

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1836

H.P. 1291

House of Representatives, April 24, 1997

**An Act to Facilitate Delegation of the Federal Waste Discharge
Permitting Program.**

Received by the Clerk of the House on April 22, 1997. Referred to the Committee on Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative COWGER of Hallowell. (GOVERNOR'S BILL)
Cosponsored by Representatives: BULL of Freeport, FOSTER of Gray, MERES of
Norridgewock, Senator: NUTTING of Androscoggin.

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

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PART A

Sec. A-1. 30-A MRSA §4452, sub-§3, ¶G, as amended by PL 1991, c. 732, §3, is further amended to read:

G. ~~The penalties for violations of waste-discharge-licenses issued-by-the-municipality-pursuant-to-Title-38,--section 413,--subsection-8,--or-violations-of~~ a septage land disposal or storage site permit issued by the Department of Environmental Protection under Title 38, chapter 13, subchapter 1, are as prescribed in Title 38, section 349.

Sec. A-2. 38 MRSA §341-A, sub-§3, ¶B, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

B. When the State receives authority to issue permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as commissioner who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.

Sec. A-3. 38 MRSA §341-C, sub-§8, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

8. Federal Water Pollution Control Act requirements. When the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as a board member who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.

Sec. A-4. 38 MRSA §344, sub-§1-A, as enacted by PL 1991, c. 183, is amended to read:

2 **1-A. Governing rules.** An application for a permit, license
4 or approval is processed under the substantive rules in effect on
the date the application or request for approval is determined to
6 be complete for processing. Notwithstanding Title 1, section
302, after the Administrator of the United States Environmental
8 Protection Agency ceases issuing permits for discharges of
pollutants to waters of this State pursuant to the
10 administrator's authority under Section 402 (c)(1) of the Federal
Water Pollution Control Act, as amended, any waste discharge
12 license issued or modified by the State pursuant to its authority
to grant permits under the Federal Water Pollution Control Act
14 must comply with State statutory or regulatory requirements that
take effect prior to final issuance of that license.

16 **Sec. A-5. 38 MRSA §347-A, sub-§6** is enacted to read:

18 **6. Public participation in enforcement settlements.** After
20 the State receives authority to grant permits under the Federal
Water Pollution Control Act, 33 United States Code, 1982, Section
22 1251 et seq., as amended, in any civil enforcement action brought
under this section, section 348 or 349 involving discharges
24 regulated by the Federal Water Pollution Control Act, the
department shall publish notice of and provide at least 30 days
for public comment on any proposed settlement as follows.

26 **A.** In the case of administrative consent agreements, the
28 proposed agreement must be filed with the board and notice
of the filing must be placed on the board's agenda at least
30 30 days before the board takes any action on the agreement.
The Attorney General and the department shall receive and
32 consider, and the department shall provide the board with
summaries of, any written comments relating to the proposed
34 agreement.

36 **B.** In the case of judicial enforcement, each proposed
judgment by consent must be filed with the court at least 30
38 days before the judgment is entered by the court. Prior to
the entry of judgment, notices of the proposed judgment must
40 be published in a newspaper having general circulation in
the area in which the alleged violation occurred, and the
42 Attorney General and the department shall receive and
consider, and file with the court, any written comments
44 relating to the proposed judgment.

46 **C.** The Attorney General shall reserve the right to withdraw
or withhold its consent to the proposed judgment if the
48 comments, views or allegations concerning the judgment
disclose facts or considerations that indicate that the
50 proposed judgment is inappropriate, improper or inadequate

2 and oppose an attempt by any person to intervene in the
3 action. When the public interest in this notification
4 process is not compromised, the Attorney General may permit
5 an exception to publication as set forth in this section in
6 a specific case where extraordinary circumstances require a
7 period shorter than 30 days or a notification procedure
8 other than that set forth in this section.

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10 **Sec. A-6. 38 MRSA §347-C**, as affected by PL 1989, c. 890, Pt.
11 A, §40 and amended by Pt. B, §5, is further amended to read:

12 **§347-C. Right of inspection and entry**

13
14 Employees and agents of the Department of Environmental
15 Protection may enter any property at reasonable hours and enter
16 any building with the consent of the property owner, occupant or
17 agent, or pursuant to an administrative search warrant, in order
18 to inspect the property or structure, including the premises of
19 an industrial user of a publicly owned treatment works, and to
20 take samples and, inspect records relevant to any regulated
21 activity or conduct tests as appropriate to determine compliance
22 with any laws administered by the department or the terms and
23 conditions of any order, regulation, license, permit, approval or
24 decision of the commissioner or of the board.

25 **Sec. A-7. 38 MRSA §349, sub-§1**, as amended by PL 1993, c. 349,
26 §71, is further amended to read:

27
28 **1. Criminal penalties.** Any person who intentionally,
29 knowingly, recklessly or with criminal negligence violates any
30 provisions of the laws administered by the department, including,
31 without limitation, a violation of the terms or conditions of any
32 order, rule, license, permit, approval or decision of the board
33 or commissioner, or who disposes of more than 500 pounds or more
34 than 100 cubic feet of litter for a commercial purpose, in
35 violation of Title 17, section 2264, is guilty of a Class E crime
36 and may be punished accordingly, except, notwithstanding Title
37 17-A, section 1301, subsection 1-A, paragraph C or Title 17-A,
38 section 1301, subsection 3, paragraph E, the fine for such a
39 violation may not be less than \$100 \$2,500 nor more than \$25,000
40 for each day of the violation, except that the minimum amount for
41 knowing violations is \$5,000 for each day of violation.

42
43 This subsection does not apply to actions subject to the criminal
44 penalties set forth in section 1319-T.

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46 **Sec. A-8. 38 MRSA §349, sub-§6**, as enacted by PL 1983, c. 796,
47 §19, is amended to read:

2 **6. Maximum penalties.** The maximum civil penalty may exceed
3 \$10,000 for each day of that violation, but shall may not exceed
4 \$25,000 for each day of the violation, when it can be shown that
5 there has been a previous violation of the same law by the same
6 party within the 5 preceding years, and the maximum criminal
7 penalty may exceed \$25,000 for each day of violation, but may not
8 exceed twice the amounts in subsection 1, when it can be shown
9 that there has been a previous violation of the same law by the
10 same party.

11 **Sec. A-9. 38 MRSA §349, sub-§9,** as amended by PL 1995, c. 235,
12 §1, is repealed and the following enacted in its place:

13 **9. Unavoidable malfunctions.** The following considerations
14 apply to violations resulting from unavoidable malfunctions.

15 A. The commissioner may exempt from civil penalty an air
16 emission in excess of license limitations if the emission
17 occurs during start-up or shutdown or results exclusively
18 from an unavoidable malfunction entirely beyond the control
19 of the licensee and the licensee has taken all reasonable
20 steps to minimize or prevent any emission and takes
21 corrective action as soon as possible. There may be no
22 exemption if the malfunction is caused, entirely or in part,
23 by poor maintenance, careless operation, poor design or any
24 other reasonably preventable condition or preventable
25 equipment breakdown. The burden of proof is on the licensee
26 seeking the exemption under this subsection. In the event
27 of an unavoidable malfunction, the licensee must notify the
28 commissioner in writing within 48 hours and submit a written
29 report, together with any exemption requests, to the
30 department on a quarterly basis. The commissioner shall
31 annually report to the joint standing committee of the
32 Legislature having jurisdiction over natural resource
33 matters with regard to the exercise of this authority.

