

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1071**

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H. P. 864

House of Representatives, March 6, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Vincent of Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

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**AN ACT to Enable Consolidation of the State Water Discharge Licensing Program  
and the Federal National Pollutant Discharge Elimination System Permit  
Program.**

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

**Sec. 1.** 38 MRSA § 347, sub-§ 3, first ¶, as amended by PL 1977, c. 694, § 760, is repealed and the following enacted in its place:

After written notice and opportunity for a hearing, the board may modify in whole or in part any license or issue an order prescribing necessary corrective action, or, with or without a hearing, may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds:

**Sec. 2.** 38 MRSA § 347, sub-§ 3 ¶¶ B-1 and B-2 are enacted to read:

**B-1.** The licensed discharge poses a threat to human health or welfare;

**B-2.** The license fails to include any standard or limitation applicable on the date of issuance;

**Sec. 3.** 38 MRSA § 413, sub-§ 3, as repealed and replaced by PL 1973, c. 450, § 9, is repealed and the following enacted in its place:

**3. Transfer of ownership.** In the event that any person possessing a license issued by the board shall transfer the ownership of the property, facility or structure which is the source of a licensed discharge, without transfer of the license being approved by the board, the license granted by the board shall continue to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer shall be jointly and severally liable for any violation thereof until such time as the board approves transfer or issuance of a waste discharge license to the new owner. The board may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

**Sec. 4.** 38 MRSA § 414, sub-§§ 2 and 3, as amended, are repealed and the following enacted in their place:

**2. Terms of licenses.** Licenses shall be issued by the board for a term of not more than 5 years.

**3. Inspection and records.** Authorized representatives of the commissioner and the Attorney General shall have access at any reasonable time, to and through any premises where a discharge originates or is located, for the purposes of inspection, testing and sampling. The board may order a discharger to produce and shall have the right to copy any records relating to the handling, treatment or discharge of pollutants and may require any licensee to keep such records relating thereto as it deems necessary.

**Sec. 5.** 38 MRSA § 414-A, sub-§ 1, ¶D, 2nd and 3rd sentences, as enacted by PL 1973, c. 450, § 15, are repealed and the following enacted in their place:

“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 directly or indirectly into waters of the State. “Best practicable treatment” means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, 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 and which are consistent with the requirements of the Federal Water Pollution Control Act, as amended.

**Sec. 6.** 38 MRSA § 414-A, sub-§ 2, as amended by PL 1973, c. 788, § 210, is repealed and the following enacted in its place:

**2. Schedules of compliance.** The board may establish schedules, within the terms and conditions of licenses, for compliance with best practicable treatment including such interim and final dates for attainment of specific standards as are necessary to carry out the purposes of this subchapter. The 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 these standards; provided that in any event these schedules shall require complete compliance with subsection 1 not later than October 1, 1976, except the application of best conventional pollutant control technology or best available technology economically achievable, which schedules shall be consistent with the times permitted for compliance by the Federal Water Pollution Control Act, as amended.

Sec. 7. 38 MRSA § 414-A, sub-§ 3, as enacted by PL 1973, c. 450, § 15, is amended by inserting at the end the following new paragraph:

Notwithstanding the foregoing, the board is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances shall be granted only in accordance with the Federal Water Pollution Control Act, sections 316 and 301 (k), as amended, and applicable regulations.

Sec. 8. 38 MRSA § 414-B, sub-§ 2, as enacted by PL 1973, c. 450, § 15, is repealed and the following enacted in its place:

2. Pretreatment standards. The board may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants which interfere with, pass through or otherwise are incompatible with those treatment works. In addition, the board may establish pretreatment standards for designated toxic pollutants which may be introduced into a publicly owned treatment works.

The board may require that any license for a discharge from a publicly owned treatment works include conditions to require the identification of pollutants, in terms of character and volume, from any significant source introducing pollutants subject to pretreatment standards, and to assure compliance with these pretreatment standards by each of these sources.

Sec. 9. 38 MRSA § 414-B, sub-§ 2-A is enacted to read:

2-A. Prohibited discharge through publicly owned treatment works. The discharge to a publicly owned treatment works of any pollutant which interferes with, passes through or otherwise is incompatible with these works, or which is a designated toxic pollutant, is prohibited unless in compliance with pretreatment standards established for the applicable class or category of discharge.

