

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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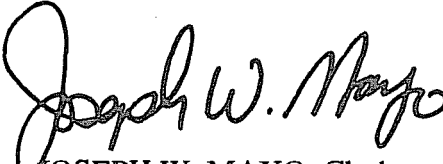
House of Representatives, January 27, 1994

**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.**

(EMERGENCY)

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Submitted by the Department of Human Services pursuant to Joint Rule 24.  
Reference to the Committee on Human Resources suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative PENDEXTER of Scarborough.  
Cosponsored by Representative: TREAT of Gardiner, Senators: BALDACCI of Penobscot,  
HALL of Piscataquis.

Emergency preamble. Whereas, Acts of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted  
as emergencies; and

4  
Whereas, current law does not authorize the Department of  
6 Human Services to impose civil administrative penalties or  
administrative orders against public water systems found in  
8 violation of federal and state drinking water laws, regulations  
and rules; and

10  
Whereas, the Administrator of the United States  
12 Environmental Protection Agency has reviewed the Maine Drinking  
Water Program and found it to have inadequate authority to  
14 enforce the federal Safe Drinking Water Act; and

16  
Whereas, the Administrator of the United States  
Environmental Protection Agency has previously initiated  
18 procedures to withdraw primary enforcement authority, or primacy,  
originally delegated to the Department of Human Services in  
20 1977. One condition placed on the retention is the enactment of  
appropriate administrative penalty and administrative order  
22 authority; and

24  
Whereas, the revocation of primacy and implementation of the  
Safe Drinking Water Act regulations by the Federal Government  
26 would be more costly to the State, to public water systems and to  
individuals served by them. Additional costs incurred through  
28 the loss of primacy could include construction of additional  
treatment facilities, increased monitoring requirements, federal  
30 enforcement actions and the need to obtain technical and  
administrative services and assistance from consultants and  
32 contractors rather than from the agency having primacy; and

34  
Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
36 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
38 safety; now, therefore,

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

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

44  
46 **1-A. Administrative compliance order.** "Administrative  
48 **compliance order**" means an administrative order that is issued by  
the department against a public water system in violation of  
federal or state drinking water laws, regulations or rules.

2 1-B. Administrative consent order. "Administrative consent  
3 order" means an order issued by the department pursuant to a  
4 bilateral agreement between the department and a public water  
5 system in violation of federal or state drinking water laws,  
6 regulations or rules.

7 4-A. Notice of noncompliance. "Notice of noncompliance"  
8 means a formal written complaint or a notice of violation of  
9 federal or state drinking water laws, regulations or rules.

10 9-A. Violation. "Violation" means noncompliance with  
11 federal or state drinking water laws, regulations and rules  
12 regardless of whether that noncompliance is intentional,  
13 negligent or otherwise.

14  
15 **Sec. 2. 22 MRSA §2617, sub-§1, as amended by PL 1993, c. 410,**  
16 **Pt. DD, §3, is further amended to read:**

17  
18 **1. Violation of section 2616.** Any person willfully  
19 **violating section 2616 or subchapter VII, on conviction, must be**  
20 **punished by a fine of not more than \$500 \$25,000. Each day of**  
21 **operation in violation of section 2616 or subchapter VII**  
22 **constitutes a separate offense. The District Court or the**  
23 **Superior Court has jurisdiction over violations of section 2616**  
24 **or subchapter VII.**

25  
26 **Sec. 3. 22 MRSA §2617, sub-§3 is enacted to read:**

27  
28 **3. Administrative remedies.** The department may seek and  
29 impose administrative remedies as provided in subchapter II-A for  
30 a violation of federal or state drinking water laws, regulations  
31 and rules.

32  
33 **Sec. 4. 22 MRSA c. 601, sub-c. II-A is enacted to read:**

34  
35 **SUBCHAPTER II-A**

36  
37 **SAFE DRINKING WATER ADMINISTRATIVE ENFORCEMENT**

38  
39 **§2618. Short title**

40  
41 This subchapter may be known and cited as the "Public  
42 Drinking Water Civil Administrative Penalty and Administrative  
43 Order Act."

44  
45 **§2619. Administrative penalties**

46  
47 **1. Authorization.** The department may impose one or more of  
48 the sanctions provided in this section when a violation of this  
49 chapter, or rules enacted pursuant to this chapter, occurs or if  
50 the department determines that a violation of this chapter, or rules

2 the department determines that sanctions are necessary and  
4 appropriate to ensure compliance with federal and state drinking  
6 water laws, regulations and rules or to otherwise protect the  
8 public health.

10 A. The department may impose administrative penalties for  
12 violations of this chapter or rules enacted pursuant to this  
14 chapter.

16 B. The department may issue an administrative compliance  
18 order to require a person or a public water system to  
20 correct a violation in a manner and within a time frame that  
22 the department determines appropriate to ensure compliance  
24 with federal and state laws, regulations and rules, or to  
26 otherwise protect the public health. Failure to correct a  
28 violation within the specified time constitutes a separate  
30 violation.

32 2. Schedule of penalties. The commissioner shall adopt  
34 rules in accordance with the Maine Administrative Procedure Act  
36 and establish a schedule of the penalties that may be imposed  
38 under this section. Factors that may be considered include but  
40 are not limited to:

42 A. The nature and duration of the violation;

44 B. The level of assessment necessary to ensure immediate  
46 and continued compliance;

48 C. Whether steps were taken by the public water system to  
50 prevent the violation;

D. Whether steps were taken by the public water system to  
remediate or mitigate damage resulting from the violation;

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.

The penalty may not be greater than \$5,000 for each violation.  
Each day that the violation remains uncorrected may be counted as  
a separate offense. A penalty may be imposed for each violation.

