

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1187

H.P. 855

House of Representatives, April 13, 1989

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

A handwritten signature in cursive script that reads 'Ed Pert'.

EDWIN H. PERT, Clerk

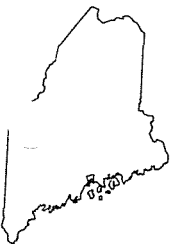
Presented by Representative COLES of Harpswell.

Cosponsored by Senator CLARK of Cumberland, Representative SKOGLUND of St. George and Representative BREWER of Boothbay Harbor.

STATE OF MAINE

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

An Act to Amend the Overboard Discharge Laws.



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

3 **Sec. 1. 38 MRSA §411-A** is enacted to read:

5 §411-A. State contribution to residential overboard discharge
7 replacement projects

9 1. General authority. Subject to the availability of
11 funds, the department shall pay a portion of the expense of a
13 pollution abatement construction project which results in the
15 elimination of a residential overboard discharge to the waters of
17 the State where such elimination is required under section 414-A,
19 subsection 1-B. The costs eligible for payment under this
21 program include the costs of abandoning the overboard discharge
23 and the design, engineering and construction costs of the
25 replacement system.

27 2. Cost-share. The department shall determine the portion
29 of project expenses which are eligible for grants under this
31 section as follows.

33 A. The department shall pay 90% of the costs of a project
35 which results in the removal of a residential overboard
37 discharge from a redeemable shellfish harvesting area which
39 is closed to harvesting as a result of actual fecal coliform
41 bacteria contamination. If, one year after removal of all
43 commercial and residential overboard discharges, the water
45 quality of the shellfish harvesting area does not meet
47 shellfish sanitation standards for fecal coliform bacteria,
49 the department shall reimburse the owners of the pollution
51 abatement project for 100% of the unreimbursed project
expenses.

B. The department shall pay 100% of the costs of a project
which results in the removal of a residential overboard
discharge from a redeemable shellfish harvesting area which
is closed to harvesting solely due to the existence of
residential overboard discharges when actual water quality
meets shellfish sanitation standards for fecal coliform
bacteria.

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

1-B. Relicensing of overboard discharges. The following
provisions shall govern the relicensing of overboard discharges.

A. Prior to the adoption of shellfish harvesting area maps
under section 464, subsection 7, the board shall find that
the discharge meets the requirements of best practicable
treatment under this section for purposes of relicensing,
when it finds either:

1 (1) That existing industrial, municipal or nonpoint
3 sources of coliform bacteria or other contaminants
5 preclude the lawful harvest of shellfish from the
7 receiving waters of the applicant's overboard discharge
 or that the receiving waters do not support
 commercially viable shellfish populations; or

9 (2) In the event that the board finds that conditions
 of subsection 1 do not exist, that:

11 (a) There is no economically feasible opportunity
13 to relocate or consolidate existing discharge
15 pipes, including connection to a municipal or
 quasi-municipal sewage treatment system; and

17 (b) There are no technologically proven
19 alternative methods of waste water disposal
21 consistent with the Maine State Plumbing Code
23 which will not result in an overboard discharge.
25 For the purposes of this subsection, the
 department shall not require the installation or
 use of waste water holding tanks as a
 "technologically proven alternative method of
 waste water disposal."

27 B. Subsequent to the adoption of shellfish harvesting area
29 maps under section 464, subsection 7, the board shall find
31 that the discharge meets the requirements of best
 practicable treatment under this section for purposes of
 relicensing, when it finds that either:

33 (1) The receiving waters constitute a nonredeemable
35 shellfish harvesting area or a noncommercial shellfish
 area; or

37 (2) That the receiving waters constitute a redeemable
39 shellfish harvesting area and that the requirements of
 paragraph A, subparagraph (2) have been met.

41 C. The board shall issue a conditional permit to any
43 applicant denied a license for a residential overboard
45 discharge under this subsection, the term of which permit
 shall extend until 6 months after the department offers a
 grant to the applicant for the costs of replacing the
 overboard discharge under the provisions of section 411-A.

47 D. The board shall limit to a maximum of 5 years the term
49 of any overboard discharge license, including relicensings,
51 issued after June 1, 1987. All licenses in existence on
 June 1, 1987, with expiration dates occurring in 1989 or
 1990 shall expire on the date stated in the license. All
 other licenses in existence on June 1, 1987, shall expire on

1 the same day and month stated in the existing license but in
2 a new year, determined by the following schedule:

3

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

11 E. At the time of relicensing and at each subsequent
12 relicensing of an overboard discharge, the board shall
13 impose all conditions necessary to meet the requirements of
14 this section and all other relevant laws.