Sec. 10. 38 MRSA § 423, first ¶, as amended by PL 1975, c. 770, § 210, is further amended to read:

No person, firm, corporation or other legal entity shall discharge, spill or permit to be discharged sewage, garbage or other ~~waste material~~ pollutants from watercraft, as defined in Title 12, section 2061, subsection 17, and including houseboats, into inland waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters.

**Sec. 11. 38 MRSA § 451, first ¶**, as last amended by PL 1971, c. 618, § 12 is further amended to read:

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~~ **pollutants**, either alone or in conjunction with another or others, in such manner as will, after reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere, lower the quality of said waters below the minimum requirements of such classifications, or where mixing zones have been established by the board, 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 ~~and 414 to 414-B~~.

**Sec. 12. 38 MRSA § 451, 3rd & 4th ¶¶**, as last amended by PL 1971, c. 618, § 12, are further amended to read:

The purpose of a mixing zone is to allow a reasonable opportunity for dilution, diffusion or mixture of ~~wastes~~ **pollutants** 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 board may require from the ~~licensee~~ **applicant** testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway; 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; the uses of the waterways in the vicinity of the discharge, and such other and further evidence as in the board's judgement 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.

Where no mixing zones have been established by the board, it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any ~~sewage, industrial or other waste~~ **pollutants**, either alone or in conjunction with another or others, into any classified surface waters, tidal flats or sections thereof, in such manner as will, after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere, lower the quality of any significant segment of said waters, tidal flats or sections thereof, affected by such discharge, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 413 to ~~415~~ **414-B**.

### STATEMENT OF FACT

The primary purpose of this bill is to amend the state's water pollution control statutes in a manner that will allow the U. S. Environmental Protection Agency to delegate administration of the National Pollutant Discharge Elimination System permit program to the State. In addition, there are various housekeeping changes in words and desirable improvements in the enforcement authority of the Board of Environmental Protection.

Sections 1 and 2. The change would allow the board in limited circumstances to revoke or suspend a license in accordance with the APA without first going to the Administrative Court. The APA permits this action if for example a court has convicted a licensee of a violation of a license or statute. In addition, 2 additional criteria for direct modification of a license or utilization of the APA procedure are added to the statutes. These additions are required by federal regulations.

Section 3. The change allows a waste discharge license issued by the board to remain in force when the source of a licensed discharge changes owners. Both the new owner and the former owner are responsible for meeting the conditions of the license until the board approves the transfer of the license to the new owner or issues a license to the new owner. In addition, the word property is added to identify the source of a discharge.

Section 4. The 3-year minimum term for licenses is deleted in order that the board may issue short term interim licenses when necessary. Obsolete language relating to licenses issued prior to September 31, 1971 is removed because all of these licenses have been renewed and this provision no longer applies. The ability of the employees of the department and Office of the Attorney General to investigate sources of discharges is clarified and expanded.

Section 5. The term "best practicable treatment" is expanded to include the application of best conventional pollutant control technology and best available technology economically achievable. Both of these are required by federal law and regulations and language is included which makes it clear that these treatment requirements are to be consistent with federal law. The words "direct or indirect" are added to ensure that the board may regulate all sources of discharges into waters of the State.

Section 6. The restriction that time schedules for compliance with license conditions can only be applied to discharges that existed on October 3, 1973 is removed. Best practicable treatment is defined as the only objective of the time schedules. In addition, the state's time schedules are required to be consistent with federal law.

Section 7. A variance provision, to be consistent with federal law, for temperature increase from heated discharges and to allow for experimentation with new technology treatment is added to the statute.

Sections 8 and 9. This is a general rewrite of the existing toxic effluent and pretreatment authority of the board. It makes it clear that harmful toxic material will not be discharged to the state's waters and that any materials introduced into a treatment plant will not interfere with the treatment process. Both will be controlled through the licence for the treatment plant.

Sections 10, 11, 12. There are a number of housekeeping word changes in these sections and some previous sections. The word "pollutant" is substituted for the word "waste" and other similar words, because pollutant is defined in the statute and the purpose of treatment is to reduce pollutants.