

MAINE STATE LEGISLATURE

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No. 1304

H.P. 901

House of Representatives, March 15, 2005

An Act Concerning Invasive Species and Water Quality Standards

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SAVIELLO of Wilton.

Cosponsored by Representatives: ANNIS of Dover-Foxcroft, BARSTOW of Gorham, CLARK of Millinocket, DUCHESNE of Hudson, EBERLE of South Portland, PINEAU of Jay, THOMPSON of China.

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

2
4 **Sec. 1. 38 MRSA §464, sub-§4, ¶A**, as amended by PL 2003, c. 650, §3, is further amended to read:

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

10 (1) Direct discharge of pollutants to waters having a
12 drainage area of less than 10 square miles, except that:

14 (a) Discharges into these waters that were
16 licensed prior to January 1, 1986 are allowed to
 continue only until practical alternatives exist;
 and

18 (b) Storm water discharges in compliance with
20 state and local requirements are exempt from this
 subparagraph;

22 (c) Aquatic pesticide or chemical discharges
24 approved by the department and conducted by the
26 department, the Department of Inland Fisheries and
28 Wildlife or an agent of either agency for the
 purpose of restoring biological communities
 affected by an invasive species are exempt from
 this subparagraph; and

30 (d) Chemical discharges for the purpose of
32 restoring water quality in GPA waters approved by
 the department are exempt from this subparagraph;

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

38 (3) Any discharge into a tributary of GPA waters that
40 by itself or in combination with other activities
42 causes water quality degradation that would impair the
44 characteristics and designated uses of downstream GPA
46 waters or causes an increase in the trophic state of
48 those GPA waters except for aquatic pesticide or
 chemical discharges approved by the department and
 conducted by the department, the Department of Inland
 Fisheries and Wildlife or an agent of either agency for
 the purpose of restoring biological communities
 affected by an invasive species in the GPA waters or a
 tributary to the GPA waters;

50 (4) Discharge of pollutants to waters of the State

2 that imparts color, taste, turbidity, toxicity,
radioactivity or other properties that cause those
4 waters to be unsuitable for the designated uses and
characteristics ascribed to their class;

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

12 (6) New discharges of domestic pollutants to the
14 surface waters of the State that are not conveyed and
treated in municipal or quasi-municipal sewage
16 facilities. For the purposes of this subparagraph,
"new discharge" means any overboard discharge that was
18 not licensed as of June 1, 1987, except discharges from
vessels and those discharges that were in continuous
20 existence for the 12 months preceding June 1, 1987, as
demonstrated by the applicant to the department with
22 clear and convincing evidence. The volume of the
discharge from an overboard discharge facility that was
24 licensed as of June 1, 1987 is determined by the actual
or estimated volume from the facilities connected to
26 the overboard discharge facility during the 12 months
preceding June 1, 1987 or the volume allowed by the
28 previous license, whichever is less, unless it is found
by the department that an error was made during prior
30 licensing. The months during which a discharge may
occur from an overboard discharge facility that was
32 licensed as of June 1, 1987 must be determined by the
actual use of the facility at the time of the most
34 recent license application prior to June 1, 1987 or the
actual use of the facility during the 12 months prior
36 to June 1, 1987, whichever is greater. If the
overboard discharge facility was the primary residence
38 of an owner at the time of the most recent license
application prior to June 1, 1987 or during the 12
40 months prior to June 1, 1987, then the facility is
considered a year-round residence. "Year-round
42 residence" means a facility that is continuously used
for more than 8 months of the year. For purposes of
44 licensing, the department shall treat an increase in
the licensed volume or quantity of an existing
46 discharge or an expansion in the months during which
the discharge takes place as a new discharge of
48 domestic pollutants;

50 (7) After the Administrator of the United States

2 Environmental Protection Agency ceases issuing permits
3 for discharges of pollutants to waters of this State
4 pursuant to the administrator's authority under the
5 Federal Water Pollution Control Act, Section 402(c)(1),
6 any proposed license to which the administrator has
7 formally objected under 40 Code of Federal Regulations,
8 Section 123.44, as amended, or any license that would
9 not provide for compliance with applicable requirements
10 of that Act or regulations adopted thereunder;

