

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2394

H.P. 1735

House of Representatives, March 2, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

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

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative JACQUES of Waterville.

Cosponsored by Representative MICHAUD of East Millinocket, Representative McGOWAN of Canaan and Senator KANY of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Clarify the Process by Which the Board of Environmental
Protection Regulates the Discharge of Toxic Substances to the State's
Surface Waters.**

(AFTER DEADLINE)



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

Sec. 1. 38 MRSA §414-A, sub-§2, as repealed and replaced by PL 1983, c. 566, §19, is amended to read:

2. **Schedules of compliance.** The board may establish schedules, within the terms and conditions of licenses, for compliance with best practicable treatment, as defined in subsection 1, paragraph D, which includes the application of best conventional pollutant control technology or best available technology economically achievable, and for compliance with section 420, subsection 2. Schedules shall must be consistent with the times permitted for compliance with the United-States Federal Water Pollution Control Act, Public Law 92-500, as amended, and may include such interim and final dates for attainment of specific standards as are necessary to carry out the purposes of this subchapter. The schedules shall must 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.

Sec. 2. 38 MRSA §420, sub-§2, ¶¶A to E are enacted to read:

A. Except as naturally occurs or as provided in paragraphs B and C, the board shall regulate toxic substances in the surface waters of the State to the extent that the ambient level of the toxic substances does not exceed federal water quality criteria as established by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, Section 304(a), as amended.

B. The board may change the statewide criteria for a particular toxic substance established pursuant to the Federal Water Pollution Control Act, Section 304(a), as amended, as follows:

(1) By adopting site-specific, numerical criteria for the toxic substance to reflect site-specific conditions different than those used to derive the statewide criteria. The site-specific numerical criteria must be based on appropriate data including toxicity test data generated according to methods approved by the department or the United States Environmental Protection Agency. The board shall adopt site-specific numerical criteria only as part of a licensing proceeding pursuant to sections 413, 414 and 414-A; or

(2) By adopting an alternative statewide criteria for the toxic substance. The alternative statewide criteria must be adopted by rule.

2 The board may only substitute a site-specific or an
4 alternative statewide criteria for the criteria established
6 in paragraph A upon a finding that either is more
 scientifically defensible than the statewide criteria and is
 no less protective of public health and aquatic life.

8 C. When surface water quality standards are not being met
10 due to the presence of a toxic substance for which no water
12 quality criteria has been established pursuant to the
 Federal Water Pollution Control Act, Section 304(a), as
 amended, the board shall:

14 (1) Adopt statewide, numerical criteria by rule; or

16 (2) Adopt site-specific, numerical criteria as part of
18 a licensing proceeding under sections 413, 414 and
 414-A.

20 Nothing in this section restricts the authority of the board
22 to adopt, by rule, statewide or site-specific, numerical
 criteria for toxic substances that are not presently causing
 water quality standards to be violated.

24 D. The board shall establish the acceptable level of
26 additional risk of cancer to be borne by the affected
28 population from exposure to the toxic substance believed to
 be carcinogenic.

30 E. In regulating substances that are toxic to humans, the
32 board shall consider any information provided by the
34 Department of Human Services. The Department of Human
 Services may request that the board adopt or revise the
 statewide or site-specific criteria for any toxic substance
 based on the need to protect public health.

36 Sec. 3. 38 MRSA §464, sub-§4, ¶A, as amended by PL 1989, c.
38 442, §4, is further amended to read:

40 A. Notwithstanding section 414-A, the board shall may not
42 issue a water discharge license for any of the following
 discharges:

44 (1) Direct discharge of pollutants to waters having a
46 drainage area of less than 10 square miles, except that
48 discharges into these waters which were licensed prior
 to January 1, 1986, ~~shall-be~~ are allowed to continue
 only until practical alternatives exist;

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

2 (3) Any discharge into a tributary of GPA waters which
3 that, by itself or in combination with other
4 activities, causes water quality degradation which
5 would impair the characteristics and designated uses of
6 downstream GPA waters or causes an increase in the
7 trophic state of those GPA waters;

8 (4) Discharge of pollutants to waters of the State
9 which that imparts color, taste, turbidity, toxicity,
10 radioactivity or other properties which that cause
11 those waters to be unsuitable for the designated uses
12 and characteristics ascribed to their class;

13 (5) Discharge of pollutants to any water of the State
14 which that violates sections 465, 465-A and 465-B,
15 except as provided in section 451; causes the "pH" of
16 fresh waters to fall outside of the 6.0 to 8.5 range;
17 or causes the "pH" of estuarine and marine waters to
18 fall outside of the 7.0 to 8.5 range; ~~or causes fish~~
19 ~~for human consumption to be injurious to human health~~
20 ~~as determined by the United States Food and Drug~~
21 ~~Administration under the procedures established by~~
22 ~~United States Code, Title 21, section 342 or as~~
23 ~~determined by the Department of Human Services. The~~
24 ~~Department of Human Services shall establish a protocol~~
25 ~~for determining risk in these situations. The protocol~~
26 ~~shall be promulgated as a rule in accordance with the~~
27 ~~Maine Administrative Procedure Act, Title 5, chapter~~
28 ~~375; and~~

29 (6) New discharges of domestic pollutants to the
30 surface waters of the State which that are not conveyed
31 and treated in municipal or quasi-municipal sewage
32 facilities. For the purposes of this subparagraph,
33 "new discharge" means any overboard discharge which
34 that was not licensed as of June 1, 1987, except those
35 discharges which that were in continuous existence for
36 the 12 months preceding June 1, 1987, as demonstrated
37 by the applicant to the board with clear and convincing
38 evidence. For purposes of licensing, the board shall
39 treat an increase in the licensed volume or quantity of
40 an existing discharge or an expansion in the months
41 during which the discharge will take place as a new
42 discharge of domestic pollutants.

43 **Sec. 4. Applicability.** Notwithstanding the Maine Revised
44 Statutes, Title 1, section 302, this Act applies to all license
45 applications pending before the Department of Environmental
46 Protection on or after January 1, 1990.

STATEMENT OF FACT

2 This bill clarifies the amounts of toxic substances allowed
4 in the State's surface waters, removes certain legal
6 uncertainties that have delayed the regulation of these toxic
8 substances and implements a requirement in the Federal Water
10 Pollution Control Act that the State must meet for their
12 control. The bill requires the Board of Environmental Protection
14 to use the numeric water quality criteria of the United States
 Environmental Protection Agency in regulating "priority" toxic
 pollutants unless it can be demonstrated for any priority
 pollutant that an alternative water quality criteria is more
 scientifically defensible, in which case the alternative standard
 is adopted.