

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1268

H.P. 945 House of Representatives, April 14, 1987
Reference to the Committee on Energy and Natural
Resources suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative RYDELL of Brunswick.

Cosponsored by Senators CLARK of Cumberland, ESTES of
York and Representative HOLLOWAY of Edgecomb.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Clarify and Amend the Treatment of
2 Overboard Effluent Discharges into the
3 Waters of the State.
4

5 Emergency preamble. Whereas, Acts of the Legis-
6 lature do not become effective until 90 days after
7 adjournment unless enacted as emergencies; and

8 Whereas, over 25% of the State's shellfish habi-
9 tat is adversely impacted by domestic sewage, with
10 9,000 of the State's 49,000 acres of mussel and clam
11 habitat completely closed to all harvesting of shell-
12 fish due to severe contamination from sewage pollu-
13 tion and another 3,000 acres partially closed; and

14 Whereas, another 1,400 acres are open only in the
15 winter when summer residences are unoccupied; and

1 Whereas, this closure represents an enormous loss
2 to the State's economy; and

3 Whereas, effluent "overboard" waste discharges
4 from single-family residences and groups of resi-
5 dences have resulted in a substantial amount of this
6 shellfish habitat closure; and

7 Whereas, there are approximately 3,000 existing
8 overboard discharges making it difficult for the De-
9 partment of Environmental Protection to properly moni-
10 tor them and ensure their compliance with license
11 requirements; and

12 Whereas, permission to discharge sewage "over-
13 board" into the State's rivers and coastal waters was
14 originally granted to existing homeowners because
15 their lots were inadequate for traditional in-ground
16 septic treatment or there was no centralized municip-
17 al sewage treatment available to these existing
18 homeowners to upgrade their untreated "straight
19 pipes;" and

20 Whereas, in recent years, new overboard discharge
21 permits have been granted, at a rate of approximately
22 300 per year, for new construction with no existing
23 need, in some cases to landowners who have no immedi-
24 ate intention to build and for increasing amounts of
25 effluent; and

26 Whereas, finding new methods of treating and re-
27 ducing discharge of residential sewage into the
28 State's coastal and freshwater areas is vital to the
29 continued economic viability of traditional
30 water-based industries and to economic growth from
31 tourism; and

32 Whereas, in the judgment of the Legislature,
33 these facts create an emergency within the meaning of
34 the Constitution of Maine and require the following
35 legislation as immediately necessary for the preser-
36 vation of the public peace, health and safety; now,
37 therefore,

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

1 Sec. 1. 38 MRSA §414, sub-§2-A is enacted to
2 read:

3 2-A. Relicensing. The relicensing of an exist-
4 ing licensed waste discharge prior to or after the
5 expiration of the term of the existing license is
6 subject to all of the requirements of this chapter.
7 For the purposes of this chapter, the term "reli-
8 cence" includes, without limitation, the terms, "re-
9 newal," "renew," "reissue" and "extend."

10 Sec. 2. 38 MRSA §451-A, sub-§7, as amended by PL
11 1983, c. 566, §29, is repealed.

12 Sec. 3. 38 MRSA §464, sub-§4, §A, as enacted by
13 PL 1985, c. 698, §15, is amended to read:

14 A. Notwithstanding section 414-A, the board
15 shall not issue a water discharge license for any
16 of the following discharges:

17 (1) Direct discharge of pollutants to wa-
18 ters having a drainage area of less than 10
19 square miles, except that discharges into
20 these waters which were licensed prior to
21 January 1, 1986, shall be allowed to contin-
22 ue only until practical alternatives exist;

23 (2) New direct discharge of domestic
24 pollutants to tributaries of Class-GPA wa-
25 ters;

26 (3) Any discharge into a tributary of GPA
27 waters which, by itself or in combination
28 with other activities, causes water quality
29 degradation which would impair the charac-
30 teristics and designated uses of downstream
31 GPA waters or causes an increase in the
32 trophic state of those GPA waters;

33 (4) Discharge of pollutants to waters of
34 the State which imparts color, taste,
35 turbidity, toxicity, radioactivity or other
36 properties which cause those waters to be
37 unsuitable for the designated uses and char-
38 acteristics ascribed to their class; and

1 (5) Discharge of pollutants to any water of
2 the State which violates sections 465, 465-A
3 and 465-B, except as provided in section
4 451; causes the "pH" of fresh waters to fall
5 outside of the 6.0 to 8.5 range; causes the
6 "pH" of estuarine and marine waters to fall
7 outside of the 7.0 to 8.5 range; or causes
8 fish for human consumption to be injurious
9 to human health as determined by the United
10 States Food and Drug Administration under
11 the procedures established by United States
12 Code, Title 21, section 342 or as determined
13 by the Department of Human Services. The
14 Department of Human Services shall establish
15 a protocol for determining risk in these
16 situations. The protocol shall be promul-
17 gated as a rule in accordance with the Maine
18 Administrative Procedure Act, Title 5, chap-
19 ter 375-7; and

20 (6) New discharges of domestic pollutants
21 to the surface waters of the State which are
22 not conveyed and treated in municipal or
23 quasi-municipal sewage facilities. "New
24 discharge" means any overboard discharge
25 which is licensed after the effective date
26 of this section. For purposes of licensing,
27 the board shall treat an increase in the li-
28 icensed volume or quantity of an existing
29 discharge or an expansion in the months dur-
30 ing which the discharge will take place as a
31 new discharge of domestic pollutants.

