

MAINE STATE LEGISLATURE

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L.D. 1792

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STATE OF MAINE
SENATE
116TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1329, L.D. 1792, Bill, "An Act to Authorize Use of Civil Administrative Penalty Authority and Administrative Order Authority Against Violation of Federal and State Drinking Water Laws, Regulations and Rules"

Amend the amendment by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

'Sec. 1. 22 MRSA §2601, sub-§§1-A, 1-B, 1-C, 1-D, 4-A and 9-A are enacted to read:

1-A. Administrative compliance order. "Administrative compliance order" means an administrative order that is issued by the commissioner against a public water system in violation of state drinking water laws, regulations or rules.

1-B. Administrative consent order. "Administrative consent order" means an order issued by the commissioner pursuant to a bilateral agreement between the commissioner and a public water system in violation of state drinking water laws, regulations or rules.

1-C. Administrative penalty. "Administrative penalty" means a fine imposed by the commissioner against a public water system in violation of state drinking water laws, regulations or rules.

1-D. Administrative remedy. "Administrative remedy" means an administrative compliance order, an administrative consent order or an administrative penalty.

SENATE AMENDMENT

2 committed a violation. The notice of noncompliance must contain
3 the following information:

4 A. Identification of the violation;

6 B. A compliance deadline; and

8 C. The possible consequences of noncompliance if the
9 requirements of the notice are not met by the specified date.

10
11 2. Administrative consent order. If the public water
12 system has failed to correct the violation as specified in the
13 notice of noncompliance by the date specified in the notice, the
14 commissioner and the public water system shall make a good faith
15 effort to agree upon a settlement and, if agreement is reached,
16 the commissioner shall issue an administrative consent order. An
17 administrative consent order may not be changed without written
18 consent by all parties to the agreement. An administrative
19 consent order must include, but is not limited to, compliance
20 schedules and milestones. If the public water system and the
21 commissioner fail to reach an agreement, the commissioner may
22 issue an administrative compliance order under subsection 3 or
23 may refer the case to the Attorney General for relief under
24 section 2617.

26 3. Administrative compliance order. If the public water
27 system and the commissioner fail to reach an agreement under
28 subsection 2, the commissioner may issue an administrative
29 compliance order to the public water system to correct the
30 violation in a manner and within a time frame that the
31 commissioner determines appropriate. The administrative
32 compliance order must contain a schedule that the public water
33 system must follow to bring it into compliance. An
34 administrative compliance order may include an administrative
35 penalty that takes effect as early as the day that the parties
36 ceased negotiating in good faith under subsection 2. The
37 administrative compliance order must specify an administrative
38 penalty that takes effect if the public water system fails to
39 comply with the administrative compliance order.

40
41 4. Administrative penalty. If the public water system and
42 the commissioner fail to reach an agreement under subsection 2,
43 the commissioner may impose an administrative penalty that takes
44 effect as early as the day that the parties ceased negotiating in
45 good faith under subsection 2. If the public water system fails
46 to comply with an administrative compliance order by the deadline
47 in the compliance schedule, an administrative penalty may be
48 assessed. A notice of penalty assessment may be issued in
49 conjunction with or separate from an administrative compliance
50 order, and must contain the following:

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- 2 A. Identification of the violation for which it is issued;
- 4 B. A citation of the law, rule or order being violated;
- 6 C. The amount of the penalty;
- 8 D. Notice of the right to an adjudicatory hearing pursuant
10 to the Maine Administrative Procedure Act; and
- 12 E. The procedure for paying the penalty.

14 **§2620. Provisions governing administrative penalties**

16 Administrative penalties imposed under this subchapter are
18 governed by the following provisions.

20 1. Maximum penalty. An administrative penalty may not be
22 greater than \$750 for each violation. Each day that a violation
24 remains uncorrected may be counted as a separate violation.

26 2. Schedule of penalties. The commissioner shall adopt
28 rules in accordance with Title 5, chapter 375 establishing a
30 schedule of administrative penalties. Factors that may be
32 considered include but are not limited to:

- 34 A. The nature and duration of the violation;
- 36 B. The level of assessment necessary to ensure immediate
38 and continued compliance;
- 40 C. Whether steps were taken by the public water system to
42 prevent the violation;
- 44 D. Whether steps were taken by the public water system to
46 remediate or mitigate damage resulting from the violation;
- 48 E. Whether the public water system has a history of
 violations;
- F. The financial condition of the public water system;
- G. Whether or not compliance is less costly than committing
 the violation;
- H. Deterrence of future noncompliance; and
- I. The best interest of the public.

