

MAINE STATE LEGISLATURE

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New Draft of: S. P. 355, L. D. 1019

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1945

S. P. 624

In Senate, May 17, 1973

Reported by Senator Marcotte of York from the 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-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, amended. Section 361 of Title 38 of the Revised Statutes, as amended, is further amended by adding at the end the following new paragraph:

The board is authorized to establish and conduct a continuous planning process in cooperation with appropriate federal, state, regional and municipal officers and agencies, consistent with the requirements of the Federal Water Pollution Control Act, as amended.

Sec. 2. R. S., T. 38, § 361-A, sub-§ 1, repealed and replaced. Subsection 1 of 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361-A of Title 38 of the Revised Statutes, as enacted by section 1 of chapter 470 of the public laws of 1971, is repealed and the following enacted in place thereof:

1. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

Sec. 3. 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,

chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Sec. 4. R. S., T. 38, § 361-A, sub-§ 7, 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 7, to read as follows:

7. **Waters of the State.** "Waters of the State" means any and all surface and subsurface waters which are contained within, flow through, or under or border upon this State or any portion thereof, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

Sec. 5. R. S., T. 38, § 363, amended. The first sentence of the 7th paragraph from the end of section 363 of Title 38 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

The dissolved oxygen content of such waters shall 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.

Sec. 6. R. S., T. 38, § 363, amended. Section 363 of Title 38 of the Revised Statutes, as amended, is further amended by adding at the end the following new paragraph:

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.

Sec. 7. 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. 8. R. S., T. 38, § 413, sub-§ 2, repealed and replaced. Subsection 2 of section 413 of Title 38 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

2. **Exemption.** No person shall be deemed to be in violation of subsection 1 for any discharge as it existed on the effective date of this Act provided

that application has been made for a license for such discharge on or before December 31, 1973. The exemption provided by this subsection shall expire upon final administrative disposition of such application or 180 days after the date of such application, whichever occurs first.

Sec. 9. 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 possessing a license issued by the board shall transfer the ownership of the facility or structure which is the source of such licensed discharge, the license granted by the board shall upon such transfer be extinguished and void and the new owner thereof shall be required to obtain a license in the manner required by this subchapter.

Sec. 10. R. S., T. 38, § 413, sub-§§ 4 and 5, repealed. Subsections 4 and 5 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, are repealed.

Sec. 11. 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. Administration. The board may adopt reasonable rules and regulations necessary for the proper administration, enforcement and implementation of the requirements of this subchapter, including:

- A. Form and content of applications;
- B. Public notice and comment;
- C. Public hearing procedures; and
- D. Installation, use and maintenance of equipment or methods relating to the inspection and monitoring of any discharge of pollutants, including, where appropriate, biological monitoring methods.

Sec. 12. R. S., T. 38, § 414, sub-§ 2, amended. The first sentence of subsection 2 of section 414 of Title 38 of the Revised Statutes, as enacted by section 4 of chapter 461 of the public laws of 1971 and as amended, is repealed and the following enacted in place thereof:

Licenses shall be issued by the board for a term of not less than 3 years nor more than 5 years.

Sec. 13. R. S., T. 38, § 414, sub-§ 6, repealed and replaced. Subsection 6 of section 414 of Title 38 of the Revised Statutes, as last repealed and replaced by section 13 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 materials in its custody including parts of an application submitted to the board and parts of the records of a hearing held by the board under this section. All such fees collected by the board may be retained by it to reimburse expenses incurred in reproducing such materials. Any records, reports or information obtained under this subchapter shall be available to the public, except that upon a showing satisfactory to the board by any person that such records, reports or information, or particular part thereof, other than effluent data, to which the board has access under this subchapter would, if made public divulge methods or processes of such person which are entitled to protection as trade secrets, such records, reports or information shall be confidential and not available for public inspection or examination. Such records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on such terms as the board may prescribe in order to protect such confidential records, reports and information, provided that such disclosure is material and relevant to any issue under consideration by the board.

