

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1308

S.P. 393

In Senate, March 5, 2001

**An Act to Implement the Recommendations of the Department of
Environmental Protection on Ambient Water Quality Criteria for Mercury.**

(EMERGENCY)

Reported by Senator Martin for the Joint Standing Committee on Natural Resources
Pursuant to Public Law 1999, chapter 500, section 6.

Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

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

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

8 Whereas, new methods for testing mercury discharges allow
10 for the detection of mercury at much lower concentrations than
was previously possible; and

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

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

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

26 **Sec. 1. 38 MRSA §420, sub-§1-A,** as enacted by PL 1999, c. 500,
28 §2, is amended to read:

30 **1-A. Mercury.** Mercury or any compound containing mercury,
whether organic or inorganic, as in any amount or concentration
32 greater than that identified or regulated, including complete
prohibition of a substance, by the board pursuant to subsection
34 2, except as otherwise provided in this subsection.

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

42 A-1. A person, firm, corporation or other legal entity
discharging mercury to the surface waters of the State in
44 concentrations contributing to nonattainment of water
quality criteria for mercury shall implement measures to
46 abate these discharges in accordance with this section and
rules adopted by the board. Rules adopted under this
48 paragraph are major substantive rules as defined in Title 5,
chapter 375, subchapter II-A.

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

12 The department shall establish and periodically review
14 interim discharge limits, based on procedures specified in
16 rule, for each facility licensed under section 413 and
18 subject to this paragraph. The discharge limits may not be
20 less stringent statistically than the facility's discharge
22 levels as of the effective date of this paragraph, except
24 that the department shall take into account factors such as
26 reduction in flow due to implementation of a wastewater
28 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.

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.

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
pollution prevention plan to the department by December 15,
1999 and December 15, 2000, or on a later date as required
by the department. A mercury pollution prevention plan must
include monitoring for mercury as required by the
department, and the monitoring information must be provided
to the department.

~~This paragraph is repealed October 1, 2001.~~

44 C. A person, firm, corporation or other legal entity who,
46 on January 1, 1971, was discharging any of the substances
48 mentioned in this subsection in connection with an
50 industrial process and, on or before December 31, 1971,
filed with the board a statement indicating the amount of
the substance so discharged on that date may not be
considered in violation of this subsection as long as any

2 discharge of mercury by that person, firm, corporation or
3 other legal entity is less than 454 grams, or one pound, per
4 year after January 1, 2000 and less than 45 grams, or 0.1
5 pound, per year after January 1, 2002. This paragraph is
6 repealed January 1, 2004.

7
8 D. Notwithstanding this subsection, whenever the
9 commissioner finds that a ~~concentration of 10 parts per~~
10 ~~billion of mercury or greater is present in any waters of~~
11 ~~this State or that~~ danger to public health exists due to
12 mercury concentrations ~~of less than 10 parts per billion~~ in
13 any waters of this State, the commissioner may issue an
14 emergency order to all persons discharging to those waters
15 prohibiting or curtailing the further discharge of mercury
16 and compounds containing mercury into those waters. These
17 findings and the order must be served in a manner similar to
18 that described in section 347-A, subsection 3, and the
19 parties affected by that order have the same rights and
20 duties as are described in section 347-A, subsection 3.

21 E. A person may not directly or indirectly discharge to a
22 publicly owned treatment facility any concentration of
23 mercury that contributes to the failure of the treatment
24 facility to comply with effluent limits or applicable water
25 quality criteria for mercury. The owner of a publicly owned
26 treatment facility may require any user of that facility to
27 institute measures necessary to abate discharges of mercury
28 to that facility. Those measures may include, but are not
29 limited to, testing to determine concentrations of mercury,
30 institution of pollution prevention practices or the
31 evaluation of raw materials, products or practices. The
32 owner of a publicly owned treatment facility may establish
33 reasonable time schedules for completion of those measures.
34 A person who does not comply with abatement measures
35 required by an owner of a publicly owned treatment facility
36 may be subject to enforcement actions taken by the owner of
37 the facility and sanctions imposed by applicable municipal
38 ordinances or section 349;

39
40 **Sec. 2. 38 MRSA §420, sub-§2,** as amended by PL 1997, c. 444,
41 §7, is further amended by amending the first paragraph to read:

42
43 **2. Toxic or hazardous substances.** Any ~~ether~~ toxic substance
44 in any amount or concentration greater than that identified or
45 regulated, including complete prohibition of such substance, by
46 the board. In identifying and regulating such toxic substances,
47 the board shall take into account the toxicity of the substance,
48 its persistence and degradability, the usual or potential
presence of any organism affected by such substance in any waters

2 of the State, the importance of such organism and the nature and
3 extent of the effect of such substance on such organisms, either
4 alone or in combination with substances already in the receiving
5 waters or the discharge. As used in this subsection, "toxic
6 substance" ~~shall-mean~~ means those substances or combination of
7 substances, including disease causing agents, which after
8 discharge or upon exposure, ingestion, inhalation or assimilation
9 into any organism, including humans either directly through the
10 environment or indirectly through ingestion through food chains,
11 will, on the basis of information available to the board either
12 alone or in combination with other substances already in the
13 receiving waters or the discharge, cause death, disease,
14 abnormalities, cancer, genetic mutations, physiological
15 malfunctions, including malfunctions in reproduction, or physical
16 deformations in such organism or their offspring.

17 **Sec. 3. Rules amended.** Notwithstanding any other provision
18 of Chapter 519 of rules adopted by the Board of Environmental
19 Protection, that chapter is not repealed on October 1, 2001, but
20 remains in effect until amended or repealed by further action of
21 the board.

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

24 SUMMARY

25 This bill is reported out by the Joint Standing Committee on
26 Natural Resources pursuant to Public Law 1999, chapter 500.

27 The bill represents the Department of Environmental
28 Protection's recommendations on new ambient water quality
29 standards for mercury. The bill repeals the existing mercury
30 discharge limit of 10 parts per billion and replaces that with a
31 prohibition on the discharge of mercury in any amount greater
32 than that allowed by rules adopted by the Board of Environmental
33 Protection. The bill also allows publicly owned treatment
34 facilities to require dischargers to implement pollution
35 prevention measures to reduce the mercury load while statewide,
36 risk-based criteria are being developed. The bill also removes a
37 sunset provision contained in the mercury discharge rules adopted
38 by the Board of Environmental Protection.
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