

# MAINE STATE LEGISLATURE

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R.S.

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NATURAL RESOURCES

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STATE OF MAINE  
SENATE  
120TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 393, L.D. 1308, Bill, "An Act to Implement the Recommendations of the Department of Environmental Protection on Ambient Water Quality Criteria for Mercury"

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

Sec. 1. 38 MRSA §413, sub-§11 is enacted to read:

11. Mercury. A facility discharging mercury into the waters of the State shall make reasonable progress to develop, incorporate and continuously improve pollution prevention practices and implement future economically achievable improvements in wastewater technology in order to reduce that facility's dependence upon mercury products, reduce or remove discharges of mercury over time and help in the restoration of the waters of the State. The department shall establish and may periodically revise interim discharge limits, based on procedures specified by rule, for each facility licensed under this section and subject to this subsection in order to reduce the discharge of mercury over time and achieve the ambient water quality criteria established in section 420, subsection 1-B. Notwithstanding section 420, subsection 1-B or section 464, subsection 4, paragraph F, a facility discharging mercury shall at all times meet the interim limits established under this subsection.

A. A discharge limit for mercury may not be less stringent statistically than an interim limit established by the department pursuant to Chapter 519 of rules adopted by the department, effective February 5, 2000, and must be based on

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2 recent data appropriate for the facility. A facility with  
3 such an interim limit shall comply with that limit unless  
4 the department establishes a different interim limit.

5 B. A facility that discharges mercury shall implement a  
6 pollution prevention plan consistent with requirements of  
7 the department. The department may require that the  
8 prevention plan be periodically updated.

9  
10 (1) The facility shall submit a copy of the pollution  
11 prevention plan to the department and the copy must be  
12 made available for viewing upon request by a member of  
13 the public. The facility shall provide information  
14 concerning the status of implementation of the  
15 pollution prevention plan to the department as required  
16 by the department.

17 (2) The facility shall monitor for mercury and provide  
18 the monitoring information to the department as  
19 required by the department.

20  
21 C. The department may adjust an interim discharge limit for  
22 mercury upward or downward upon its own action or at the  
23 request of a licensee based upon factors such as additional  
24 monitoring data, reduction in flow due to implementation of  
25 a water conservation plan, seasonal variations, increased  
26 atmospheric deposition and changes in levels of production.

27 D. The department may approve an application and establish  
28 an interim discharge limit for a new or expanded discharge  
29 of mercury after the effective date of this paragraph only  
30 if:

31  
32 (1) An opportunity for public participation is provided;

33 (2) The discharge will not result in a significant  
34 lowering of existing water quality with respect to  
35 mercury; and

36 (3) The action is necessary to achieve important  
37 economic or social benefits to the State.

38  
39 E. A facility that on January 1, 1971, was discharging  
40 mercury in connection with an industrial process and, on or  
41 before December 31, 1971, filed with the board a statement  
42 indicating the amount of the substance so discharged on that  
43 date may not be considered in violation of this subsection  
44 as long as any discharge of mercury by that facility is less  
45 than 454 grams, or one pound, per year and less than 45  
46 grams, or one pound, per year.

grams, or 0.1 pound, per year after January 1, 2002. This paragraph is repealed January 1, 2004.

F. Notwithstanding this subsection, whenever the commissioner finds that a danger to public health exists due to mercury concentrations in any waters of the State, the commissioner may issue an emergency order to all facilities discharging to those waters prohibiting or curtailing the further discharge of mercury and compounds containing mercury into those waters. These findings and the order must be served in a manner similar to that described in section 347-A, subsection 3 and the parties affected by that order have the same rights and duties as are described in section 347-A, subsection 3.