34 B. An affirmative defense is established for a wastewater
35 discharge in excess of license limitations if the discharge
36 results exclusively from unintentional and temporary
37 noncompliance with technology-based limitations because of
38 factors entirely beyond the reasonable control of the
39 licensee and the licensee has taken all reasonable steps to
40 minimize or prevent any discharge and takes corrective
41 action as soon as possible. There may be no exemption if
42 the malfunction is caused, entirely or in part, by
43 operational error, improperly designed treatment facilities,
44 inadequate treatment facilities, lack of preventive
45 maintenance or careless or improper operation. The burden
46 of proof is on the licensee seeking the exemption under this
47 subsection. In the event of an unavoidable malfunction, the
48 commissioner shall report to the joint standing committee of the
49 Legislature having jurisdiction over natural resource
50 matters with regard to the exercise of this authority.

2 licensee must notify the commissioner orally within 24
3 hours, and in writing within 5 days. The commissioner shall
4 annually report to the joint standing committee of the
5 Legislature having jurisdiction over natural resource
6 matters with regard to the exercise of this authority.

7 **Sec. A-10. 38 MRSA §361-A, sub-§§1-I, 1-J and 1-K** are enacted to
8 read:

9 **1-I. Clean Water Act.** "Clean Water Act" means the Federal
10 Water Pollution Control Act, as defined in paragraph 1-K.

11 **1-J. Code of Federal Regulations.** "Code of Federal
12 Regulations" means the codification of regulations published in
13 the Federal Register by the Federal Government, and includes
14 those regulations effective on or before January 1, 1997.

15 **1-K. Federal Water Pollution Control Act.** "Federal Water
16 Pollution Control Act" means federal Public Law 92-500 or 33
17 United States Code, Sections 1251 et seq., including all
18 amendments effective on or before January 1, 1997.

19 **Sec. A-11. 38 MRSA §361-A, sub-§7,** as enacted by PL 1973, c.
20 450, §4, is amended to read:

21 **7. Waters of the State.** "Waters of the State" means any and
22 all surface and subsurface waters which that are contained
23 within, flow through, or under or border upon this State or any
24 portion thereof of the State, including the marginal and high
25 seas, except such waters as are confined and retained completely
26 upon the property of one person and do not drain into or connect
27 with any other waters of the State, but not excluding waters
28 susceptible to use in interstate or foreign commerce, or whose
29 use, degradation or destruction would affect interstate or
30 foreign commerce.

31 **Sec. A-12. 38 MRSA §413, sub-§§2, 2-B and 2-D** as affected by PL
32 1989, c. 890, Pt. A, §40 and amended by Pt. B, §28, are further
33 amended to read:

34 **2. Exemptions.** No person may be deemed A person is not
35 considered in violation of this section for the discharge of
36 rock, sand, dirt or other pollutants resulting from erosion
37 related to agricultural activities, subject to the following
38 conditions.

39 **A.** The appropriate soil and water conservation district has
40 recommended an erosion and sedimentation control plan or
41 conservation plan for the land where this erosion originates.

2 B. The commissioner has certified that the plan meets the
objectives of this chapter.

4 C. The commissioner determines that the agricultural
6 activities are in compliance with the applicable portion of
the plan, or the soil and water district has certified that
8 funds from existing federal and state programs are not
available to implement the applicable portion of the plan.

10 D. After the State receives authority to grant permits
12 under the Federal Water Pollution Control Act, this
14 exemption will not apply to any discharges considered point
16 sources under federal law, including discharges from
concentrated animal feeding operations and discharges from
silvicultural point sources, as defined by federal law.

18 **2-B. Exemptions; snow dumps.** The board department may by
rule exempt license categories of snow dumps ~~from the need to~~
20 ~~obtain a license under this section when it finds that the~~
22 ~~exempted~~ when the activity would not have a significant adverse
effect on the quality or classifications of the waters of the
State, except there may be no snow dumps directly into the fresh
surface waters of the State.

24 **2-D. Exemptions; road salt or sand-salt storage piles.** The
26 commissioner may exempt any road salt or sand-salt storage area
from the need to obtain a license under this section for
28 discharges to groundwaters of the State when the commissioner
finds that the exempt activity will not have a significant
30 adverse effect on the quality or classifications of the waters
groundwaters of the State. In making this finding, the
32 commissioner's review must include, but is not limited to, the
location, structure and operation of the storage area.

34 Owners of salt storage areas shall register the location of
36 storage areas with the department on or before January 1, 1986.
As required by section 411, the department shall prioritize
38 municipal or quasi-municipal sand-salt storage areas prior to
November 1, 1986.

40 **Sec. A-13. 38 MRS §413, sub-§2-E,** as affected by PL 1989, c.
42 890, Pt. A, §40 and amended by Pt. B, §28, is repealed.

44 **Sec. A-14. 38 MRS §413, sub-§2-F,** as enacted by PL 1987, c.
46 769, Pt. A, §173, is amended to read:

48 **2-F. Exemption; aquaculture.** ~~No~~ Until the State receives
authority to grant permits under the Federal Water Pollution
Control Act, 33 United States Code, 1982, a person may not be
50 considered in violation of this section if:

2 A. The discharge activity is associated with off-shore
3 marine aquaculture operations in the estuarine and marine
4 waters; and

6 B. As a condition of obtaining a leasehold from the
7 Department of Marine Resources, the Department of
8 Environmental Protection certifies that the aquaculture
9 activities mentioned in this subsection will not have a
10 significant adverse effect on water quality or violate the
11 standards ascribed to the receiving waters' classifications.

12 **Sec. A-15. 38 MRSA §413, sub-§2-G, ¶B,** as enacted by PL 1995,
14 c. 493, §2 and affected by §21, is amended to read:

16 B. A discharge to surface waters of the State that occurs
17 in the process of recovering, containing, cleaning up or
18 removing an oil or hazardous substance spill or leak if the
19 discharge complies with the instructions of ~~the commissioner~~
20 ~~or the commissioner's designee and, where applicable, an~~
21 on-scene coordinator pursuant to 40 Code of Federal
22 Regulations, Part 300.

24 **Sec. A-16. 38 MRSA §413, sub-§8,** as affected by PL 1989, c.
25 890, Pt. A, §40 and amended by Pt. B, §28, is repealed.

26 **Sec. A-17. 38 MRSA §413, sub-§9,** as enacted by PL 1987, c.
28 769, Pt. A, §175, is repealed.

