

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1019

S. P. 355

In Senate, February 23, 1973

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Cummings of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Amend Maine Water Pollution Control Laws to Conform with Requirements of Federal Water Pollution Control Act Amendments of 1972.

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

Sec. 1. R. S., T. 38, § 361-A, sub-§ 4-A, additional. Section 361-A of Title 38 of the Revised Statutes, as enacted by section 1 of chapter 470 of the public laws of 1971, is amended by adding a new subsection 4-A, to read as follows:

4-A. Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemical, biological or radiological wastes, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Sec. 2. R. S., T. 38, § 413, sub-§ 1, amended. Subsection 1 of section 413 of Title 38 of the Revised Statutes, as amended, is further amended to read as follows:

1. License required. No person ~~firm, corporation, association, partnership, municipality, quasi-municipal body, state agency, or other legal entity~~ 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, effluent or any sewage pollutant~~ without first obtaining a license therefor from the board.

Sec. 3. R. S., T. 38, § 413, sub-§ 2, repealed and replaced. Subsection 2 of section 413 of Title 38 of the Revised Statutes, as amended by section 3 of

chapter 461 and section 12 of chapter 618, both of the public laws of 1971, is repealed and the following enacted in place thereof:

2. Exemption. No person shall be deemed to be in violation of subsection 1, provided that such person has, on or before December 31, 1973, made an application to the Board of Environmental Protection for any such discharge as described in subsection 1.

Sec. 4. R. S., T. 38, § 413, sub-§ 3, repealed and replaced. Subsection 3 of section 413 of Title 38 of the Revised Statutes, as enacted by section 3 of chapter 461 of the public laws of 1971 and as amended, is repealed and the following enacted in place thereof:

3. Transfer of ownership. In the event that any person granted a license by the board shall transfer the ownership of the facility or structure which is the source of the discharge described in subsection 1, the license granted by the board shall upon such a transfer be extinguished and void and the new owner shall be required to obtain a license under section 414.

Sec. 5. R. S., T. 38, § 413, sub-§ 4, §§ E and F, additional. Subsection 4 of section 413 of Title 38 of the Revised Statutes, as enacted by section 3 of chapter 461 of the public laws of 1971, and as amended, is further amended by adding 2 new paragraphs, E and F, to read as follows:

E. Federal objections. The board shall not issue a license to any applicant if it receives notice that in the judgment of the Chief of the United States Army Corps of Engineers such discharge would substantially impair anchorage and navigation of any of the navigable waters of the United States, or in the judgment of the Administrator of the United States Environmental Protection Agency such license would not be consistent with federal water quality statutes and regulations.

F. Area-wide waste treatment. The board shall not issue a license to any applicant if it determines that such application is in conflict with an applicable area-wide waste treatment management plan as defined in section 208, subsection B of the Federal Water Pollution Control Act Amendments of 1972.

Sec. 6. R. S., T. 38, § 414, sub-§ 1, repealed and replaced. Subsection 1 of 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:

1. Processing of applications. The board may adopt rules and regulations for the efficient and expeditious processing of applications under this section including regulations governing:

- A. Forms and contents of applications;
- B. Public notice and comment;
- C. Public hearing procedures; and
- D. Such other regulations as are necessary to administer this section.

If the board determines that any proposed discharge meets the requirements of section 413, subsection 4, it shall issue such license to the applicant upon payment of the required fee.

Sec. 7. R. S., T. 38, § 414, sub-§ 6, repealed and replaced. Subsection 6 of section 414 of Title 38 of the Revised Statutes, as repealed and replaced by section 137 of chapter 622 of the public laws of 1971, is repealed and the following enacted in place thereof:

6. Conduct of hearings. A full and complete record shall be kept of all hearings held under this section. The board may establish reasonable fees for the reproduction of any materials in its custody including parts of an application submitted to the board and parts of the record of a hearing held by the board under this section.