Sec. 14. R. S., T. 38, § 414, sub-§ 7, additional. Section 414 of Title 38 of the Revised Statutes, as amended, is further amended by adding a new subsection 7, to read as follows:

7. Processing. Within 180 days of receipt of an application, the board shall make a final administrative disposition of the application by either issuing a license, denying a license or issuing a license upon terms and conditions necessary to insure compliance with this subchapter and any rules and regulations promulgated thereunder.

Sec. 15. R. S., T. 38, §§ 414-A and 414-B, additional. Title 38 of the Revised Statutes is amended by adding 2 new sections to read as follows:

§ 414-A. Conditions of licenses

1. Generally. The board shall issue a license for the discharge of any pollutants only if it finds that:

A. Classified waters. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

B. Unclassified waters. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter;

C. Waters of higher quality. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless upon an affirmative showing by the applicant the board finds that such lowering is a result of necessary economic and social development; and

D. Effluent limitations. The discharge will be subject to effluent limitations which require application of the best practicable treatment. "Effluent

limitations" means any restriction or prohibition including but not limited to effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents which are discharged into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of waste, including process methods, for a category or class of discharge sources which the board determines are best calculated to protect and improve the quality of the receiving water. In determining best practicable treatment for each such category or class, the board shall consider the then existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives.

2. Schedules of compliance. The board may establish schedules of compliance, within the terms and conditions of licenses for discharges existing on the effective date of this Act, including such interim and final dates for attainment of specific standards as are necessary to carry out the purposes of this subchapter. Such schedules shall be as short as possible and shall be based upon a consideration of the technological and economic impact of the steps necessary to attain such standards; provided that in any event such schedules shall require complete compliance with subsection 1 not later than October 1, 1976.

3. Federal law. At such time as the Administrator of the United States Environmental Protection Agency determines to cease issuing permits for discharges of pollutants to waters of this State pursuant to his authority under Section 402(c) (1) of the Federal Water Pollution Control Act, as amended, the board shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after such determination shall contain such provision, including effluent limitations, which the board deems necessary to carry out the purposes of this subchapter and any such federal laws or regulations.

§ 414-B. Publicly owned treatment works

1. Definition. "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

2. Pretreatment standards. The board may establish toxic effluent and pretreatment standards for the introduction into publicly owned treatment works of pollutants which interfere with, pass through or otherwise are incompatible with such treatment works.

3. User charges. The board may impose as a condition in any license for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

Sec. 16. R. S., T. 38, § 416, amended. The last paragraph of section 416 of Title 38 of the Revised Statutes, as last repealed and replaced by section 1 of chapter 458 of the public laws of 1971 and as amended, is repealed and the following enacted in place thereof :

This section shall not apply to any discharge promptly reported and removed in accordance with rules, regulations and orders of the board nor to any discharge licensed under this subchapter.

Sec. 17. R. S., T. 38, § 417, amended. The last paragraph of section 417 of Title 38 of the Revised Statutes, as last repealed and replaced by section 2 of chapter 458 of the public laws of 1971, is repealed.

Sec. 18. 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 to read as follows :

2. **Toxic or hazardous substances.** Any other toxic substance in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance, by the board. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence and degradability, the usual or potential presence of any organism affected by such substance in any waters of the State, the importance of such organism and the nature and extent of the effect of such substance on such organisms, either alone or in combination with substances already in the receiving waters or the discharge. 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 either alone or in combination with other substances already in the receiving waters or the discharge, 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. 19. R. S., T. 38, § 451, sub-§ 2, repealed and replaced. Subsection 2 of section 451 of Title 38 of the Revised Statutes, as last repealed and replaced by section 1 of chapter 359 of the public laws of 1971 and as amended, is repealed and the following enacted in place thereof :

2. **Revocation, modification or suspension of licenses.** The board may, after opportunity for hearing, revoke, suspend or modify, in whole or in part, any license, or issue an order prescribing necessary corrective action, whenever the board finds :

A. The licensee has violated any condition of the license ;

B. The licensee has obtained a license by misrepresentation or failure to disclose fully all relevant facts;

C. There has been a change in any condition or circumstances that requires either a temporary or permanent reduction or elimination of the licensed discharge; or

D. The licensee has violated any provision of this subchapter.

Any member, authorized employee or representatives of the board presiding at any hearing under this section is authorized to administer oaths and affirmations to any witness appearing at such hearing.