30 **Sec. A-18. 38 MRSA §413, sub-§10** is enacted to read:

32 10. Marine aquaculture projects. After the State receives
33 authority to grant permits under the Federal Water Pollution
34 Control Act, 33 United States Code, 1982, the department may
35 issue to an owner of a marine aquaculture project a license for
36 the discharge of pollutants to those waters only if the following
37 conditions are satisfied:

38 A. An application for a leasehold has been accepted as
39 complete by the Department of Marine Resources and a copy of
40 an approved leasehold is provided to the department prior to
41 any discharge of pollutants;

42 B. The project will not have a significant adverse effect
43 on water quality or violate the standards of the receiving
44 water's classification;

45 C. The project will be managed and monitored in accordance
46 with a program approved by the Department of Marine
47 Resources;

2 D. The project is not located in waters classified as SA
4 under section 465-B, subsection 1; and

6 E. Other applicable requirements of this chapter are met.

8 A license issued pursuant to this subsection is void if water
10 quality is significantly affected by the project.

12 For the purposes of this subsection, an aquaculture project is a
14 defined managed water area that uses discharges of pollutants
16 into that designated area for the maintenance or production of
18 harvestable plants or animals in estuarine or marine waters.

20 **Sec. A-19. 38 MRSA §414, sub-§2**, as amended by PL 1993, c.
22 410, Pt. G, §5, is further amended to read:

24 **2. Terms of licenses.** Licenses are issued by the
26 department for a term of not more than 5 years, except that
28 licenses for overboard discharges may be issued for a term of not
30 more than 10 years, as provided for in section 414-A, subsection
32 1-B, paragraph D. For the purposes of this section, "overboard
34 discharge" is defined in accordance with section 466, subsection
36 9-A.

38 **Sec. A-20. 38 MRSA §414, sub-§§2-A, 3 and 6**, as affected by PL
40 1989, c. 890, Pt. A, §40 and amended by Pt. B, §29, are further
42 amended to read:

44 **2-A. Relicensing.** The relicensing of an existing licensed
46 waste discharge prior to or after the expiration of the term of
48 the existing license is subject to all of the requirements of
50 this chapter. For the purposes of this chapter, the term
"relicense" includes, without limitation, the terms "renewal,"
"renew," "reissue" and "extend." Relicensing of a waste
discharge may be denied for any of the reasons set forth in
section 341-D.

3. Inspection and records. Authorized representatives of
the commissioner and the Attorney General shall have access at
any reasonable time, to and through any premises where a
discharge originates or is located or where required records are
kept, including records of industrial users of publicly owned
treatment works, for the purposes of inspection, testing and
sampling. The department may order a discharger to produce and
shall have has the right to copy any records relating to the
handling, treatment or discharge of pollutants and may require
any licensee to keep such records relating thereto to the
handling, treatment or discharge of pollutants as the department
determines necessary. The department also may order, in writing,

2 a discharger or industrial user of publicly owned treatment works
3 to produce such records, reports and other information as may
4 reasonably be required in order to determine if that person is in
5 violation of any law, order, rule, license, permit, approval or
6 decision of the board or commissioner related to a wastewater
7 discharge.

8 **6. Confidentiality of records.** Any records, reports or
9 information obtained under this subchapter is available to the
10 public, except that upon a showing satisfactory to the department
11 by any person that any records, reports or information, or
12 particular part thereof of any record, report or information,
13 other than the names and addresses of applicants, license
14 applications, licenses and effluent data, to which the department
15 has access under this subchapter would, if made public, divulge
16 methods or processes which that are entitled to protection as
17 trade secrets, these records, reports or information must be
18 confidential and not available for public inspection or
19 examination. Any records, reports or information may be disclosed
20 to employees or authorized representatives of the State or the
21 United States concerned with carrying out this subchapter or any
22 applicable federal law, and to any party to a hearing held under
23 this section on terms the commissioner may prescribe in order to
24 protect these confidential records, reports and information,
25 ~~provided that~~ as long as this disclosure is material and relevant
26 to any issue under consideration by the department.

28 **Sec. A-21. 38 MRSA §414, sub-§8** is enacted to read:

30 **8. Effect of license.** Issuance of a license under this
31 chapter does not convey any property right of any sort, or
32 exclusive privilege. Except for toxic effluent standards and
33 prohibitions imposed under the Federal Water Pollution Control
34 Act, Section 307, as amended, compliance with a license during
35 its terms constitutes compliance with this chapter. It is not a
36 defense for a licensee in an enforcement action that it would
37 have been necessary to halt or reduce the licensed activity in
38 order to maintain compliance with the conditions of the license.
39 The licensee shall take all reasonable steps to minimize or
40 prevent any discharge in violation of a license that has a
41 reasonable likelihood of adversely affecting human health or the
42 environment.

44 **Sec. A-22. 38 MRSA §414-A, sub-§§1 and 1-A,** as affected by PL
45 1989, c. 890, Pt. A, §40 and amended by Pt. B, §30, is further
46 amended to read:

48 **1. Generally.** The board department shall issue a license
49 for the discharge of any pollutants only if it finds that:
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A. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

B. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter;

C. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the department finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with section 464, subsection 4, paragraph F. The finding must be made following procedures established by rule of the board pursuant to section 464, subsection 4, paragraph F;

D. The discharge will be subject to effluent limitations that require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents that are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations. If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgment. In determining best practicable treatment for each category or class, the department shall consider the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives; and

2 E. A pesticide discharge is unlikely to exert a significant
adverse impact on nontarget species. This standard is only
applicable to applications to discharge pesticides.

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6 **1-A. License for copper sulfate applications in public
water supplies.** The commissioner ~~shall issue upon application,
an emergency license within 48 hours of application~~ may issue
licenses to treat public water supplies with copper sulfate or
8 related compounds. The commissioner may not issue more than 2
10 consecutive emergency licenses for the same body of water.

12 A. ~~An emergency~~ A license may only be issued if the
Department of Human Services, Division of Health Engineering
14 has determined that:

16 (1) An abundant growth of algae producing taste or
odor exists to such a degree that the water supply is
18 in danger of becoming unhealthful or unpalatable;

20 (2) The abundance of algae is a sporadic event. For
purposes of this section, "sporadic" means occurring
22 not more than 2 years in a row; and

24 (3) The algae cannot effectively be controlled by
other methods.

26 B. Any emergency license issued under this subsection is
28 for one application or series of applications not to exceed
6 months, as provided in the terms of the license.

30 C. The commissioner shall impose all conditions necessary
32 to meet the requirements of this section and all other
relevant provisions of law.