Sec. 8. R. S., T. 38, § 420, sub-§§ 2 and 3, additional. Section 420 of Title 38 of the Revised Statutes, as enacted by section 130 of chapter 544 of the public laws of 1971 and as amended, is further amended by adding 2 new subsections, 2 and 3, to read as follows:

2. Toxic or hazardous substances. Any other toxic substance identified by the board in any concentration greater than the natural concentration in the receiving waters or as otherwise ordered by the board by rule or regulation or in any license issued pursuant to section 414. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence, degradability, the usual or potential presence of any organism effected by such substance in any waters of the State and the importance of such organism and the nature and extent of the effect of such substance on such organisms. As used in this subsection, "toxic substance" shall mean those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions including malfunctions in reproduction, or physical deformations in such organism or their offspring.

3. Radiological, chemical or biological warfare agents. Radiological, chemical or biological warfare agents or high level radioactive wastes.

Sec. 9. R. S., T. 38, § 424, additional. Title 38 of the Revised Statutes is amended by adding a new section 424 to read as follows:

§ 423. Effluent limitations and standards of performance

The board may establish by regulation effluent limitations and standards of performance for all sources of pollutants to any body of water defined in section 413, subsection 1. For purposes of this section, "effluent limitations" shall mean any restriction related to quantities, rates and concentrations of chemical, physical, biological and other constituents of any pollutants discharged to the aforesaid waters. For purposes of this section, "standards of performance" shall mean a standard for the control of the discharge of pollu-

tants. Such effluent limitation and standards of performance shall reflect the greatest degree of effluent reduction which the board determines to be achievable by application of the best practicable treatment and which are necessary to achieve and maintain the water quality standards established in sections 363 and 364 and the licensing conditions of sections 413, subsection 4. The board may adopt such schedules of compliance or timetables as it deems necessary for the implementation of any such effluent limitation or standards of performance. The board may adopt regulations establishing pre-treatment standards for introduction of pollutants into publicly owned treatment works for those pollutants which are not susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. The board may allow a reasonable time for compliance with regulations adopted pursuant to this section.

Sec. 10. R. S., T. 38, § 451, amended. The 3rd paragraph from the end of section 451 of Title 38 of the Revised Statutes, as last repealed and replaced by section 2 of chapter 359 of the public laws of 1971, is amended by adding at the end a new sentence to read as follows :

In the event that the alleged violator is a licensee under section 414, the board may revoke, suspend or modify any such license.

Sec. 11. R. S., T. 38, § 453, amended. The first sentence of section 453 of Title 38 of the Revised Statutes, as amended, is further amended to read as follows :

Any person, corporation or other legal entity, who shall violate any of this subchapter, except sections 416 and 417, or who shall fail, neglect or refuse to obey any order ~~or~~, regulation or decision of the board lawfully issued pursuant hereto, 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 after the expiration of any time limit set by the board. **Any person who violates any provision of the Federal Water Pollution Control Act Amendments of 1972 or regulations and guidelines promulgated thereunder, the administrative and enforcement authority for which the Administrator of the United States Environmental Protection Agency has delegated to the Department of Environmental Protection, shall be punished by a fine of not less than \$2,500 nor more than \$25,000 for each day of such violation.**

Sec. 12. R. S., T. 38, § 454, amended. Section 454 of Title 38 of the Revised Statutes, as last repealed and replaced by section 132 of chapter 544 of the public laws of 1971 and as amended, is further amended to read as follows :

§ 454. Injunctions, civil and criminal actions

In the event of any violation of any of the provisions of this subchapter, or of any order, license, permit, regulation or decision of the board 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 and 453, or any appropriate combination thereof, without recourse to section 451.

STATEMENT OF FACT

The Federal Water Quality Act Amendments of 1972, commonly called the Muskie Act, were passed by Congress on October 18, 1972. This Act and the guidelines issued thereunder by the Federal Environmental Protection Agency require changes in the water quality laws of the State of Maine. The changes embodied in this legislation are intended to make Maine law consistent with such federal requirements in order that the Maine Department of Environmental Protection might have the opportunity to administer the federal law as it applies to the State of Maine. Without such authority, Maine will not be empowered to administer the federal permit system. Rather, the United States Environmental Protection Agency will maintain jurisdiction over such Act and administer it independently of any state agency.