

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 219

S.P. 134

In Senate, February 16, 1989

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOLLOWAY of Lincoln.

Cosponsored by Representative WEBSTER of Cape Elizabeth and Senator PERKINS of Hancock.

STATE OF MAINE

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

An Act to Create a Review Board for Appeals of Denials of Sewage Disposal Licenses.



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

3 Sec. 1. 5 MRSA §12004-L, sub-§5 is enacted to read:

5 5. Sewage Disposal Not Authorized 38 MRSA §464-B
7 Appeals Board

9 Sec. 2. 38 MRSA §464-A is enacted to read:

11 §464-A. Appeals of decisions

13 Any person aggrieved by a decision of the Board of
15 Environmental Protection and the Department of Marine Resources
17 with respect to applications for overboard discharge licenses may
19 appeal the decision to the Sewage Disposal Appeals Board,
21 referred to in this section and section 464-B as the "appeals
23 board." For the purpose of this section and section 464-B,
25 "applicant" means the aggrieved person who, as of the effective
27 date of this section, has a licensed or unlicensed overboard
29 discharge and who is seeking an overboard discharge license,
31 license renewal or license transfer. This section and section
33 464-B do not apply to new overboard discharges that did not exist
35 as of the effective date of this section or to expansions of an
37 existing overboard discharge.

39 1. License issued. The appeals board shall approve a
41 license, license renewal or transfer of license upon finding that:

43 A. The applicant's wastes are discharged in an area in
45 which commercial, industrial or municipal wastes are
47 discharged; or

49 B. The applicant's discharges of wastes do not affect
51 current use of the area in which the discharges are made.

53 2. Minimum impact; economic hardship. The appeals board
55 shall approve a license renewal or transfer of license upon
57 finding that all of the following conditions are met.

59 A. The applicant has fully investigated all alternatives
61 for the best practicable treatment of the waste discharge.
63 For the purpose of this section, "best practicable
65 treatment" has the same meaning as defined in section 414-A,
67 subsection 1, paragraph D.

69 B. There are no technologically proven alternatives
71 available to the applicant because of the location and soil
73 conditions or other unique characteristics of the
75 applicant's property subject to this chapter.

1 C. The applicant's existing waste discharges have a minimal
2 adverse impact on the existing water quality of the
3 receiving waters.

4 D. The economic benefits, which are associated with
5 increasing the water quality of receiving waters as a result
6 of the stoppage of the applicant's discharge of wastes,
7 equal or do not exceed the costs of compliance.

8
9 3. Economic hardship. The appeals board shall consider
10 severe economic hardship that an applicant may suffer as the
11 result of the denial of a license, license renewal or license
12 transfer under this section. If the appeals board finds that the
13 economic hardship outweighs the benefits associated with
14 increasing the quality of the receiving waters, the appeals board
15 may grant a license, license renewal or license transfer.

16
17 4. Standards and definitions. The Board of Environmental
18 Protection and the Commissioner of Marine Resources shall jointly
19 adopt rules for the implementation of this section. At a minimum
20 these rules shall:

21
22 A. Establish an appeals process which is consistent with
23 the Maine Administrative Procedure Act, Title 5, chapter
24 375; and

25
26 B. Establish criteria with respect to the provisions in
27 subsection 2, paragraphs A to D.

28
29 Sec. 3. 38 MRSA §464-B is enacted to read:

30
31 §464-B. Sewage Disposal Appeals Board

32
33 The Sewage Disposal Appeals Board, established in accordance
34 with Title 5, chapter 379, shall implement the provisions of
35 section 464-A.

36
37 1. Membership. The appeals board shall consist of the
38 Commissioner of Environmental Protection and the Commissioner of
39 Marine Resources.

40
41 2. Duties. The appeals board shall hear appeals under
42 section 464-A.

43
44 3. Powers. The appeals board may issue or deny overboard
45 discharge licenses, license renewals or transfers of licenses in
46 accordance with section 464-A.

47
48 A. In denying an overboard discharge license, license
49 renewal or license transfer, the appeals board shall provide
50 the reasons to the applicant for the denial.
51

1 B. Approval of a license requires the approval of both
2 members of the board.

3
4 4. Final agency action. The decision rendered by the
5 appeals board shall be deemed final agency action. Any person
6 aggrieved by a decision of the appeals board may obtain judicial
7 review of the decision in accordance with Title 5, chapter 375,
8 subchapter VII. Nothing in this subsection may be construed to
9 mean that an applicant may not choose to seek remedies in the
10 court without first taking the applicant's case to the appeals
11 board. Any applicant under section 464-A may seek redress in the
12 courts without bringing a case to the appeals board.

15 STATEMENT OF FACT

16
17
18 This bill creates the Sewage Disposal Appeals Board to which
19 homeowners may appeal decisions which deny them licenses, license
20 renewals or transfers of licenses for the discharge of wastes
21 (overboard discharges) into waters of the State. The appeals
22 board consists of the Commissioner of Environmental Protection
23 and the Commissioner of Marine Resources.

24 The appeals board is required to hold a hearing consistent
25 with the Maine Administrative Procedure Act.

26 The appeals board will approve an overboard discharge
27 license, license renewal or transfer of license if all of the
28 following conditions are met:

29
30 1. The board finds that the applicant has fully
31 investigated all alternatives for the best practicable treatment
32 of the waste discharges;

33 2. The board finds no technologically proven alternative
34 available to the homeowner for the discharge of wastes;

35 3. The homeowner's discharges of waste into the waters have
36 only a minimal adverse effect on the quality of the receiving
37 waters; and

38 4. Denial of the license will not result in economic
39 benefits that equal or exceed the cost of compliance.

40 In the event that denial of a license, license renewal or
41 license transfer will cause severe economic hardship that
42 outweighs the benefits associated with increasing the quality of
43 the receiving waters, the board may grant a license, license
44 renewal or license transfer to an applicant.

45

1 The appeals board is required to issue a license, license
2 renewal or transfer if the homeowner's waste discharges are made
3 in areas in which commercial, industrial or municipal wastes are
4 made. If the homeowner's discharges of wastes will have no
5 effect on current use of the area in which discharges are made,
6 the homeowner will be granted a license, license renewal or
7 transfer.