34 ~~D. The board and the Department of Human Services shall
36 jointly adopt rules to carry out the purposes of this
section.~~

38 **Sec. A-23. 38 MRSA §414-A, sub-§1-B, ¶D,** as amended by PL 1993,
40 c. 410, Pt. G, §6, is further amended to read:

42 D. The ~~Until the State receives authority to issue permits
under the Federal Water Pollution Control Act, the~~
44 department shall limit to a maximum of 10 years the term of
any overboard discharge license or conditional permit,
46 including relicensings, issued after June 1, 1987. For the
purposes of this section, "overboard discharge" is defined
48 in accordance with section 466, subsection 9-A. ~~Licenses
issued after June 1, 1987 for a 5 year term, must be
50 extended to a 10 year term upon payment of the processing~~

2 and ~~licensing fees, prorated for the increased term of the~~
3 license. All licenses in existence on June 1, 1987, with
4 expiration dates occurring in 1989 or 1990, expire on the
5 date stated in the license. All other licenses in existence
6 on June 1, 1987 expire on the same day and month stated in
7 the existing license but in a new year, determined by the
8 following schedule:

| Current Expiration Date | New Date |
|-------------------------|----------|
| 1991, 1992 | 1990 |
| 1993, 1994 | 1991 |
| 1995, 1996 | 1992 |
| 1997, 1998 | 1993 |

16 After the State receives authority to issue permits under
17 the Federal Water Pollution Control Act, the term of any
18 overboard discharge license or conditional permit may not be
19 more than 5 years.

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21 **Sec. A-24. 38 MRSA §414-A, sub-§4**, as amended by PL 1993, c.
22 232, §2, is further amended to read:

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24 **4. License conditions affecting bypasses.** In fashioning
25 license decisions and conditions, the department shall consider
26 the extent to which operation of the licensed facility will
27 require an allowance for bypass of wastewater from any portion of
28 a treatment facility when necessary for essential maintenance to
29 assure efficient operation of the licensed facility, when
30 unavoidable to prevent loss of life, personal injury or severe
31 property damage and otherwise subject to applicable effluent
32 limitations and standards. When the applicant demonstrates to
33 the department that, consistent with best practical treatment
34 requirements and other applicable standards, reasonably
35 controlled and infrequent bypasses will be necessary for this
36 purpose, and there is no feasible alternative to the bypass, such
37 as the use of auxillary treatment facilities, retention of
38 untreated wastes or maintenance during normal equipment downtime,
39 the department shall fashion appropriate license allowances and
40 conditions.

41
42 **Sec. A-25. 38 MRSA §414-A, sub-§5** is enacted to read:

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44 **5. Modification, reopening and revocation.** The following
45 actions may be taken to reopen, modify or revoke and reissue
46 waste discharge licenses. All actions taken under this section
47 must be with notice to the licensee and all other interested
48 parties of record and with opportunity for hearing. Actions may
49 be appealed as set forth in sections 341-D and 346.

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2 A. The department may reopen a license to add or change
4 conditions or effluent limitations for toxic compounds
6 identified in 40 Code of Federal Regulations, Section 401 or
8 to include schedules of compliance to implement industrial
10 pretreatment rules adopted by the board. Additionally, at
 the time of license issuance, the department may include as
 a condition of a license a provision for reopening the
 license for inclusion or change of specific limitations when
 facts available upon issuance indicate that changed
 circumstances or new information may be anticipated.

12 B. A request for modification of a license may be made by
14 the licensee for any valid cause or changed circumstance.
 The department may initiate a license modification:

16 (1) When necessary to correct legal, technical or
18 procedural mistakes or errors;

20 (2) When there has been or will be a substantial
22 change in the activity or means of treatment that
 occurred after the time the license was issued;

24 (3) When new information other than revised rules,
26 guidance or test methods becomes available that would
 have justified different conditions at the time the
 license was issued;

28 (4) When a pollutant not included in the license may
30 be present in the discharge in quantities sufficient to
32 require treatment, such as when the pollutant exceeds
34 the level that can be achieved by the technology-based
 treatment standards appropriate to the licensee, or
 contribute to water quality violations;

36 (5) When necessary to remove net limits based on
38 pollutant concentration in intake water when the
 licensee is no longer eligible for them, consistent
 with federal law;

40 (6) When necessary to make changes as a result of the
42 failure of one state to notify another state whose
 waters may be affected by a discharge; or

44 (7) When necessary to include pretreatment compliance
46 schedules required pursuant to federal law.

48 C. The department may revoke and modify a license when any
50 of the conditions specified in section 341-D, subsection 3
 exist or upon an application for transfer of a license.

2 **Sec. A-26. 38 MRSA §414-B, sub-§2**, as affected by PL 1989, c.
3 890, Pt. A, §40 and amended by Pt. B, §31, is further amended to
4 read:

5 **2. Pretreatment standards.** The department may establish
6 pretreatment standards for the introduction into publicly owned
7 treatment works of pollutants which that interfere with, pass
8 through or otherwise are incompatible with those treatment works.
9 In addition, the department may establish pretreatment standards
10 for designated toxic pollutants which that may be introduced into
11 a publicly owned treatment works. In order to assume and
12 properly administer the authority to issue and enforce permits
13 under the Federal Water Pollution Control Act, the department may
14 adopt rules as necessary, provided that the rules do not violate
15 the Federal Water Pollution Control Act or 40 Code of Federal
16 Regulations, Part 403.

17 The department may require that any license for a discharge from
18 a publicly owned treatment works include conditions to require
19 the identification of pollutants, in terms of character and
20 volume, from any significant source introducing pollutants
21 subject to pretreatment standards, and to assure compliance with
22 these pretreatment standards by each of these sources.

23 **Sec. A-27. 38 MRSA §414-B, sub-§2-A**, as enacted by PL 1979, c.
24 444, §9, is amended to read:

25 **2-A. Prohibited discharge through publicly owned treatment**
26 **works.** The discharge to a publicly owned treatment works of any
27 pollutant which that interferes with, passes through or otherwise
28 is incompatible with these works, or which that is a designated
29 toxic pollutant, is prohibited unless in compliance with
30 pretreatment standards established for the applicable class or
31 category of discharge. Violation of the terms and conditions of
32 local pretreatment regulations or a user contract, permit or
33 similar agreement between an industrial user and the owner of a
34 publicly owned treatment works is prohibited. A violation may be
35 enforced by the State or the owner of the treatment works or
36 through joint action.

37 **Sec. A-28. 38 MRSA §418, sub-§2**, as affected by PL 1989, c.
38 890, Pt. A, §40 and amended by Pt. B, §35, is further amended to
39 read:

40 **2. Storage; permit.** Whoever proposes to use the inland
41 waters of this State for the storage or curing of logs or
42 pulpwood, or for other purposes incidental to the processing of
43 forest products, or to transport logs or pulpwood from islands to
44 the mainland, shall apply to the department for a permit for that

2 use. Applications for these permits must be in a form prescribed
by the commissioner.

4 If the department finds, on the basis of the application, that
6 the proposed use will not lower the existing quality or the
classification, whichever is higher, of any waters, nor adversely
8 affect the public rights of fishing and navigation therein, and
that inability to conduct that use will impose undue economic
10 hardship on the applicant, it shall grant the permit for a period
not to exceed 10 5 years, with such terms and conditions as, in
12 its judgment, may be necessary to protect the quality, standards
and rights.

14 In the event the department determines it necessary to solicit
further evidence regarding the proposed use, it shall schedule a
16 public hearing on the application.

