

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1806

S. P. 623

In Senate, June 3, 1971

Reported by Senator Graham of Cumberland from Committee on Natural Resources and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

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 The 4th paragraph of section 363 of Title 38 of the Revised Statutes, as repealed and replaced by section 4 of chapter 475 of the public laws of 1967, is amended to read as follows: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

Sec. 3. R. S., T. 38, § 413, amended. Section 413 of Title 38 of the Revised Statutes, as amended by section 9 of chapter 499 of the public laws of 1969, is further amended to read as follows:

§ 413. Waste discharge licenses

1. License required. No person, firm, corporation, association, partnership, or municipality, quasi-municipal body, state agency, or other legal en-

ity ~~of agency thereof~~ shall directly or indirectly, discharge or cause to be discharged into any brook, stream, river, pond, lake or other body of water or watercourse or any tidal waters, whether classified or unclassified, any waste, refuse, ~~or effluent from any manufacturing, processing or industrial plant or establishment~~ or any sewage so as to constitute a new source of ~~pollution to said waters~~ without first obtaining a license therefor from the commission.

2. Exemptions. No municipality or quasi-municipal body shall require a license from the commission ~~shall be required under this section or section 414~~ for any discharge, described in subsection 1, as the same existed on September 1, 1959. No other person, firm, corporation, association, partnership, state agency or other legal entity shall require a license from the commission for any discharge described in subsection 1, ~~manufacturing, processing or industrial plant or establishment~~ as such discharge existed in quality or quantity ~~operated prior to~~ on August 8, 1953 for any such discharge at its present general location, such license being hereby granted.

3. Expiration of exemptions.

A. Change in quantity or quality. Upon a significant increase in the quantity or a significant adverse change in the quality of any discharge exempted from licensing by subsection 2, the exemption granted by subsection 2 is extinguished and void and the person, firm, corporation, association, partnership, municipality, quasi-municipal body, state agency or other legal entity causing the increase or change shall seek a license under section 414.

B. Transfer of ownership. In the event that ~~licensee~~ the person, firm, corporation, association, partnership, municipality, quasi-municipal body, state agency or other legal entity exempted from licensing ~~under by this section~~ subsection 2, or granted a license by the commission shall transfer the ownership of the ~~manufacturing, processing or industrial plant~~ a facility or structure which is the source of the a discharge mentioned in the ~~last sentence of the previous paragraph of this section~~ described in subsection 1, the exemption granted by subsection 2 or the license granted by ~~this section~~ the commission shall upon such transfer be extinguished and void and the new owner shall seek license under section 414.

C. Other expirations. On October 1, 1976, any exemption granted by subsection 2 is extinguished and void and the discharger shall seek a license under section 414 for any discharge after that date.

4. Conditions for licensing.

A. Classified waters. The commission shall issue a license to an applicant seeking to discharge into classified waters upon a finding that the applicant's 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 or below the existing water quality, whichever is higher.

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.

5. **Registration of Discharges Exempted from Licensing.** Every person, firm, corporation, association, partnership, municipality, quasi-municipal body, state agency and other legal entity which is exempted under subsection 2 from licensing, shall, by March 1, 1973, file with the commission a statement 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 6.

6. **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. 4. R. S., T. 38, § 414, amended. 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 further amended to read as follows:

§ 414. Applications for licenses

1. **Form.** 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 hereinafter provided.

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

~~A. (1) If the commission 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 of any receiving body of water or tidal waters will meet the requirements of section 413, subsection 4, it may issue such license to the applicant upon payment of the sum of \$50; or (2) Hold a public hearing upon the application in the manner hereinafter provided. In the event that either the applicant shall object in writing to the terms or conditions of a license within 30 days of notice thereof or the commission has knowledge of substantial objection to the granting of such license it shall hold a public hearing upon the application in the manner provided.~~

~~B. Public hearings. In the event that the applicant proposes to discharge other than less than 1,000 gallons of domestic sanitary sewage per day, the The commission shall set a time and place for hearing on the application, which hearing shall be held within 45 days of receipt by the commission of the application, or the licensee's objection, 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 and 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, and evidence Evidence taken and received which shall may include but not be limited to the applicant's financial ability to meet the State's water pollution control standards 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.~~

If after hearing, the commission shall determine that such discharge, either of itself or in combination with existing discharges to the waterway will meet the requirements of section 413, subsection 4 will not lower the clas-

sification of any receiving body of water or tidal waters it shall issue such license to the applicant upon payment of the required fee sum of \$50 or modify the terms and conditions of the license as appropriate.

2. **Unclassified waters.** In the interim between the first day of September, 1959 and the classification by the Legislature of any 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 into any unclassified surface waters or tidal flats, without first obtaining a license from the commission. No license from the commission shall be required of any municipality, sewer district or other quasi-municipal corporation, in existence prior to September 1, 1959 for any discharge as the same existed on that date at its then point of discharge, such license being hereby granted. The commission shall not withhold a license if it shall find that such sewage or waste will not lower the quality of the unclassified waters below the classification which the commission expects to recommend in accordance with section 365. The form of application, commission action thereon, and license fee shall be as provided in subsection 1.

3. **General.** Any license to so discharge granted by the commission may contain such reasonable terms and conditions with respect to the discharge as in the commission's determination will best achieve the standards set forth in sections 363 and 364.

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 and the rights of which have been exercised for more than 3 years, the commission may upon 60 days' notice to the licensee order the licensee 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 hearings, inspection, testing, enforcement and record keeping by the commission provided that no such fee shall exceed \$500. License fees collected under this subsection shall be paid over to the General Fund.

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

The commission may make reasonable rules and regulations relating to the conduct of hearings held under this section.

Sec. 5. R. S., T. 38, § 415, amended. Section 415 of Title 38 of the Revised Statutes, as amended, is further amended by adding at the end the following:

No riparian or littoral owner on any body of water shall have a cause of action either at law or in equity against any licensee licensed under section 414 to discharge into the same body of water nor be deemed an aggrieved party under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensee nor be deemed an aggrieved party under this section based on the fact that such licensed discharge will prevent the owner from having the reasonable use and enjoyment of such body of water, provided that said licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of said body of water, nor cause actual damages to such owner.

Sec. 6. 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, firm, corporation, municipality, association, partnership, quasi-municipal body, state agency 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 or mixture with the receiving waters 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 exemptions or licenses which may have been granted or issued under sections 413 to 415 and 414.~~

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 license an exemption is required~~ has been granted

by virtue of ~~the last sentence of~~ section 413, subsection 2. 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, diffusion or mixture of wastes with the receiving waters 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.

STATEMENT OF FACT

This bill contains the changes in Maine's water pollution laws 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.