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3. Payment of penalty. Administrative penalties must be paid within 30 days of the issuance of notice of administrative penalty or, if appealed, within 30 days of the appeal decision. The commissioner shall deposit administrative penalties received into the Public Drinking Water Fund established in section 2660-F.

4. Enforcement. Further prosecution of a person who fails to pay the full penalty imposed pursuant to this chapter must be referred to the Attorney General for appropriate action. A person who fails to pay the full penalty imposed pursuant to this chapter is liable for all fines and penalties allowed under this subchapter and all costs, interest and fees incurred by the State, including attorney's fees.

§2620-A. Appeals

Appeal of actions authorized under this section is governed by the following.

1. Due process generally. The commissioner shall comply with the Maine Administrative Procedure Act when imposing administrative penalties and issuing administrative compliance orders. A public water system against which an administrative penalty is assessed or an administrative compliance order is issued has a right to a hearing as provided under the Maine Administrative Procedure Act. The decision of a hearing officer is a final agency action subject to review in the Superior Court, as provided in Title 5, chapter 375, subchapter VII.

2. Effect on penalties. A public water system has 30 days from the date an administrative penalty is issued against it to pay the full amount of the penalty or to file a request for a hearing with the commissioner. If the public water system waives the right to or fails to request a hearing within 30 days, the administrative penalty is considered final. If a request for a hearing is filed within the 30 days, the following provisions apply.

A. Violations or penalties do not accrue from the date that the public water system files the request for a hearing to the date the hearing officer renders a decision.

B. Notwithstanding paragraph A, if the hearing officer finds that the appeal is frivolous, the violations or penalties accrue throughout the appeal period.

C. If an administrative hearing is held and a penalty is assessed at the conclusion of that hearing, the penalty becomes final 30 days after the decision.

§2620-B. Exception

Notwithstanding section 2619, if a violation poses a serious risk to public health, the commissioner may issue an administrative compliance order immediately without having issued a notice of noncompliance or having attempted to negotiate an administrative consent order.

§2620-C. Rules

The commissioner shall adopt rules establishing procedures regarding notice and the issuance, amendment and withdrawal of administrative compliance orders and administrative consent orders.

Sec. 5. 22 MRSA §2660-C, sub-§4, ¶H, as enacted by PL 1993, c. 410, Pt. DD, §4, is amended to read:

H. Submit to the department commissioner annually by August 1st a report that must include, but is not limited to, a performance evaluation of the program, including the implementation of administrative remedies, and commission recommendations regarding, but not limited to, administrative remedies, program operations, funding and staffing requirements, funding formulas and fee collection and transfer schedules.

Sec. 6. 22 MRSA §§2660-D and 2660-F, as enacted by PL 1993, c. 410, Pt. DD, §4, are amended to read:

§2660-D. Annual work plan on primacy

Annually, by January 1st, the department commissioner shall submit to the commission a work plan and budget, listing all funding sources including but not limited to appropriations from the General Fund and allocations from the United States Environmental Protection Agency that are used for the purpose of complying with federal requirements for maintaining primacy. The work plan must include goals and objectives relating to the use of administrative remedies that are consistent with other parts of the work plan.

§2660-F. Public Drinking Water Fund

The Public Drinking Water Fund is established as an interest-bearing dedicated revenue account. All interest earned by the account becomes part of the fund. All fees collected by the department commissioner under this subchapter must be deposited into the fund. Any balance remaining in the fund at the end of the fiscal year does not lapse but is carried forward

into subsequent fiscal years. The department commissioner may use the fund only to support the program, including the cost of salaries, benefits, travel, education, technical assistance, capital equipment and other allowable expenses incurred by the program.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The Department of Human Services will experience an increase in dedicated revenue if the commissioner imposes an administrative penalty. The amount of additional dedicated revenue will depend on the number of penalties assessed.

The additional costs to adopt an administrative remedy process can be absorbed by the department utilizing existing budgeted resources.

The Department of the Attorney General will incur some minor additional costs to enforce certain provisions related to nonpayment of administrative penalties. These costs can be absorbed within the department's existing budgeted resources.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

STATEMENT OF FACT

This amendment incorporates all of the substance of House Amendment "A" to Committee Amendment "A," except that it excludes reference to federal laws, regulations or rules.

SPONSORED BY:

(Senator PARADIS)

COUNTY: Aroostook