18 At that hearing the department shall solicit and receive
testimony concerning the nature and extent of the proposed use
20 and its impact on existing water quality, water classification
standards and the public rights of fishing and navigation and the
22 economic implications upon the applicant of the use. If, after
hearing, the department determines that the proposed use will not
24 lower the existing quality or the classification standards,
whichever is higher, of any waters, nor adversely affect the
26 public rights of fishing and navigation therein and that
inability to conduct the use will impose undue economic hardship
28 on the applicant, it shall grant the permit for a period not to
exceed 10 5 years, with such terms and conditions as in its
30 judgment may be necessary to protect the quality, standards and
rights.

32 **Sec. A-29. 38 MRSA §451, 2nd ¶**, as amended by PL 1991, c. 66,
34 Pt. A, §11, is further amended to read:

36 The department may establish a mixing zone for any discharge
at the time of application for a waste discharge license. The
38 department shall attach a description of the mixing zone as a
condition of a license issued for that discharge. After
40 opportunity for a hearing in accordance with section 345-A, the
department may establish by order a mixing zone with respect to
42 any discharge for which a license has been issued pursuant to
section 414 or for which an exemption has been granted by virtue
44 of section 413, subsection 2. ~~Prior to the commencement of any~~
~~enforcement action to abate a classification violation, the~~
46 ~~department shall establish in the manner provided in this~~
~~paragraph a mixing zone with respect to the discharge sought to~~
48 ~~be affected.~~

2 **Sec. A-30. 38 MRSA §464, sub-§4, ¶A**, as corrected by RR 1993,
c. 1, §113, is amended to read:

4 A. Notwithstanding section 414-A, the department may not
6 issue a water discharge license for any of the following
discharges:

8 (1) Direct discharge of pollutants to waters having a
10 drainage area of less than 10 square miles, except that
12 discharges into these waters that were licensed prior
to January 1, 1986, are allowed to continue only until
practical alternatives exist;

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

18 (3) Any discharge into a tributary of GPA waters that
20 by itself or in combination with other activities
causes water quality degradation that would impair the
22 characteristics and designated uses of downstream GPA
waters or causes an increase in the trophic state of
those GPA waters;

24 (4) Discharge of pollutants to waters of the State
26 that imparts color, taste, turbidity, toxicity,
radioactivity or other properties that cause those
28 waters to be unsuitable for the designated uses and
characteristics ascribed to their class;

30 (5) Discharge of pollutants to any water of the State
32 that violates sections 465, 465-A and 465-B, except as
provided in section 451; causes the "pH" of fresh
34 waters to fall outside of the 6.0 to 8.5 range; or
causes the "pH" of estuarine and marine waters to fall
36 outside of the 7.0 to 8.5 range; and

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

2 for processing and in processing an application to determine
whether it meets statutory and regulatory criteria.

4 **Sec. B-2. 38 MRSA §352, sub-§2, ¶C**, as amended by PL 1991, c.
6 384, §2 and affected by §16, is further amended to read:

8 C. Except for those fees assessed under ~~section~~ sections
353-A and 353-B, licensing fees must be assessed for direct
10 costs incurred in monitoring, inspecting and sampling to
ensure proper compliance by a licensee.

12 **Sec. B-3. 38 MRSA §352, sub-§2, ¶F**, as enacted by PL 1993, c.
14 735, §2, is amended to read:

16 F. Waste discharge license fees assessed under section 352
353-B for facilities licensed under ~~section~~ Title 36,
18 section 656 and sections 362-A, 413, 418, 451 and 1101 must
be used to support activities for water quality control
20 operations, including licensing, compliance evaluation,
monitoring, data acquisition, data management and
22 administration.

24 **Sec. B-4. 38 MRSA §352, sub-§2-A** is enacted to read:

26 2-A. Fee adjustment. The commissioner may adjust maximum
fees established in this subchapter on an annual basis according
28 to the United States Consumer Price Index established by the
federal Department of Labor, Bureau of Labor Statistics.

30 **Sec. B-5. 38 MRSA §352, sub-§5-A**, as amended by PL 1995, c.
32 704, Pt. A, §1 and affected by Pt. C, §2, is further amended by
amending Table I to read:

34 TABLE I

36 MAXIMUM FEES IN DOLLARS

| 38 TITLE 36 | PROCESSING | CERTIFICATION |
|---|------------|---------------|
| 40 SECTION | FEE | FEE |
| 42 656, sub-§1, ¶E, Pollution Control Facilities | | |
| 44 A. Water pollution control facilities with capacities at | \$250 | \$20 |
| 46 least 4,000 gallons of waste per day and | | |
| 48 §1760, sub-§29, water pollution control | | |
| 50 facilities | | |

| | | | |
|----|--|--------------------------|---------|
| 2 | B. Air pollution control and §1760, sub-§30, air pollution control facilities | 250 | 20 |
| 4 | | | |
| 6 | TITLE 38 | PROCESSING | LICENSE |
| 8 | SECTION | FEE | FEE |
| 10 | 344, sub-§7, Permit by rule | \$50 | \$0 |
| 12 | 362-A-Experiments | 175 | 175 |
| 14 | 413, Waste discharge licenses | <u>See section 353-B</u> | |
| 16 | A.--Residential (10-year-term) | 450 | 150 |
| 18 | B.--Commercial (10-year-term) | | |
| 20 | 1.--Flow-of-less-than 2,000-gallons-per-day | 4,800 | 1,280 |
| 22 | 2.--Flow-of-2,000-to 20,000-gallons-per day-inclusive | 4,800 | 4,000 |
| 24 | 3.--Flow-of-greater than-20,000-gallons per-day | 4,800 | 9,600 |
| 26 | C.--Industrial-minor (based-upon-EPA-list of-major-and-minor source-discharges) | | |
| 28 | 1.--Discharges-of cooling-water, sanitary-wastewater or-treated-storm-water only | 1,500 | 480 |
| 30 | 2.--All-others | 1,500 | 6,000 |
| 32 | D.--Industrial-major (based-upon-EPA-list-of major-source-discharges) | | |
| 34 | 1.--Discharge-of cooling-water-or sanitary-wastewater only | 4,800 | 3,000 |
| 36 | 2.--All-others | 4,800 | 8,800 |
| 38 | E.--Publicly-owned treatment-works | | |
| 40 | 1.--Flow-of-less than-or-equal-to 50,000-gallons-per day-and-no-significant industrial-component | 100 | 400 |
| 42 | 2.--Flow-of-greater than-50,000-gallons | 100 | 1,400 |
| 44 | | | |
| 46 | | | |
| 48 | | | |
| 50 | | | |

