue a license to the applicant upon payment of the first year's fee prescribed by commission regulation in accordance with subsection 4.

C. Best practicable treatment. For the purposes of this section, the term "best practicable treatment" means secondary treatment, or such treatment in excess of secondary treatment as the current state of the art of treating the waste under consideration will permit and will not impose an unreasonable economic burden on one applicant.

The commission may in issuing a license specify the method of treatment of the discharge which it deems the best practicable. In determining the best practicable treatment for any discharge the commission shall consider the existing state of technology, the effectiveness of the available alternative methods of treating the discharge, and the economic consequences upon the applicant by installing each method of treatment available.

The commission may also in such license specify such reasonable terms and conditions with respect to the discharge as in the commission's determination will assure that the discharge will not lower the classification or the existing water quality of any classified waters; or will not lower the quality of any unclassified waters below the classification which the commission expects to recommend in accordance with section 365.

The burden of proof is upon the applicant to show to the commission's satisfaction that the proposed discharge, either of itself or in combination with existing discharges, will not lower the existing water quality or the classification of any classified waters, or the proposed classification of any unclassified waters. Where the applicant proposes to discharge waste, refuse, sewage or other effluent which, either of itself or in combination with existing discharges, would lower the existing water quality but not the classification of any waters, the burden of proof is upon the applicant to demonstrate to the commission's satisfaction that social and economic considerations justify the degradation of such existing water quality. The applicant must also show to the commission's satisfaction that it has the financial capacity and the technical ability to meet all applicable state water pollution control standards.

A full and complete record shall be kept of all hearings held under this section and all testimony shall be taken by a stenographer.

Licenses shall not be issued under this section for a term exceeding 3 years.

4. Fees. The commission shall by regulation establish a schedule of annual fees for licenses issued under this section. In determining the amount of such fees, the commission shall consider effluent loads, flow volumes, cycles of operation and such other information as will enable it to establish fees reflecting the reasonable costs of inspecting licensed premises and testing licensed discharges.

All license fees shall be retained by the commission and used for the expenses of inspecting licensed premises, testing licensed discharges, and costs incurred in administrative or legal proceedings involving the enforcement of licenses.

Failure to pay a license fee when due shall be deemed a violation of the license.

Sec. 3. R. S., T. 38, § 414-A, additional. Title 38 of the Revised Statutes is amended by adding a new section 414-A to read as follows:

§ 414-A. License violations; unlicensed discharges

No person, firm, corporation, municipality, quasi-municipal corporation, state agency or other legal entity shall violate any of the terms and conditions of any license issued to it by the commission pursuant to section 414.

Whenever it appears to the commission after investigation that there is a violation of this section or section 413, the commission may, in addition to any other remedies available to it, issue a notice to the alleged violator, describing the nature of the alleged violation, ordering that such violation be cured, and further ordering the cessation of any unlicensed discharge or the suspension of the alleged violator's license, if any, in whole or in part, until such cure has been effected.

Service of such notice shall be made by an officer qualified to serve civil process. Upon receipt of such notice the discharge license, if any, of the alleged violator shall be suspended as ordered by the commission and no effluent shall thereafter be discharged by it in violation of the order of suspension, or, if the notice relates to an unlicensed discharge, such discharge shall be terminated forthwith.

The orders contained in such notice shall continue in force and effect until the violations are cured to the satisfaction of the commission or until a court shall order otherwise. Such orders may not be appealed to the Superior Court in the manner provided by section 415, but the alleged violator may apply to the commission for a hearing thereon, which shall be held by the commission within 48 hours after receipt of application therefor. Within 7 days after such hearing the commission shall make findings of fact and continue, rescind or modify the orders. The decision of the commission may be appealed to the Superior Court in the manner provided by section 415. Neither the filing of the application for hearing nor the taking of the appeal shall stay any orders issued under this section.

STATEMENT OF FACT

Section 1 of this bill defines the effluent discharges which require a license from the Environmental Improvement Commission and those which are exempted from license. Section 1 also specifies that these exemptions shall expire on October 1, 1976 (the final date on the cleanup timetable for most of Maine's major rivers) or on the transfer of ownership of an exempted or

licensed facility. Those exempted from license are required to file a statement concerning the volume and composition of their discharge. Discharges into waters having insufficient drainage areas to provide adequate dilution on a year-round basis are prohibited.

Section 2 of the bill is designed to streamline the public hearing process on waste discharge license applications by permitting the commission to dispense with a hearing in cases where the proposed discharge involves only a minor volume of domestic sanitary sewage, and it is clear that no pollution will result. Section 2 also imposes an anti-degradation standard which can be waived only on a showing, to the commission's satisfaction, of some overriding economic or social consideration. Section 2 also required that discharges receive the "best practicable treatment", a defined term. Finally, the section limits licenses to 3 years and empowers the commission to establish license fees.

Section 3 empowers the commission to suspend licenses and provides a prompt administrative hearing for those whose licenses have been suspended.