32 Sec. 4. 38 MRSA §464, sub-§4, §G is enacted to
33 read:

34 G. The board shall not relicense any overboard
35 discharge licensed prior to the effective date of
36 this paragraph unless the board finds that the
37 discharge meets all waste discharge licensing re-
38 quirements of state law.

39 (1) The board may not find that the dis-
40 charge meets the requirements of best prac-
41 ticable treatment pursuant to section 414-A
42 for purposes of relicensing, unless it finds
43 that the applicant has:

1 (a) Fully investigated all alterna-
2 tives to relocate or consolidate exist-
3 ing discharge pipes, including connec-
4 tion to a municipal or quasi-municipal
5 sewage treatment system and has
6 documented to the board why such an al-
7 ternative is not available;

8 (b) Implemented all technologically
9 available alternative methods of waste
10 water disposal consistent with the
11 Maine State Plumbing Code which will
12 not result in an overboard discharge,
13 as long as those methods will cause
14 more than a minimal reduction in the
15 impact on the water quality of the re-
16 ceiving waters;

17 (c) Implemented all technologically
18 available methods of reducing the vol-
19 ume and quantity of pollutants dis-
20 charged overboard in order to improve
21 effluent quality and decrease the envi-
22 ronmental impact of the discharge so
23 long as the methods will cause more
24 than a minimal reduction in the volume
25 and quality of pollutants discharged;
26 and

27 (d) Shown that continuance of the re-
28 licensed discharge will not cause or
29 contribute to the new or expanded clo-
30 sure of a shellfish area by the Depart-
31 ment of Marine Resources.

32 (2) The applicant is responsible for sub-
33 mitting to the board all information neces-
34 sary to make the findings and determinations
35 required by this section.

36 (3) Beginning on the effective date of this
37 section, no overboard discharge license may
38 have a term of more than 5 years. All ex-
39 isting licenses with expiration dates occur-
40 ring in 1988 and 1989 shall expire on the
41 date stated in the license. All other ex-
42 isting licenses shall expire on the same day

1 and month stated in the existing license,
2 but on a new year, determined by the follow-
3 ing schedule:

4	<u>Current Expiration Date</u>	<u>New Date</u>
5	<u>1990, 1991</u>	<u>1989</u>
6	<u>1992, 1993</u>	<u>1990</u>
7	<u>1994, 1995</u>	<u>1991</u>
8	<u>1996, 1997</u>	<u>1992</u>
9	<u>1998</u>	<u>1993</u>

10 (4) At the time of relicensing and at each
11 subsequent relicensing of an overboard dis-
12 charge, the board shall impose all condi-
13 tions necessary to meet the requirements of
14 this section and all other relevant statuto-
15 ry provisions.

16 Sec. 5. 38 MRSA §466, sub-§§9-A and 9-B are en-
17 acted to read:

18 9-A. Overboard discharge. "Overboard discharge"
19 means discharge to the surface waters of the State of
20 domestic pollutants not conveyed to and treated in
21 municipal or quasi-municipal sewerage treatment fa-
22 cilities.

23 9-B. Quasi-municipal. "Quasi-municipal" means
24 any form of ownership and management by a governmen-
25 tal unit embracing a portion of a municipality, a
26 single municipality or several municipalities which
27 is created by law to deliver public waste water
28 treatment services, but which is not a general pur-
29 pose governmental unit.

30 Emergency clause. In view of the emergency cited
31 in the preamble, this Act shall take effect when ap-
32 proved.

1

STATEMENT OF FACT

2 A proliferation of residential waste water dis-
3 posal systems that discharge into the inland and
4 coastal waters of the State has led to the closure of
5 many areas to shellfish harvesting because of the
6 risk of bacterial contamination of shellfish and con-
7 cern for public health and safety. A vast economic
8 resource is being lost to the State and to those res-
9 idents who rely on shellfishing for their livelihood.

10 Waste water disposal systems have continually
11 shown a very high rate of failure due to improper
12 disinfection procedures used by home and business
13 owners and also due to the need for constant mainte-
14 nance of these systems. The Department of Environ-
15 mental Protection is unable to adequately monitor and
16 enforce the large number of these overboard licenses.

17 Additionally, even when working properly, the
18 chlorine used to disinfect the discharges can have
19 relatively severe effects in small streams and shel-
20 tered coves where many aquatic species are sensitive
21 and vulnerable to the impacts of the chlorine.

22 Under current law, the Board of Environmental
23 Protection has continued to issue overboard residen-
24 tial waste water licenses, even in areas already
25 closed to the taking of shellfish. The result of
26 this licensing practice is that the eventual reopen-
27 ing of valuable shellfish harvesting areas will be
28 pushed further and further into the future and op-
29 tions for the uses of these areas will be reduced.

30 This bill prohibits new overboard discharges into
31 inland and coastal surface waters of the State. It
32 also shortens the term of existing licenses and es-
33 tablishes stricter standards for reissuing of those
34 licenses. While the Legislature is not willing to
35 require the removal of existing overboard discharge
36 systems that were originally licensed under less
37 strict standards, the harms caused by these systems

1 to shellfishing, aquaculture and contact recreation
2 uses of the state waters requires that their impacts
3 be reduced to the greatest extent possible, as quick-
4 ly as possible, and not allowed in any way to expand.

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