| | | | |
|----|-------------------------------------|--------------|-------------|
| 2 | per-day, but less | | |
| 4 | than 0.5 million | | |
| | gallons per day and | | |
| | no significant | | |
| 6 | industrial component | | |
| | 3. Flow of at least | 100 | 3,600 |
| | 0.5 million gallons | | |
| 8 | per day, but less | | |
| | than 5 million | | |
| 10 | gallons per day and | | |
| | no significant | | |
| 12 | industrial component | | |
| | 4. Flow of at least | 300 | 5,400 |
| 14 | 5 million gallons per | | |
| | day or a significant | | |
| 16 | industrial component | | |
| | F. Special discharges | | |
| 18 | 1. Aquatic pesticides | 130 | 75 |
| | 2. Dredge spoils | 130 | 75 |
| 20 | 418. Log storage | 55 | 25 |
| | 451. Mixing zones | 1,200 | 2,200 |
| 22 | 451-A. Time schedule | 25 | 25 |
| | variances | | |
| 24 | 480-E. Natural resources | | |
| | protection | | |
| 26 | A. Any alteration of a | 140 | 50 |
| | protected natural resource, | | |
| 28 | except coastal wetlands and | | |
| | coastal sand dunes, causing | | |
| 30 | less than 20,000 square feet | | |
| | of alteration of the resource | | |
| 32 | B. Any alteration of a | 240 | 60 |
| | coastal wetland causing less | | |
| 34 | than 20,000 square feet of | | |
| | alteration of the resource | | |
| 36 | C. Any alteration of a | .015/sq. ft. | 005/sq. ft. |
| | protected natural | alteration | alteration |
| 38 | resource, except coastal | | |
| | sand dunes, causing 20,000 | | |
| 40 | square feet or more of | | |
| | alteration of the resource | | |
| 42 | D. Any alteration of a | 3,500 | 1,500 |
| | coastal sand dune | | |
| 44 | E. Condition compliance | 84 | 0 |
| | F. Minor modification | 184 | 0 |
| 46 | 485-A. Site location of development | | |
| | A. Residential subdivisions | | |
| 48 | 1. Affordable housing | 50/lot | 50/lot |
| | 2. On public water and | | |
| 50 | sewers | 175/lot | 175/lot |

| | | | |
|----|-------------------------------------|-------------------|---------|
| | 3. All Other | 250/lot | 250/lot |
| 2 | B. Industrial parks | 460/lot | 460/lot |
| | C. Mining | 1,500 | 1,000 |
| 4 | D. Structures | 4,000 | 2,000 |
| | D-1. Traffic | | |
| 6 | Scoping meeting | | |
| | with no further review | 500 | 0 |
| 8 | Scoping meeting with | | |
| | further review | 500 | 1,500 |
| 10 | "Scoping meeting" refers | | |
| | to the process described | | |
| 12 | in section 484, subsection | | |
| | 2, paragraph B | | |
| 14 | E. Other | 1,000 | 1,000 |
| | 543, Oily waste discharge | 40 | 160 |
| 16 | 560, Vessels at anchorage | 125 | 100 |
| | 587, Ambient air quality | 5,050 | 50 |
| 18 | or emissions standards | | |
| | variances | | |
| 20 | 590, Air emissions licenses | See section 353-A | |
| | 633, Hydropower projects | | |
| 22 | A. New or expanded | 450/MW | 50/MW |
| | generating capacity | | |
| 24 | B. Maintenance and | 150 | 50 |
| | repair or other | | |
| 26 | structural alterations | | |
| | not involving an | | |
| 28 | increase in generating | | |
| | capacity | | |
| 30 | 1101, Sanitary districts | 150 | 50 |
| | 33 United States Code, | | |
| 32 | Chapter 26, Water Quality | | |
| | Certifications, in conjunction | | |
| 34 | with applications for | | |
| | hydropower project licensing | | |
| 36 | or relicensing | | |
| | A. Initial consultation | 1,000 | 0 |
| 38 | B. Second consultation | 1,000 | 0 |
| | C. Application | | |
| 40 | 1. Storage | 1,000 | 0 |
| | 2. Generating | 300/MW | 50/MW |
| 42 | 1304, Waste management | | |
| | A. Septage disposal | | |
| 44 | 1. Site designation | 50 | 25 |
| | B. Land application of | | |
| 46 | sludges and residuals | | |
| | program approval | | |
| 48 | 1. Industrial sludge | 400 | 400 |
| | 2. Municipal sludge | 300 | 275 |
| 50 | 3. Bioash | 300 | 275 |

| | | | |
|----|---|-------|-------|
| | 4. Wood ash | 300 | 75 |
| 2 | 5. Food waste | 300 | 75 |
| | 6. Other residuals | 300 | 175 |
| 4 | C. Landfill | | |
| | 1. Closing plans for nonmunicipal landfills | 1,500 | 1,500 |
| 6 | 2. Closing plans for municipal landfills | 500 | 500 |
| 8 | 3. Variance requests for attenuation landfills | 175 | 175 |
| 10 | 4. Preliminary information reports | 175 | 175 |
| 12 | 5. License transfers | 500 | 175 |
| 14 | 6. Special waste disposal | | |
| 16 | a. One-time disposal of quantities of 6 cubic yards or less | 50 | 50 |
| 18 | b. One-time disposal of quantities greater than 6 cubic yards | 100 | 100 |
| 20 | c. Program approval for routine disposal of a special waste | 300 | 300 |
| 22 | D. Incineration facility | | |
| 24 | 1. Fuel substitution activities | 1,575 | 1,500 |
| 26 | 2. License transfer | 175 | 175 |
| 28 | E. License transfer other than for landfills and incinerators | 100 | 100 |
| 30 | | | |
| 32 | | | |
| 34 | | | |
| 36 | | | |

38 **Sec. B-6. 38 MRSA §353, sub-§2**, as amended by PL 1993, c. 735, §7, is further amended to read:

40 **2. Processing fee.** Except for annual air emission fees pursuant to section 353-A and annual waste discharge fees pursuant to section 353-B, a processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing the application results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner may not refund the

2 processing fee if the application is denied by the board or the
3 commissioner. If the application is withdrawn by the applicant
4 within 30 days of the start of processing, the processing fee
5 must be refunded, except in the case of nonferrous metal mining
6 applications. If an application for nonferrous metal mining is
7 withdrawn by the applicant within 30 days of the date of filing,
8 1/2 of the application fee must be refunded.

9
10 **Sec. B-7. 38 MRSA §353, sub-§5**, as amended by PL 1991, c. 384,
11 §7 and affected by §16, is further amended to read:

12 **5. Renewals or amendments.** As set forth in section
13 sections 353-A and 353-B, except for renewals or amendments
14 issued under section sections 413 and 590, the processing fee for
15 renewals or amendments is equal to direct costs up to 1/2 the
16 processing fee for initial applications. The license fee for
17 renewals is identical to the initial license fee. The license fee
18 for amendments may not exceed the initial license fee.

19
20 **Sec. B-8. 38 MRSA §353-B** is enacted to read:

21
22 **§353-B. Annual waste discharge license fees**

23
24 **1. Fees assessed.** After the effective date of this
25 section, licensees must pay annual waste discharge license fees
26 consisting of a base or minimum plus amounts from paragraph B,
27 reflecting the quantity of pollutants actually discharged or
28 licensed to be discharged and paragraph C, in consideration of
29 the potential for water quality impact.

30
31 **A.** A base fee is assessed for the categories of waste
32 discharge licenses identified in subsection 2, paragraph A.
33 When a license authorizes discharges in more than one
34 category, only the largest base fee may be applied to the
35 license. When discharge fees described in paragraph B are
36 not applicable or appropriate for a particular license group
37 or discharge activity, only the base fee is assessed.