11 (8) Discharges for which the imposition of conditions
12 can not ensure compliance with applicable water quality
13 requirements of this State or another state;

14 (9) Discharges that would, in the judgment of the
15 Secretary of the United States Army, substantially
16 impair anchorage or navigation;

17 (10) Discharges that would be inconsistent with a plan
18 or plan amendment approved under the Federal Water
19 Pollution Control Act, Section 208(b); and

20 (11) Discharges that would cause unreasonable
21 degradation of marine waters or when insufficient
22 information exists to make a reasonable judgment
23 whether the discharge would cause unreasonable
24 degradation of marine waters.

25 Notwithstanding subparagraph (6), the department may issue a
26 wastewater discharge license allowing for an increase in the
27 volume or quantity of discharges of domestic pollutants from
28 any university, college or school administrative unit sewage
29 facility, as long as the university, college or school
30 administrative unit has a wastewater discharge license valid
31 on the effective date of this paragraph and the increase in
32 discharges does not violate the conditions of subparagraphs
33 (1) to (5) and (7) to (11) or other applicable laws.

34 **Sec. 2. 38 MRSA §465, sub-§1, ¶C**, as repealed and replaced by
35 PL 2003, c. 574, §1, is amended to read:

36 C. Except as provided in this paragraph, there may be no
37 direct discharge of pollutants to Class AA waters.

38 (1) Storm water discharges that are in compliance with
39 state and local requirements are allowed.

40 (2) A discharge to Class AA waters that are or once
41 were populated by a distinct population segment of
42 Atlantic salmon as determined pursuant to the United
43 States Fish and Wildlife Service.

2 States Endangered Species Act of 1973, Public Law
3 93-205, as amended, is allowed if, in addition to
4 satisfying all the requirements of this article, the
5 applicant, prior to issuance of a discharge license,
6 objectively demonstrates to the department's
7 satisfaction that the discharge is necessary, that
8 there are no other reasonable alternatives available
9 and that the discharged effluent is for the purpose of
10 and will assist in the restoration of Atlantic salmon
11 and will return the waters to a state that is closer to
12 historically natural chemical quality.

13 (a) The department may issue no more than a total
14 of 3 discharge licenses pursuant to this
15 subparagraph and subsection 2, paragraph C,
16 subparagraph (2).

17 (b) A discharge license issued pursuant to this
18 subparagraph may not be effective for more than 5
19 years from the date of issuance.

20 (3) Aquatic pesticide or chemical discharges approved
21 by the department and conducted by the department, the
22 Department of Inland Fisheries and Wildlife or an agent
23 of either agency for the purpose of restoring
24 biological communities affected by an invasive species
25 are allowed.

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28 **Sec. 3. 38 MRSA §465, sub-§2, ¶C, as repealed and replaced by**
29 **PL 2003, c. 574, §2, is amended to read:**

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31
32 C. Except as provided in this paragraph, direct discharges
33 to these waters licensed after January 1, 1986 are permitted
34 only if, in addition to satisfying all the requirements of
35 this article, the discharged effluent will be equal to or
36 better than the existing water quality of the receiving
37 waters. Prior to issuing a discharge license, the
38 department shall require the applicant to objectively
39 demonstrate to the department's satisfaction that the
40 discharge is necessary and that there are no other
41 reasonable alternatives available. Discharges into waters
42 of this classification licensed prior to January 1, 1986 are
43 allowed to continue only until practical alternatives exist.

44 (1) This paragraph does not apply to a discharge of
45 storm water that is in compliance with state and local
46 requirements.

47 (2) This paragraph does not apply to a discharge to
48 Class A waters that are or once were populated by a
49 distinct population segment of Atlantic salmon as
50

2 determined pursuant to the United States Endangered
Species Act of 1973, Public Law 93-205, as amended, if,
4 in addition to satisfying all the requirements of this
article, the applicant, prior to issuance of a
6 discharge license, objectively demonstrates to the
department's satisfaction that the discharge is
8 necessary, that there are no other reasonable
alternatives available and that the discharged effluent
10 is for the purpose of and will assist in the
restoration of Atlantic salmon and will return the
12 waters to a state that is closer to historically
natural chemical quality.

