

MAINE STATE LEGISLATURE

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M
R.D.S.

L.D. 2038

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DATE: May 20, 1999

(Filing No. S- 316)

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NATURAL RESOURCES

Reported by:

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION**

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COMMITTEE AMENDMENT " A" to S.P. 716, L.D. 2038, Bill, "An
Act to Amend the Water Quality Laws to Establish a New Standard
for Mercury Discharges"

24
Amend the bill by striking out everything after the title
and before the summary and inserting in its place the following:

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

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Whereas, current law prohibits the discharge of mercury
into water in any concentration that increases the natural
concentration of mercury in the receiving waters; and

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Whereas, new methods for testing mercury discharges now
enable mercury to be detected at much lower levels than was
previously possible; and

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Whereas, it is necessary to immediately establish
facility-specific standards for mercury discharges that prevent
wastewater dischargers from increasing their mercury discharges
and to require dischargers to implement pollution prevention
measures to reduce the mercury load while statewide, risk-based
criteria are being developed; and

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

COMMITTEE AMENDMENT

11.01.08

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

4 **Sec. 1. 38 MRSA §420, sub-§1**, as amended by PL 1997, c. 722,
6 §§1 and 2, is repealed.

8 **Sec. 2. 38 MRSA §420, sub-§1-A** is enacted to read:

10 **1-A. Mercury.** Mercury or any compound containing mercury,
whether organic or inorganic, as provided in this subsection.

12 A. After October 1, 2001, a person, firm, corporation or
other legal entity may not discharge mercury or any compound
containing mercury, whether organic or inorganic, in any
concentration that increases the natural concentration of
mercury in the receiving waters.

14 B. Until October 1, 2001, a person, firm, corporation or
other legal entity may not discharge mercury or any compound
containing mercury in a concentration greater than the
concentration discharged as of the effective date of this
paragraph.

16 The department shall establish interim discharge limits,
based on procedures specified in rule, for each facility
licensed under section 413 and subject to this paragraph.
The discharge limits may not be less stringent statistically
than the facility's discharge levels as of the effective
date of this paragraph, except that the department shall
take into account factors such as reduction in flow due to
implementation of a wastewater conservation plan, seasonal
variations and changes in levels of production. When the
department has established an interim discharge limit for a
facility, that limit is deemed to be the concentration
discharged as of the effective date of this paragraph, and a
facility shall comply with that interim discharge limit.

18 When considering an enforcement action in response to a
violation of this paragraph before the department
establishes an interim discharge limit for the facility, the
commissioner shall consider factors such as reduction in
flow due to implementation of a wastewater conservation
plan, seasonal variations and changes in levels of
production.

20 A person, firm, corporation or other legal entity that
discharges mercury shall implement a mercury pollution
prevention plan consistent with model plans developed by the
department. The facility shall provide information
concerning the status of implementation of the mercury

R. S.

COMMITTEE AMENDMENT "A" to S.P. 716, L.D. 2038

2 pollution prevention plan to the department by December 15,
3 1999 and December 15, 2000. A mercury pollution prevention
4 plan must include monitoring for mercury as required by the
5 department, and the monitoring information must be provided
6 to the department.

7 This paragraph is repealed October 1, 2001.

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10 C. A person, firm, corporation or other legal entity who,
11 on January 1, 1971, was discharging any of the substances
12 mentioned in this subsection in connection with an
13 industrial process and, on or before December 31, 1971,
14 filed with the board a statement indicating the amount of
15 the substance so discharged on that date may not be
16 considered in violation of this subsection as long as any
17 discharge of mercury by that person, firm, corporation or
18 other legal entity is less than 454 grams, or one pound, per
19 year after January 1, 2000 and less than 45 grams, or 0.1
20 pound, per year after January 1, 2002. This paragraph is
21 repealed January 1, 2004.

22 D. Notwithstanding this subsection, whenever the
23 commissioner finds that a concentration of 10 parts per
24 billion of mercury or greater is present in any waters of
25 this State or that danger to public health exists due to
26 mercury concentrations of less than 10 parts per billion in
27 any waters of this State, the commissioner may issue an
28 emergency order to all persons discharging to those waters
29 prohibiting or curtailing the further discharge of mercury
30 and compounds containing mercury into those waters. These
31 findings and the order must be served in a manner similar to
32 that described in section 347-A, subsection 3, and the
33 parties affected by that order have the same rights and
34 duties as are described in section 347-A, subsection 3;