2           3. Enforcement and appeal. Enforcement and appeal of  
4           actions authorized under this section are as follows.

6           A. The department shall comply with the Maine  
8           Administrative Procedure Act when imposing administrative  
10           penalties and issuing administrative compliance orders. A  
12           public water system against which an administrative penalty  
14           is assessed or an administrative compliance order is issued  
16           has a right to a hearing as provided under the Maine  
18           Administrative Procedure Act.

20           B. A public water system has 30 days from the date an  
22           administrative penalty is issued against it to pay the full  
24           amount of the penalty or to file a request for an  
26           administrative hearing with the Administrative Hearings  
28           Unit. If the public water system waives the right to or  
30           fails to request a hearing within 30 days, the  
32           administrative penalty is considered final. If an  
34           administrative hearing is held and a penalty is assessed at  
36           the conclusion of that hearing, the penalty becomes final 30  
38           days after the decision. A final order of the  
40           administrative hearing officer is subject to appeal as  
42           provided in the Maine Administrative Procedure Act.

44           §2620. Noncompliance

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

2. Notice of noncompliance. Except as otherwise provided  
              in this section, a notice of noncompliance must be issued to the  
              public water system within 30 days after the department has  
              ascertained that there has been a violation. The notice must  
              contain the following information:

A. Identification of the violation;

B. A compliance deadline; and

C. The possible consequences of noncompliance, including  
                  the assessment of an administrative penalty or the issuance  
                  of administrative order if the requirements of the notice  
                  are not met by the specified date.

If the violating public water system has a history of  
              noncompliance or if the violation poses a serious risk to public  
              health, the department may waive issuance of a notice of

2 noncompliance and may immediately issue an administrative  
3 compliance order.

4 3. Administrative compliance order. The department may  
5 issue an administrative compliance order if the public water  
6 system has failed to correct the violation specified in the  
7 notice of noncompliance by the date in the notice. The  
8 administrative compliance order must contain a schedule that the  
9 public water system must follow to bring it into compliance. An  
10 administrative compliance order may include an administrative  
11 penalty. The administrative compliance order must specify the  
12 administrative penalty to be assessed if the public water system  
13 fails to comply with the administrative compliance order. The  
14 public water system must be given the opportunity for an  
15 administrative hearing with public notice in accordance with  
16 provisions of the Maine Administrative Procedure Act regarding  
17 the administrative compliance order. If the public water system  
18 fails to comply with the administrative compliance order by the  
19 deadline in the compliance schedule, an administrative penalty  
20 must be assessed.

21 4. Notice of penalty assessment. The department shall  
22 issue a penalty assessment notice if the public water system has  
23 failed to respond as required pursuant to an order; failed to  
24 comply with a notice of noncompliance; or failed to comply with  
25 an administrative order within 30 days. The notice of penalty  
26 assessment may be issued in conjunction with an administrative  
27 compliance order or as a result of noncompliance with an  
28 administrative compliance order. The penalty assessment notice  
29 must contain the following:

30 A. Identification of the violation for which it is issued;

31 B. A citation of the law, rule or order being violated;

32 C. The amount of the penalty;

33 D. Notice of the right to an adjudicatory hearing pursuant  
34 to the Maine Administrative Procedure Act; and

35 E. The procedures for paying the penalty.

36 5. Administrative consent order. An administrative consent  
37 order may be issued if the public water system has failed to  
38 correct the violation as specified in the notice of noncompliance  
39 by the date specified in the notice. The department shall issue  
40 an administrative consent order after the department and the  
41 public water system have reached an agreement regarding  
42 compliance. An administrative consent agreement may not be  
43 changed without written consent by all parties to the agreement.  
44

2 An administrative consent order must include, but is not limited  
4 to, compliance schedules, milestones and administrative  
6 penalties. If the public water system and the department fail to  
8 reach an agreement, the department may issue an administrative  
compliance order immediately. The department may decline to  
enter into an administrative consent order and may turn the case  
over to the Office of the Attorney General for relief under  
section 2617.

10 6. Payment of penalty. All penalties must be paid to the  
12 Treasurer of State within 30 days of the issuance of a final  
14 order. Further prosecution of a person who fails to pay the full  
16 penalty imposed pursuant to this chapter must be referred to the  
18 Office of the Attorney General for appropriate action. Such a  
person is liable for all fines and penalties allowed under this  
section and all costs, interest and fees incurred by the State,  
including attorney's fees.

Emergency clause. In view of the emergency cited in the  
preamble, this Act takes effect when approved.

## STATEMENT OF FACT

26 The purpose of this bill is to provide statutory enforcement  
28 authority to the Department of Human Services to compel  
30 compliance with state drinking water rules by allowing the  
department to assess civil penalties for the violation of federal  
and state drinking water laws, regulations and rules.

32 Pursuant to 40 Code of Federal Regulations, Section 142.10,  
34 the State was delegated primary responsibility for the  
administration and enforcement of federal drinking water  
36 regulations mandated under the 1986 amendments of the federal  
Safe Drinking Water Act. In addition, the State has primary  
38 enforcement authority over the Safe Drinking Water Act, which  
states that state law may be no less stringent than the most  
40 recent national primary drinking water regulations in effect, as  
issued or promulgated by the United States Environmental  
Protection Agency and adopted by the State.

42 Current law provides that the court may fine a public water  
44 system upon conviction. It also provides that the Commissioner  
of Human Services may commence a civil action in court for  
46 injunctive relief. Current law does not provide for civil  
administrative relief.



2 This bill allows the Department of Human Services to impose  
4 civil administrative penalties and orders against public water  
6 systems without having to go through the judicial system.

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8  
10 This document has not yet been reviewed to determine the  
12 need for cross-reference, stylistic and other technical  
amendments to conform existing law to current drafting standards.