

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1438

H.P. 1023

House of Representatives, April 27, 1995

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### **An Act to Create Wet-weather Water Quality Standards.**

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.  
Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville.  
Cosponsored by Senator BUSTIN of Kennebec and  
Representatives: DAGGETT of Augusta, DEXTER of Kingfield, GOULD of Greenville,  
MITCHELL of Vassalboro, MORRISON of Bangor, Senators: CAREY of Kennebec,  
LAWRENCE of York.

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

2  
4       Sec. 1. 38 MRSA §464, sub-§2-B is enacted to read:

6       2-B. Temporary removal of designated uses; use  
7 attainability analysis and creation of subcategory of uses for  
8 combined sewer overflows. When designated uses are not being met  
9 as a result of combined sewer overflow discharges, the board may,  
10 consistent with this subsection and 40 Code of Federal  
11 Regulations, Part 131, temporarily remove designated uses that  
12 are not existing uses and create a temporary combined sewer  
13 overflow subcategory referred to as a CSO subcategory.

14       A. The board may create temporary CSO subcategories in  
15 classes B, C and SB and SC waters only when, due to the age,  
16 condition and design of an existing sewer system, technical  
17 or financial limitations prevent the timely attainment of  
18 all designated uses. In a CSO subcategory, uses are  
19 suspended only in the smallest area possible, for the  
20 shortest duration practicable and include only those  
21 designated uses and areas determined by the board to have  
22 the least potential for public benefit.

24       B. Notwithstanding subsections 2 and 2-A, CSO subcategories  
25 may be created by the board upon application by a  
26 municipality or quasi-municipality having licensed combined  
27 sewer overflow discharges, if the following standards are  
28 met.

30       (1) The applicant submits to the department for  
31 approval, with or without conditions, a study and plan,  
32 including an implementation schedule, for combined  
33 sewer overflow abatement, referred to as the CSO plan.  
34 In order for the board to create a CSO subcategory, the  
35 CSO plan must:

36               (a) Place high priority on abatement of combined  
37 sewer overflows that affect waters having the  
38 greatest potential for public use or benefit and  
39 plan to relocate any remaining discharges to areas  
40 where minimal impacts or losses of uses would  
41 occur; and

44               (b) Provide for the implementation as soon as  
45 practical of technology-based control methods to  
46 achieve best practicable treatment or ensure that  
47 cost-effective best management practices are being  
48 implemented.

2                   (2) The board finds that attainment of a designated  
3                   use is not feasible and such determination must be  
4                   supported by demonstration that the conditions of 40  
5                   Code of Federal Regulations, Part 131.10(g) are met.

6                   (3) The board finds that the uses to be affected are  
7                   not existing uses as defined in subsection 4, paragraph  
8                   F, subparagraph (1).

10                   (4) The board finds that discharges from combined  
11                   sewer overflows are not affecting uses that, in the  
12                   board's judgment, constitute high value or important  
13                   resources. In determining if a resource is high value  
14                   or important the board shall consider its economic,  
15                   recreational and ecological significance, the  
16                   likelihood that removal of a combined sewer overflow  
17                   will lead to utilization of that resource and the  
18                   effects of other discharges or conditions on that  
19                   resource.

20                   C. Prior to creating any CSO subcategory, the board shall  
21                   adopt rules regarding required studies, best practicable  
22                   treatment, abatement options and related issues for combined  
23                   sewer overflows. CSO subcategories must be created after  
24                   completion of the following.

25                   (1) Either during or following development of combined  
26                   sewer abatement plans, licensees shall conduct public  
27                   hearings in the area that would be affected by a CSO  
28                   subcategory. Notices and records of hearings must be  
29                   kept and included as part of an application made to the  
30                   board.

31                   (2) Combined sewer overflow abatement plans must be  
32                   submitted to the department for technical review and  
33                   approval.

34                   (3) Licensees proposing CSO subcategories shall submit  
35                   formal applications to the board. Information in the  
36                   application must include: description of the areas and  
37                   uses to be affected, the time and duration of effects,  
38                   comments received at public hearings, a description of  
39                   continuing efforts to abate impacts and proposals for  
40                   periodic review and update of abatement plans.

41                   (4) The board shall provide public notice of  
42                   applications for CSO subcategories and solicit public  
43                   comments. The board shall also consult with agencies,  
44                   public officials and other persons identified as having  
45                   interest in the area to be affected. Based on the

2           results of public hearings held by the applicant, the  
3           comments received and the nature of the application,  
4           the board may hold a public hearing.

5           (5) The board may approve, approve with conditions or  
6           deny applications for CSO subcategories. In cases when  
7           a water body is affected by combined sewer overflows  
8           from more than one licensee, the board shall, to the  
9           maximum extent possible, consider regional impacts and  
10           seek to establish common goals and uses for those  
11           waters.

12           (6) In a manner prescribed by the board, applicants  
13           receiving approval of CSO subcategories shall provide  
14           notice to the public in the area affected, describing  
15           the limitations on use of the water body.

16           D. Upon creation of a CSO subcategory and removal of a  
17           designated use, the board may temporarily suspend or modify  
18           water quality criteria associated with that use as  
19           appropriate, but only to the extent and duration that those  
20           criteria are affected by the licensee for whom the  
21           assignment is made. Action by the board under this  
22           subsection does not relieve other discharge sources from any  
23           requirement to provide necessary treatment or best  
24           management practices or to comply with water quality  
25           criteria.

26           E. Either independently or in conjunction with the  
27           requirements of subsection 3 and upon renewal of individual  
28           waste discharge licenses, the department shall periodically  
29           review all CSO subcategories. Reviews of CSO subcategories  
30           must take into consideration water quality criteria and  
31           uses, combined sewer overflow abatement technology,  
32           monitoring data, financial information and regulatory  
33           requirements affecting CSO subcategories.

34           Upon petition by the department or any person or on its own  
35           motion, the board may, at its discretion, and following notice  
36           and opportunity for hearing, revise or revoke a CSO subcategory  
37           when it finds any change in the conditions under which the  
38           existing designation was made. The failure to comply with the  
39           measures specified in an approved combined sewer overflow  
40           abatement plan is cause for revocation of a limited-use CSO  
41           subcategory.

42           **Sec. 2. 38 MRSA §466, sub-§2-B** is enacted to read:

43           2-B. Combined sewer overflow. "Combined sewer overflow"  
44           means a discharge of excess wastewater from a municipal or  
45           industrial source.

2 quasi-municipal sewerage system that conveys both sanitary wastes  
3 and storm water in a single pipe system and that is in direct  
4 response to a storm event or snowmelt. Combined sewer overflow  
5 discharges do not include dry weather discharges that occur as a  
6 result of nonstorm events or are caused solely by groundwater  
7 infiltration.

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## 12 STATEMENT OF FACT

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14 This bill proposes changes to Maine's water quality  
15 standards to allow Maine combined sewer overflow communities to  
16 request from the Board of Environmental Protection temporary  
17 limited-use segments. These site-specific limited-use segments  
18 will remove designated uses for short periods of time after rain  
19 storms and snowmelt in areas affected by existing combined sewer  
20 overflows. This will allow communities to continue to make  
21 progress in solving the combined sewer overflow pollution  
22 problems without undue financial hardship and to meet the State's  
water quality standards.