G. A facility may not directly or indirectly discharge to a publicly owned treatment facility any concentration of mercury that contributes to the failure of the treatment facility to comply with interim effluent limits or applicable ambient water quality criteria for mercury. The owner of a publicly owned treatment facility may require any user of that facility, except for a residential source, to institute measures necessary to abate discharges of mercury to that facility. Those measures may include, but are not limited to, testing to determine concentrations of mercury, institution of pollution prevention practices or the evaluation of raw materials, products or practices. The owner of a publicly owned treatment facility may establish reasonable time schedules for completion of those measures. A facility that does not comply with abatement measures required by an owner of a publicly owned treatment facility may be subject to enforcement actions taken by the department or the owner of the facility and sanctions imposed by applicable municipal ordinances or section 349.

Sec. 2. 38 MRSA §420, sub-§1-A, as enacted by PL 1999, c. 500, §2, is repealed.

Sec. 3. 38 MRSA §420, sub-§1-B is enacted to read:

1-B. **Mercury.** Facilities discharging mercury into the waters of the State shall make reasonable progress to develop, incorporate and continuously improve pollution prevention practices, and implement economically achievable future improvements in wastewater technology, in order to reduce their dependence upon mercury products, reduce or remove discharges of mercury over time, and help in the restoration of the waters of the State. This subsection establishes ambient water quality criteria for mercury that identify that level of mercury considered safe for human health and the environment.

2           A. The ambient water quality criteria for mercury are as  
4           follows:

6                   (1) Ambient water quality criteria for aquatic life:

8                           (a) Freshwater acute: 1.7 micrograms per liter;

10                           (b) Freshwater chronic: 0.91 micrograms per liter;

12                           (c) Saltwater acute: 2.1 micrograms per liter; and

14                           (d) Saltwater chronic: 1.1 micrograms per liter;  
14                           and

16                   (2) Fish tissue residue criterion for human health:  
18                   0.2 milligrams per kilogram in the edible portion of  
18                   fish.

20           B. A facility is not in violation of the ambient criteria  
22           for mercury if:

24                   (1) The facility is in compliance with an interim  
26                   discharge limit established by the department pursuant  
26                   to section 413, subsection 11; or

28                   (2) The facility is in compliance with a remediation  
30                   or corrective action plan, license or order approved  
32                   either by the department pursuant to section 1301,  
32                   1304, 1319, 1364 or 1365, or by the United States  
32                   Environmental Protection Agency under federal law with  
32                   the concurrence of the department.

34           C. The department may establish a site-specific  
36           bioaccumulation factor for mercury when there is sufficient  
38           information to indicate that a site-specific bioaccumulation  
38           factor will be protective of human health and wildlife. A  
38           site-specific bioaccumulation factor may only be established:

40                   (1) As part of a licensing proceeding pursuant to  
42                   section 413 by the board; or

44                   (2) As part of a remediation or corrective action  
46                   plan, license or order approved either by the  
48                   department pursuant to section 1301, 1304, 1319, 1364  
48                   or 1365, or by the United States Environmental  
48                   Protection Agency under federal law with the  
48                   concurrence of the department.

2           D. The department shall establish by rule a statewide  
4           bioaccumulation factor protective of 95% of the waters of  
6           the State based upon data of acceptable quality and  
8           representing the species consumed by the public following  
          guidelines published by the United States Environmental  
          Protection Agency. Rules adopted pursuant to this paragraph  
          are major substantive rules as defined in Title 5, chapter  
          375, subchapter II-A.

10           E. The department shall establish by rule statewide ambient  
12           water quality criteria for mercury concerning wildlife based  
14           upon data of acceptable quality from the State or the United  
16           States Environmental Protection Agency. Rules adopted  
          pursuant to this paragraph are major substantive rules as  
          defined in Title 5, chapter 375, subchapter II-A.

18           The commissioner shall report to the joint standing committee of  
20           the Legislature having jurisdiction over natural resources  
22           matters by January 15, 2005 and by January 15th every 5th year  
24           thereafter on the status of mercury discharges, progress in  
26           implementing pollution prevention plans and progress toward  
28           attainment of ambient water quality criteria for mercury under  
          this subsection. The report may include proposed statutory  
          amendments. The joint standing committee of the Legislature  
          having jurisdiction over natural resources matters may report out  
          any necessary implementing legislation related to these mercury  
          issues in each session in which a report is required under this  
          subsection.