38
39 **B.** In addition to the base fee amount, fees are assessed in
40 consideration of the quantity and nature of pollutants
41 discharged. When data are available, average daily
42 discharge quantities are used in computing fees for
43 conventional and nonconventional pollutants discharged from
44 publicly owned sanitary and industrial process wastewater
45 sources. When data are not available and for other
46 pollutants and categories, fees are determined using the
47 discharge limits established in a waste discharge license.
48

2 C. In addition to the base and discharge fees described in
paragraphs A and B, fees may be assessed for the following.

4 (1) The base fee may be increased by a factor
reflecting the initial dilution of an effluent as
6 discharged to the receiving water. This assessment is
applied to publicly owned sanitary and industrial
8 process wastewater sources licensed for more than
10 50,000 gallons per day and having initial dilutions of
12 less than 1,000 to one. The assessment is determined
by multiplying the applicable base fee times 2 divided
by the square root of the chronic dilution factor.

14 (2) When a license authorizes multiple discharge
points from the same location, there is an additional
16 fee of \$50 per discharge point.

18 D. If there are no discharges pursuant to a waste discharge
license during an entire year, only the base fee is assessed
20 for that year plus applicable water quality impact and
multiple discharge points adjustments from paragraph C may
22 be assessed.

24 2. Maximum fee amounts and rates. Waste discharge license
fees are as set out in this section.

26 A. The base and maximum fees that may be assessed to
28 categories of discharge activities are as follows.

| <u>Discharge Group</u> | <u>Base fee not to</u> | <u>Maximum fee for</u> |
|---------------------------|------------------------|----------------------------|
| | <u>exceed</u> | <u>individual in group</u> |
| 30 Publicly owned | | |
| 32 treatment facilities, | <u>annual fee</u> | <u>none</u> |
| 34 greater than 10,000 | \$250 | |
| 36 gallons per day but | | |
| 38 less than 5 million | | |
| 40 gallons per day and | | |
| no significant | | |
| 40 industrial waste | | |
| 42 Publicly owned | <u>annual fee</u> | <u>none</u> |
| 44 treatment facilities, | \$1,100 | |
| 46 greater than 5 million | | |
| gallons per day or | | |
| 46 with significant | | |
| 48 industrial waste | | |
| 50 Major industrial | <u>annual fee</u> | <u>none</u> |
| facility, process | \$2,650 | |

| | | | | |
|----|------------------------------|--------------------|--------------|-----------------|
| 2 | <u>wastewater (based</u> | | | |
| | <u>on EPA list of</u> | | | |
| 4 | <u>major source</u> | | | |
| | <u>discharges)</u> | | | |
| 6 | <u>Other industrial</u> | <u>annual fee</u> | <u>\$900</u> | <u>none</u> |
| | <u>facility, process</u> | | | |
| 8 | <u>wastewater</u> | | | |
| 10 | <u>Food handling or</u> | <u>annual fee</u> | <u>\$450</u> | <u>\$3,000</u> |
| | <u>packaging waste-</u> | | | |
| 12 | <u>water</u> | | | |
| 14 | <u>Fish rearing facility</u> | <u>annual fee</u> | <u>\$325</u> | <u>\$2,000</u> |
| 16 | <u>Noncontact cooling</u> | <u>annual fee</u> | <u>\$125</u> | <u>\$10,000</u> |
| | <u>water</u> | | | |
| 18 | <u>Industrial or</u> | <u>annual fee</u> | <u>\$160</u> | <u>\$3,000</u> |
| 20 | <u>commercial sources,</u> | | | |
| | <u>miscellaneous or</u> | | | |
| 22 | <u>incidental non-</u> | | | |
| | <u>process wastewater</u> | | | |
| 24 | <u>Municipal combined</u> | <u>annual fee</u> | <u>\$160</u> | <u>\$2,000</u> |
| 26 | <u>sewer overflow</u> | | | |
| 28 | <u>Sanitary wastewater,</u> | <u>annual fee</u> | <u>\$60</u> | <u>\$1,200</u> |
| | <u>commercial sources</u> | | | |
| 30 | <u>Sanitary wastewater,</u> | <u>annual fee</u> | <u>\$45</u> | <u>---</u> |
| 32 | <u>residential sources</u> | | | |
| | <u>600 gallons per day</u> | | | |
| 34 | <u>and less</u> | | | |
| 36 | <u>Sanitary wastewater,</u> | <u>annual fee</u> | <u>\$60</u> | <u>\$600</u> |
| | <u>residential sources</u> | | | |
| 38 | <u>more than 600 gallons</u> | | | |
| | <u>per day</u> | | | |
| 40 | <u>Sanitary wastewater,</u> | <u>annual fee</u> | <u>\$60</u> | <u>\$600</u> |
| 42 | <u>public sources less</u> | | | |
| | <u>than 10,000 gallons</u> | | | |
| 44 | <u>per day</u> | | | |
| 46 | <u>Aquatic pesticide</u> | <u>annual fee*</u> | <u>\$200</u> | <u>---</u> |
| | <u>application</u> | | | |
| 48 | <u>Snow dumps</u> | <u>annual fee*</u> | <u>\$125</u> | <u>---</u> |
| 50 | | | | |

| | | | | |
|----|--|---------------------|----------------|------------|
| 2 | <u>Salt and sand storage pile</u> | <u>annual fee*</u> | <u>\$150</u> | <u>---</u> |
| 4 | <u>Log storage permit</u> | <u>annual fee*</u> | <u>\$200</u> | <u>---</u> |
| 6 | <u>General permit coverage for storm water discharges, not to exceed</u> | <u>annual fee*</u> | <u>\$100</u> | <u>---</u> |
| 10 | <u>Experimental discharge license</u> | <u>license fee*</u> | <u>\$500</u> | <u>---</u> |
| 14 | <u>Mixing zone, in addition to other applicable fees</u> | <u>flat fee*</u> | <u>\$4,000</u> | <u>---</u> |
| 18 | <u>Formation of sanitary district</u> | <u>flat fee*</u> | <u>\$300</u> | <u>---</u> |
| 22 | <u>Transfer of license for residential or commercial sanitary wastewater</u> | <u>flat fee*</u> | <u>\$100</u> | <u>---</u> |

26 *Discharge or license quantity fees do not apply to these
28 categories.

30 When a license authorizes multiple discharge points in
32 different categories in the same license, the total maximum
34 fee for the license may not exceed the maximum fee for the
36 most significant category plus 1/2 of the maximum fee for
38 each of the other applicable categories.