The board may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any such hearing. If any person served with such subpoena demonstrates to the satisfaction of the board that the production of such information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, such information shall be disclosed only at a nonpublic portion of such hearing and shall be confidential as provided in section 414. If any person refuses to obey any such subpoena, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of such subpoena. Such justice may issue such order and may punish failure to obey the same as contempt.

Sec. 20. 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~~ violates any provision of this subchapter, ~~except sections 416 and 417 or who shall fail, neglect or refuse to obey~~ any order, or regulation, license 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~~ \$25,000 for each day of such violation, failure, neglect or refusal after the expiration of any time limit set by the board.

Sec. 21. R. S., T. 38, § 453, amended. Section 453 of Title 38 of the Revised Statutes, as amended, is further amended by adding at the end the following new paragraph:

Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this subchapter, or by any rule, regulation, license or order issued under this subchapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this subchapter or any rule, regulation, license or order issued under this subchapter, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months, or by both.

Sec. 22. 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~~ **the laws which the Department of Environmental Protection is responsible for administering** ~~subchapter~~, or of any order, regulation, ~~or~~ decision, license or permit 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. **In addition to any other penalties provided by law, any person who violates any provision of this subchapter or any rule, regulation, license or order issued or promulgated hereunder, shall be subject to a civil penalty, payable to the State, not to exceed \$10,000 per day of such violation.**

STATEMENT OF FACT

In October, 1972, the United States Congress enacted the Federal Water Pollution Control Act Amendments of 1972 (the "Act"). The Act constituted a comprehensive revision of the federal water pollution laws. Instead of inconsistent state law the national water quality program resulting from the Act will require minimum state standards to be at least as stringent as federal standards. States are, of course, free to enact more rigorous laws and regulations as local conditions demand. The Act transfers federal water quality regulation from the Army Corps of Engineers who had administered the 1899 Refuse Act to the Administrator of the U. S. Environmental Protection Agency. The administrator is authorized to issue discharge permits to all pollution sources with the ultimate goal of eliminating all discharge of pollutants by 1983. Each state is permitted to continue its own licensing program. Whenever the administrator finds that a state licensing program complies with minimum federal standards, he may discontinue the federal permit system in that state, thus saving industries from the necessity and expense of going through 2 licensing procedures.

Although no state is compelled to undertake the permit program, every state is compelled, in order to remain eligible for federal construction grants, to have an adequate continuing planning process. A "continuing planning process" as defined under the Act and in recently enacted regulations, in effect requires a state to have or obtain nearly all the requirements which would otherwise be required of it to qualify for the issuance of federal permits.

This bill, a redraft of L. D. 1019, was drafted in an attempt to give the Maine Board of Environmental Protection (1) the authority to adopt and implement a satisfactory "continuing planning process" and (2) if necessary or desirable, the option of qualifying for the federal permit program. It was originally drafted in some haste in order to meet cloture requirements. Since that time E.P.A. has enacted comprehensive regulations under the Act further defining the necessary elements of state laws. This bill was drafted after extensive consultation between the Maine D.E.P., the Federal E.P.A. and

attorneys from both the state and federal governments. It is based upon the Act regulations in 40 C.F.R., part 124, and a model bill prepared by the Council of State Governments. Although it may have been easier to entirely repeal and replace the Maine water quality laws, it was decided to try to attempt to mesh existing Maine laws with the requirements of the Act. While it would appear from this L.D. that substantial changes have been made in Maine law, it is the opinion of both the Maine D.E.P. and Attorney General's Department that the Department had implicit authority to accomplish most of the goals of this bill. That view, however, did not satisfy the federal E.P.A. who required explicit legislation. It is not anticipated that this bill will have significant impact on the present administration of Maine's pollution abatement laws.