35 **Sec. 3. Rulemaking; interim mercury discharge limits.** The
36 Department of Environmental Protection shall promptly adopt
37 rules, including emergency rules as necessary, that specify
38 procedures, including statistically valid sampling procedures, to
39 be used in establishing interim discharge limits pursuant to the
40 Maine Revised Statutes, Title 38, section 420, subsection 1-A,
41 paragraph B. The procedures may provide for the use of sampling
42 data collected prior to adoption of the rules as long as the
43 United States Environmental Protection Agency's Methods 1631 and
44 1669 were used. It is not necessary for the department to amend
45 existing waste discharge licenses in order to establish these
46 interim discharge limits. The discharge limits remain in effect
47 until October 1, 2001. Rules adopted pursuant to this section
48 are routine technical rules under Title 5, chapter 375,
49 subchapter II-A.

A. a. S.

2 **Sec. 4. Pollution prevention plans.** The Department of
3 Environmental Protection shall work with a representative
4 stakeholder group, including direct and indirect dischargers, to
5 develop model pollution prevention plans by December 31, 1999 for
6 mercury dischargers to meet the requirements of the Maine Revised
7 Statutes, Title 38, section 420, subsection 1-A, paragraph B.
8 The stakeholder group also shall develop recommendations
9 regarding how the plans should be implemented by facilities.

10
11 The model plans must take into account facility size and
12 levels of mercury in effluent and must provide for the following,
13 as appropriate for the class of facility: identification of known
14 and potential sources of mercury to the facility, including
15 sources in the treatment process; assessment of the relative
16 significance of the sources; identification of alternatives for
17 and costs of reducing the mercury from those sources;
18 implementation of reasonable measures to reduce mercury
19 discharges; and implementation of an education program for the
20 public that is intended to assist in the reduction of sources of
21 mercury to the facility and to the environment.

22 Recommendations from the stakeholder group are advisory to
23 the department.

24
25 **Sec. 5. Reports.** The Department of Environmental Protection
26 shall submit reports to the joint standing committee of the
27 Legislature having jurisdiction over natural resources matters by
28 January 14, 2000 and January 15, 2001 on the status of mercury
29 discharges from facilities subject to mercury discharge limits
30 pursuant to the Maine Revised Statutes, Title 38, section 420,
31 subsection 1-A, paragraph B and the status of the facilities'
32 efforts to implement mercury pollution prevention plans.

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34 **Sec. 6. Statewide criteria for mercury.** The Department of
35 Environmental Protection shall develop proposed statewide
36 criteria for mercury that are protective of human health, aquatic
37 life and wildlife. In developing the criteria, the department
38 shall consider all available information, including standards
39 developed by other states, the Great Lakes region and the United
40 States Environmental Protection Agency and any information
41 provided by the Department of Human Services, Bureau of Health.
42 The department shall submit its recommendations to the joint
43 standing committee of the Legislature having jurisdiction over
44 natural resources matters by January 15, 2001, together with any
45 implementing legislation. The joint standing committee of the
46 Legislature having jurisdiction over natural resources matters
47 may report out legislation regarding mercury to the First Regular
48 Session of the 120th Legislature.

R. & S.

SUMMARY

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4 This amendment replaces the bill. The amendment suspends
6 the law that prohibits the discharge of mercury into the waters
8 of the State in any concentration that increases the natural
10 concentration of mercury in the receiving waters until October 1,
12 2001 and prohibits anyone from discharging mercury in a
14 concentration greater than the concentration discharged as of the
effective date of this Act between the effective date and October
1, 2001. It retains the discharge limits for any entity that on
January 1, 1971 was discharging mercury in connection with an
industrial process and filed with the Board of Environmental
Protection on or before December 31, 1971 a statement indicating
the amount of mercury discharged on that date.

16

18 The amendment requires the department to adopt rules that
20 specify procedures to be used in establishing interim discharge
22 limits for facilities. The discharge limits may not be less
24 stringent than the facility's discharge levels as of the
effective date of this Act. It requires the department to work
with a stakeholder group to develop model pollution prevention
plans for mercury dischargers by December 31, 1999. It also
requires the department to report to the joint standing committee
of the Legislature having jurisdiction over natural resources
matters on the status of mercury discharges and the status of
pollution prevention plan implementation by January 14, 2000 and
January 15, 2001.

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30 The amendment requires the department to develop proposed
32 statewide criteria for mercury and submit its recommendations to
the joint standing committee of the Legislature having
jurisdiction over natural resources matters by January 15, 2001,
together with any implementing legislation.

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36 The amendment also adds an emergency preamble and an
emergency clause, an appropriation section and a fiscal note to
the bill.