40 B. The annual rate per unit for various pollutants and
42 groups of discharges used in computing discharge and
44 license quantity fees may not exceed the limits set out in
46 this paragraph. When a license authorizes the discharge of
48 pollutants fitting more than one category, the appropriate
50 fee is due for each group and type of pollutant.

| | <u>License group or type of pollutant</u> | <u>Rate</u> |
|----|--|-------------------------|
| 44 | <u>Conventional pollutants, license rate</u> | <u>\$1.75 per pound</u> |
| 46 | <u>Conventional pollutants, discharge rate</u> | <u>\$3.35 per pound</u> |
| 50 | <u>Conventional pollutants, primary</u> | <u>\$0.75 per pound</u> |

| | | |
|----|---|----------------------------------|
| 2 | <u>treatment only</u> | |
| 4 | <u>Conventional pollutants, food handling or packing facilities</u> | <u>\$0.08 per pound</u> |
| 6 | <u>Nonconventional or toxic pollutants</u> | <u>Variable*</u> |
| 8 | <u>Heat (as licensed flow x temperature x 8.34)</u> | <u>\$0.06 per million BTU</u> |
| 10 | <u>Flow: fish rearing facilities</u> | <u>\$60 per million gallons</u> |
| 12 | <u>Flow: combined sewer overflows (based on treatment facility design)</u> | <u>\$80 per million gallons</u> |
| 14 | <u>Flow: nonprocess from industrial or commercial sources</u> | <u>\$250 per million gallons</u> |
| 16 | <u>Flow: publicly owned treatment facilities</u> | <u>\$900 per million gallons</u> |
| 18 | <u>Flow: process from industrial or commercial sources</u> | <u>\$900 per million gallons</u> |
| 20 | <u>Flow: treated storm water</u> | <u>\$25 per million gallons</u> |
| 22 | <u>Flow: sanitary from commercial services</u> | <u>\$0.02 per gallon</u> |
| 24 | <u>Flow: sanitary from residential sources</u> | <u>\$0.02 per gallon</u> |
| 26 | <u>Flow: sanitary from publicly owned facilities less than 10,000 gallons per day</u> | <u>\$0.02 per gallon</u> |

36 *The license rate per pound is \$15 divided by the licensed effluent concentration. The discharge rate per pound is \$30 divided by the licensed effluent concentration.

38

40 For the purposes of this section, the term "conventional pollutant" means oxygen-demanding compounds, suspended or dissolved solids and oil and grease. The term "nonconventional pollutants" means other chemical constituents subject to fees. Excluded from fees are the following: ph, residual chlorine, settleable solids, bacteria, whole effluent toxicity tests, color, any compound without numeric license limitations and effluent concentrations reported as being below acceptable detection limits.

50

2 Annual discharge or license quantity fees may be calculated
3 using either pounds of pollutants or allowable flow, as is
4 most appropriate for the circumstances of a particular
5 discharge category, situation or location. License limits
6 may be supplemented by applications and related supporting
7 materials where necessary to calculate effluent quantities
8 or concentrations.

9
10 **3. Schedule.** The fee for existing licenses must be paid on
11 the anniversary date of the license or another date initially
12 established by the department. This date, once established,
13 remains the scheduled date for paying the annual fee, regardless
14 of future changes of the anniversary date. The annual fee for
15 new applications must be estimated and paid at the time of filing
16 the application. When the processing of the application is
17 complete or following the first year of discharge, if applicable,
18 the final annual fee is determined. Any additional amount due or
19 refund of overpayment must be paid within 30 days of
20 determination of the final fee. If the application is denied,
21 50% of the initial annual fee must be refunded.

22 **4. Renewals, amendments and modifications.** Except for
23 transfers of licenses for discharges of sanitary wastewater from
24 commercial or residential sources as provided for in subsection
25 2, there are no additional fees assessed for license renewals,
26 amendments or modifications.

27 **5. Nonpayment of fees.** Failure to pay an annual fee within
28 30 days of the anniversary date of a license is sufficient
29 grounds for revocation of the license, permit or privilege under
30 section 341-D, subsection 3.

31
32 **Sec. B-9. Revenue reductions due to pollution prevention.** The
33 Legislature recognizes the public benefits of pollution
34 prevention efforts that result in reduced quantities of
35 pollutants discharged into the waters of the State, and a fee
36 system involving amounts of pollutants discharged provides a
37 sound incentive for pollution prevention. The Legislature
38 further recognizes that proper funding for water quality
39 management programs must be maintained without creating economic
40 disincentives or inequities from pollution prevention.
41 Accordingly, future decreases in fee revenues due to pollution
42 prevention should be acknowledge and offset by increased General
43 Fund appropriations.

44
45 **Sec. B-10. Allocation.** The following funds are allocated from
46 Federal Expenditure Funds to carry out the purposes of this Act.

47
48
1997-98

1998-99

2 ENVIRONMENTAL PROTECTION,
4 DEPARTMENT OF

6 Performance Partnership Grant

| | | | |
|---|-------------------|------------|------------|
| 6 | Positions | (-1.000) | (-1.000) |
| 8 | Personal Services | (\$69,677) | (\$69,880) |

10 Provides for the transfer of
12 an Environmental Specialist
IV to Other Special Revenue.

14 **Sec. B-11. Allocation.** The following funds are allocated from
Other Special Revenue to carry out the purposes of this Act.

| | | | |
|----|--|----------------|----------------|
| 16 | | 1997-98 | 1998-99 |
|----|--|----------------|----------------|

18 ENVIRONMENTAL PROTECTION,
20 DEPARTMENT OF

22 Maine Environmental Protection Fund

| | | | |
|----|-------------------|-----------|-----------|
| 24 | Positions | (8.000) | (8.000) |
| 26 | Personal Services | \$388,518 | \$402,965 |

28 Provides the allocation of
funds for one Environmental
Engineer, 3 Environmental
30 Specialist II positions, one
Environmental Specialist III
32 position, 2 Clerk Typist III
positions and for the
34 transfer of one Environmental
Specialist IV from Federal
36 Expenditure Funds.

38

40

SUMMARY

42 This bill makes a series of changes in Maine law necessary
for the State to apply for future delegation of the Federal
44 Discharge Licensing and Management Program. Currently, Maine is
one of only a few states in the nation that has not yet received
46 delegation for this program. As a consequence, persons having
wastewater discharges must obtain licenses from both the United
48 States Environmental Protection Agency and the Department of
Environmental Protection and are subject to separate inspection
50 and compliance programs. Delegation would mean that the State

2 would gain authority to administer the federal program and the
3 need for federal permits would be eliminated in favor of a single
4 state-issued license.

5
6 The bill consists of 3 sections: statutory changes,
7 authorization for a revised waste discharge license fee system
8 and allocation of positions necessary to carry out the program.
9 The statutory changes proposed in Part A of this bill are
10 necessary to address inconsistencies between state and federal
11 law which must be removed before the State can proceed with other
12 portions of a full application to the United States Environmental
13 Protection Agency for delegation of the federal program. In Part
14 B, the revisions to the fee system will allow the Department of
15 Environmental Protection to set license fees based on technical
16 considerations and within the framework and limitations
17 established in the bill. The allocations of positions realigns
18 some existing positions and adds new positions that are needed
19 for an adequate, functional program. These new positions are
20 funded primarily through increased license fees. In addition to
21 supporting new positions for delegation, increases in existing
22 fees are also necessary to address shortfalls in funding for
presently authorized positions. The current fees were last
adjusted in 1987.