15 **Sec. 3. 38 MRSA §464, sub-§4, ¶A,** as amended by PL 1987, c.
16 419, §10, is further amended to read:

19 A. Notwithstanding section 414-A, the board shall not issue
20 a water discharge license for any of the following
21 discharges:

23 (1) Direct discharge of pollutants to waters having a
24 drainage area of less than 10 square miles, except that
25 discharges into these waters which were licensed prior
26 to January 1, 1986, shall be allowed to continue only
27 until practical alternatives exist;

29 (2) New direct discharge of domestic pollutants to
30 tributaries of Class-GPA waters;

31 (3) Any discharge into a tributary of GPA waters
32 which, by itself or in combination with other
33 activities, causes water quality degradation which
34 would impair the characteristics and designated uses of
35 downstream GPA waters or causes an increase in the
36 trophic state of those GPA waters;

39 (4) Discharge of pollutants to waters of the State
40 which imparts color, taste, turbidity, toxicity,
41 radioactivity or other properties which cause those
42 waters to be unsuitable for the designated uses and
43 characteristics ascribed to their class;

45 (5) Discharge of pollutants to any water of the State
46 which violates sections 465, 465-A and 465-B, except as
47 provided in section 451; causes the "pH" of fresh
48 waters to fall outside of the 6.0 to 8.5 range; causes
49 the "pH" of estuarine and marine waters to fall outside
50 of the 7.0 to 8.5 range; or causes fish for human
51 consumption to be injurious to human health as
determined by the United States Food and Drug

1 Administration under the procedures established by
2 United States Code, Title 21, section 342 or as
3 determined by the Department of Human Services. The
4 Department of Human Services shall establish a protocol
5 for determining risk in these situations. The protocol
6 shall be promulgated as a rule in accordance with the
7 Maine Administrative Procedure Act, Title 5, chapter
8 375; and

9
10 (6) New discharges of domestic pollutants to the
11 surface waters of the State which are not conveyed and
12 treated in municipal or quasi-municipal sewage
13 facilities. "New discharge" means any overboard
14 discharge which is licensed after the effective date of
15 this section would otherwise be licensed on or after
16 June 1, 1987, unless the board finds that the applicant
17 has demonstrated with clear and convincing evidence
18 that the discharge was in continuous existence for the
19 12 months preceding June 1, 1987. For purposes of
20 licensing, the board shall treat an increase in the
21 licensed volume or quantity of an existing discharge or
22 an expansion in the months during which the discharge
23 will take place as a new discharge of domestic
24 pollutants.

25
26 ~~Notwithstanding the provisions of this subparagraph, an~~
27 ~~increase in the volume or quantity of domestic~~
28 ~~pollutants in a licensed discharge of domestic~~
29 ~~pollutants emanating from an existing commercial or~~
30 ~~industrial business or from an existing state or~~
31 ~~federal facility is not prohibited so long as, in~~
32 ~~addition to all other provisions of applicable law, all~~
33 ~~the following conditions are met:~~

34
35 (a) ~~The board finds that, based on the past~~
36 ~~record of compliance by the licensee with all~~
37 ~~requirements of its existing discharge licenses,~~
38 ~~the licensee is likely to comply with the~~
39 ~~requirements of any subsequent license governing~~
40 ~~the increased discharge. The board shall not make~~
41 ~~this finding if there have been significant,~~
42 ~~numerous or repeated violations of any standard,~~
43 ~~limit or condition of the existing licenses;~~

44
45 (b) ~~The licensee agrees, as a license condition,~~
46 ~~to retain qualified employees or independent~~
47 ~~consultants to ensure that the overboard discharge~~
48 ~~system is meeting all requirements of the license~~
49 ~~and to test, monitor and maintain the system. The~~
50 ~~board shall require, as a license condition, that~~
51 ~~the licensee test the effluent on a weekly basis~~
52 ~~to ensure that the license requirements are being~~

1 met-and-that-the-licensee-promptly-submit-reports
2 of-these-tests-to-the-department;-and

3 (e)---The-board-finds-that-all-requirements-of
4 paragraph-G-have-been-met-with-respect-to-the
5 proposed-increase-in-the-overboard-discharge.
6

7
8 **Sec. 4. 38 MRSA §464, sub§4, ¶G,** as enacted by PL 1987, c.
9 180, §15, is repealed.