14 (a) The department may issue no more than a total
of 3 discharge licenses pursuant to this
16 subparagraph and subsection 1, paragraph C,
subparagraph (2).

18 (b) A discharge license issued pursuant to this
20 subparagraph may not be effective for more than 5
years from the date of issuance.

22 (3) This paragraph does not apply to aquatic pesticide
24 or chemical discharges approved by the department and
conducted by the department, the Department of Inland
26 Fisheries and Wildlife or an agent of either agency for
the purpose of restoring biological communities
28 affected by an invasive species.

30 **Sec. 4. 38 MRSA §465, sub-§3, ¶C**, as enacted by PL 1985, c.
698, §15, is amended to read:

32 C. Discharges to Class B waters shall ~~may~~ not cause adverse
34 impact to aquatic life in that the receiving waters shall
must be of sufficient quality to support all aquatic species
36 indigenous to the receiving water without detrimental
changes in the resident biological community. This
38 paragraph does not apply to aquatic pesticide or chemical
discharges approved by the department and conducted by the
40 department, the Department of Inland Fisheries and Wildlife
or an agent of either agency for the purpose of restoring
42 biological communities affected by an invasive species.

44 **Sec. 5. 38 MRSA §465, sub-§4, ¶C**, as enacted by PL 1985, c.
698, §15, is amended to read:

46 C. Discharges to Class C waters may cause some changes to
48 aquatic life, ~~provided that~~ except that the receiving waters
shall must be of sufficient quality to support all species
50 of fish indigenous to the receiving waters and maintain the

2 structure and function of the resident biological
community. This paragraph does not apply to aquatic
4 pesticide or chemical discharges approved by the department
and conducted by the department, the Department of Inland
6 Fisheries and Wildlife or an agent of either agency for the
purpose of restoring biological communities affected by an
invasive species.

8
10 **Sec. 6. 38 MRSA §465-A, sub-§1, ¶C**, as amended by PL 1999, c.
243, **§9**, is repealed and the following enacted in its place:

12 C. There may be no new direct discharge of pollutants into
Class GPA waters. The following are exempt from this
14 provision:

16 (1) Chemical discharges for the purpose of restoring
water quality approved by the department;

18 (2) Aquatic pesticide or chemical discharges approved
20 by the department and conducted by the department, the
Department of Inland Fisheries and Wildlife or an agent
22 of either agency for the purpose of restoring
biological communities affected by an invasive species;
24 and

26 (3) Storm water discharges that are in compliance with
state and local requirements.

28
30 Discharges into these waters licensed prior to January 1,
1986 are allowed to continue only until practical
32 alternatives exist. Materials may not be placed on or
removed from the shores or banks of a Class GPA water body
34 in such a manner that materials may fall or be washed into
the water or that contaminated drainage may flow or leach
36 into those waters, except as permitted pursuant to section
480-C. A change of land use in the watershed of a Class GPA
38 water body may not, by itself or in combination with other
activities, cause water quality degradation that impairs the
40 characteristics and designated uses of downstream GPA waters
or causes an increase in the trophic state of those GPA
42 waters.

44 **Sec. 7. 38 MRSA §466, sub-§8-A** is enacted to read:

46 **8-A. Invasive species.** "Invasive species" means an
invasive animal as determined by the Department of Inland
48 Fisheries and Wildlife or an invasive aquatic plant as listed
under section 410-N or as determined by the department. A
50 species may be determined to be invasive for all waters or for
specific waters.

2

SUMMARY

4 This bill amends water quality standards to allow the
6 Department of Environmental Protection to approve aquatic
8 chemical or pesticide discharges for the purpose of restoring
10 biological communities affected by invasive species, for Class
12 AA, A, B and C waters, for tributaries to GPA waters and in
14 drainage areas of less than 10 square miles. The bill adds
similar authority for GPA waters and clarifies text. The bill
allows the Department of Environmental Protection to approve a
chemical treatment to waters with a drainage area of less than 10
miles for the purpose of restoring water quality in GPA waters.
The bill adds a definition of "invasive species" to the water
classification program.