30           **Sec. 4. Legislative intent regarding mercury discharge.** The State  
32           is required pursuant to the federal Clean Water Act to adopt  
34           ambient water quality criteria for toxic pollutants the discharge  
36           or presence of which in waters could reasonably be expected to  
38           interfere with designated uses of the waters adopted by the  
40           State. The Legislature finds that the State has a significant,  
42           ongoing contamination problem in regard to mercury and compounds  
44           containing mercury, both organic or inorganic, as demonstrated by  
46           widespread fish advisories. It also finds that this situation is  
48           due to a combination of factors, primarily including air  
50           deposition, historic industrial practices, current wastewater  
          discharges and consumer products. Efforts are required to  
          address each of these factors, including the support of national  
          strategies to address interstate issues. This Act establishes  
          ambient water quality criteria for mercury that identify that  
          level of mercury considered safe for human health and the  
          environment. Many of the state's waters do not meet these  
          criteria. The Legislature recognizes that technology is not  
          always adequate to allow facilities to reduce their discharges to  
          an extent necessary to avoid violation of these

2 criteria and that background levels in some water bodies may  
3 violate these criteria even without the presence of wastewater  
4 discharges. In order to best address the portion of mercury  
5 entering the environment through wastewater discharges, the  
6 Legislature establishes a process in the Maine Revised Statutes,  
7 Title 38, section 413, subsection 11 to require significant and  
8 reasonable progress in the reduction of wastewater discharges  
9 containing mercury in the State.'

10 Further amend the bill by inserting at the end before the  
11 summary the following:

12  
13  
14 **FISCAL NOTE**

15 The Department of Environmental Protection will incur some  
16 minor additional costs to adopt certain rules pertaining to  
17 ambient water quality criteria for mercury and to submit a  
18 required report to the Legislature. These costs can be absorbed  
19 within the department's existing budgeted resources.'

20  
21  
22 **SUMMARY**

23 This amendment replaces the bill. The amendment requires  
24 the Department of Environmental Protection to establish and  
25 periodically revise interim discharge limits for mercury in order  
26 to reduce the discharge of mercury over time. Discharge limits  
27 established by the department may not be less stringent than an  
28 interim limit established by the department pursuant to its rules  
29 effective February 5, 2000. A facility discharging mercury must  
30 comply with the interim limit unless the department establishes a  
31 new interim limit. A facility in compliance with an interim  
32 discharge limit or remediation plan, order or license established  
33 by the department is not in violation of any of the ambient water  
34 quality criteria for mercury.

35 The amendment also prohibits discharges of mercury to a  
36 publicly owned treatment facility that contributes to the failure  
37 of the treatment facility to comply with interim effluent limits  
38 or applicable ambient water quality criteria for mercury. The  
39 amendment allows the owner of the publicly owned treatment  
40 facility to require a user, other than a residential user, to  
41 institute measures needed to abate the discharge of mercury to  
42 the facility and establish reasonable time schedules for  
43 completion of the measures.

44 The amendment also establishes specific ambient water  
45 quality criteria for mercury for aquatic life and human health  
46 and requires the Department of Environmental Protection to

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2 establish by rule wildlife protection criteria. The amendment  
also authorizes the department to establish a site-specific  
4 bioaccumulation factor for mercury protective of human health and  
wildlife and requires the department to adopt major substantive  
6 rules establishing a statewide bioaccumulation factor protective  
of 95% of the State's water bodies.

8 The amendment also requires the department to report to the  
joint standing committee of the Legislature having jurisdiction  
10 over natural resources matters by January 15, 2005 and every 5  
years thereafter on the status of mercury discharges; progress in  
12 implementing pollution prevention plans; and progress toward  
attaining ambient water quality criteria for mercury. The report  
14 may include any necessary implementing legislation.

16 The amendment also adds a fiscal note to the bill.