10 **Sec. 5. 38 MRSA §464, sub-§§7, 8 and 9** are enacted to read:

11 7. Procedure for the evaluation of shellfish areas; maps.
12 Prior to January 1, 1991, the Commissioner of Marine Resources
13 shall categorize shellfish areas into 2 categories, "harvesting"
14 and "noncommercial." The category of shellfish harvesting area
15 is divided into 2 subcategories, "redeemable" and "nonredeemable."
16

17
18 A. These categories shall be employed solely in the
19 relicensing of overboard discharges under section 414-A,
20 subsection 1-B.

21
22 B. Prior to January 1, 1991, the Commissioner of Marine
23 Resources shall adopt, by rule, maps delimiting the extent
24 of all redeemable and nonredeemable shellfish harvesting
25 areas in the State. All areas not mapped under this section
26 are noncommercial shellfish areas. The Commissioner of
27 Marine Resources shall review and revise these maps on a
28 continuing basis.

29
30 C. To determine whether a shellfish harvesting area meets
31 the definition of "redeemable," the Commissioner of Marine
32 Resources shall conduct field surveys to determine the
33 number and type of direct and nonpoint discharges; the
34 actual level of fecal coliform bacterial contamination; and
35 the likelihood of reopening the area to shellfish harvesting
36 if all commercial and residential overboard discharges are
37 eliminated.

38
39 8. Interdepartmental coordination. The board, the
40 Commissioner of Marine Resources and the Commissioner of Human
41 Services shall jointly:

42
43 A. Provide accurate and consistent information on the
44 requirements of this section, section 411-A and section
45 414-A, subsection 1-B; and

46
47 B. Certify waste water treatment and disposal technologies
48 which can be used to replace overboard discharges.

49
50 9. Development of group systems. Subject to the provisions
51 of section 414-A, subsection 1-B, the board shall coordinate the

1 development and implementation of waste water treatment and
3 disposal systems serving more than one residence or commercial
establishment where individual replacement systems are not
5 feasible.

7 **Sec. 6. 38 MRSA §466, sub-§10-A** is enacted to read:

9 10-A. Shellfish areas. The terms employed in the
categorization of shellfish areas are defined as follows.

11 A. "Noncommercial shellfish area" means any intertidal or
13 subtidal land and the waters over that land which is not a
shellfish harvesting area.

15 B. "Nonredeemable shellfish harvesting area" means any
17 shellfish harvesting area which is closed to shellfish
harvesting at least in part as the result of existing or
19 potential sources of fecal coliform bacteria from existing
municipal, industrial or nonpoint source discharges.

21 C. "Redeemable shellfish harvesting area" means any
23 shellfish harvesting area which is closed to shellfish
harvesting solely as the result of existing or potential
25 sources of fecal coliform bacteria from existing residential
or commercial overboard discharges.

27 D. "Shellfish harvesting area" means any intertidal or
29 subtidal land and the waters over that land which support
the growth of shellfish species in sufficient abundance to
31 allow commercial harvesting.

33 **STATEMENT OF FACT**

35 This bill amends the overboard discharge laws which affect
37 the relicensing of existing overboard discharges. The purpose of
39 these amendments is to focus the State's resources on the goal of
reopening closed shellfish areas as quickly as possible while
removing the inequities of the present law.

41 The bill establishes criteria and a procedure for evaluating
43 and categorizing the coastal waters of the State as "redeemable"
or "nonredeemable" shellfish harvesting areas or as
"noncommercial" shellfish areas.

45 An area is a shellfish harvesting area only if it supports a
47 shellfish population large enough for commercial harvesting.
49 Such an area will be considered "nonredeemable" if its closure is
the result of industrial, municipal or nonpoint sources of
51 pollution. Applicants for relicensing in such areas would be
required simply to meet the terms of their existing licenses.
These areas would be cleaned up as the industrial, municipal or
nonpoint sources of pollution are removed.

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Applicants for relicensing in "redeemable" areas would be subject to the provisions similar to those of existing law with the exception that the Department of Environmental Protection would be explicitly precluded from requiring the use of holding tanks as a "technologically proven alternative." License holders who are required to remove their overboard discharges from redeemable areas would be granted conditional permits allowing them to continue to operate their systems until the department has paid its portion of the costs of system replacement.

The bill establishes a major grants program to reimburse the owners of overboard discharges removed as the result of this law. The State would cover at least 90% and up to 100% of the cost of removal and system replacement.

The provision in the existing law allowing the expansion of existing commercial, state and federal overboard discharges is eliminated.

The accelerated schedule for the renewal of existing overboard discharge licenses established under Public Law 1987, c. 180 is slightly altered to allow the Department of Marine Resources to map shellfish harvesting areas. Despite the slight delay, the end point of 1993 is maintained.