

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1558

S.P. 542

In Senate, April 7, 2005

An Act Concerning Storm Water Management

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
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

Presented by Senator COWGER of Kennebec.
Cosponsored by Representatives: FISCHER of Presque Isle, MARLEY of Portland.

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

2
4 **Sec. 1. 38 MRSA §413, sub-§1-A**, as affected by PL 1989, c.
6 890, Pt. A, §40 and amended by Pt. B, §28, is further amended to
8 read:

10 **1-A. License required for surface wastewater disposal**
12 **systems.** No person may install, operate or maintain a surface
14 wastewater disposal system without first obtaining a license
16 therefor from the department, except that the department may
18 exempt or license by rule categories of storm water discharges to
20 groundwater when the discharges will not have a significant
22 adverse effect on the quality or classification of waters of the
24 State. Rules adopted pursuant to this subsection are routine
26 technical rules as defined in Title 5, chapter 375, subchapter
28 2-A unless the rules are incorporated as amendments to existing
30 rules that are major substantive rules as defined in Title 5,
32 chapter 375, subchapter 2-A.

34 **Sec. 2. 38 MRSA §413, sub-§1-B, ¶B**, as enacted by PL 2003, c.
36 551, §5, is amended to read:

38 B. The department may exempt or license by rule license
40 categories of subsurface discharges ~~when the discharges will~~
42 ~~not have a significant adverse effect on the quality or~~
44 ~~classification of groundwaters of the State~~ to groundwater
46 in the same manner and using the same criteria as provided
48 in subsection 1-A. Rules adopted pursuant to this paragraph
50 ~~are routine technical rules as defined in Title 5, chapter~~
52 ~~375, subchapter 2-A unless the rules are incorporated as~~
54 ~~amendments to existing rules that are major substantive~~
56 ~~rules as defined in Title 5, chapter 375, subchapter 2-A.~~

58 **Sec. 3. 38 MRSA §420-D, first ¶**, as amended by PL 2001, c. 232,
60 §13, is further amended to read:

62 A person may not construct, or cause to be constructed, a
64 project that includes ~~20,000-square-foot-or-more-of-impervious~~
66 ~~area-or-5-acres~~ one acre or more of disturbed area ~~in the direct~~
68 ~~watershed of a body of water most at risk from new development or~~
70 ~~one-acre-or-more-of-impervious-area-or-5-acres-or-more-of~~
72 ~~disturbed-area-in-any-other-area~~ without prior approval from the
74 department. A person proposing a project shall apply to the
76 department for a permit using an application provided by the
78 department and may not begin construction until approval is
80 received. This section applies to a project or any portion of a
82 project that is located within an organized area of this State.

2 **Sec. 4. 38 MRSA §420-D, sub-§1**, as enacted by PL 1995, c. 704,
Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is amended
to read:

4
6 **1. Standards.** The department shall adopt rules specifying
quantity and quality standards for storm water. Storm water
8 quality standards for projects with 3 acres or less of impervious
surface may address phosphorus, nitrates and suspended solids but
10 may not directly address other dissolved or hazardous materials
unless infiltration is proposed. ~~Storm-water-quality-standards~~
12 ~~apply-only-in-the-direct-watersheds-of-waterbodies-most-at-risk~~
~~from-development-and-in-sensitive-or-threatened-geographic~~
14 ~~regions-or-watersheds-defined-by-the-department-under-subsection~~
~~4.--Until-such-regions-are-defined,-storm-water-quality-standards~~
~~are-not-required-to-be-met-by-a-permit-applicant.~~

16 **Sec. 5. 38 MRSA §420-D, sub-§7, ¶D**, as enacted by PL 1995, c.
18 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is
repealed.

20 **Sec. 6. 38 MRSA §420-D, sub-§10**, as amended by PL 1997, c.
22 502, §3 and affected by c. 603, §§8 and 9, is repealed.

24 **Sec. 7. 38 MRSA §420-D, sub-§§12 and 13** are enacted to read:

26 **12. Fees.** An applicant for a permit under this section shall
pay a fee to the department as follows.

28 A. If structural means of storm water control are used, the
30 fee is \$500 for the first acre of disturbed area, plus \$250
for each additional whole acre of disturbed area.

32 B. If solely vegetative means of storm water control are
34 used, the fee is \$250 for the first acre of disturbed area,
plus \$125 for each additional whole acre of disturbed area.

36 C. When a permit by rule is required as provided by rules
38 adopted by the department, the fee is \$55.

40 If a project described in paragraph A or B is reviewed and
approved by a professional engineer at a soil and water
42 conservation district office that has a memorandum of
understanding with the department concerning review of projects
44 pursuant to this section, the fee is reduced to \$100 for the
first acre of disturbed area, plus \$50 for each additional whole
46 acre of disturbed area.

48 **13. Significant existing sources.** The department may
require a person owning or operating a significant existing
50 source of storm water to implement a storm water management

2 system. The owner or operator shall obtain approval from the
3 department pursuant to this subsection for the storm water
4 management system.

5 For the purposes of this subsection, "significant existing
6 source" means a significant existing source of storm water
7 pollution based on quantity or quality standards for storm water
8 from a developed area that was in existence prior to July 1, 1997
9 and is located in the direct watershed of a waterbody that is
10 impaired due to urban runoff. The department shall identify
11 significant existing sources as provided in this subsection.

12 A. The department shall develop a total maximum daily load
13 for the watershed of a waterbody impaired due to urban
14 runoff prior to designating significant existing sources
15 within the watershed.

16 B. The department shall adopt rules prior to requiring that
17 an owner or operator of a significant existing source within
18 the direct watershed of a specific waterbody obtain approval
19 of a storm water management system. Rules adopted pursuant
20 to this paragraph are routine technical rules as defined in
21 Title 5, chapter 375, subchapter 2-A. The rules must
22 include, but are not limited to, the following:

23 (1) The name of or other means of identifying the
24 waterbody that is impaired due to urban runoff;

25 (2) A list of significant existing sources or a
26 description of the types or classes of significant
27 existing sources;

28 (3) A date or schedule indicating when approvals must
29 be obtained; and

30 (4) Storm water quantity and quality standards for
31 storm water management systems.

32 C. The owner or operator of a site designated as a
33 significant existing source shall apply to the department
34 for approval of a storm water management system.

35 D. "Significant existing source" does not include:

36 (1) Types of sources or activities described in
37 subsection 7;

38 (2) The developed area of a facility required to meet
39 ongoing storm water management standards pursuant to a

2 storm water general or individual permit issued
3 pursuant to section 413; and

4 (3) A municipal conveyance system unless the storm
5 water pollution originates with the conveyance system.

6
7 **Sec. 8. Transition.** Prior approval is required pursuant to
8 the Maine Revised Statutes, Title 38, section 420-D if a person
9 constructs, or causes to be constructed, a project that includes
10 one acre or more of disturbed area on or after the effective date
11 of this Act.

12
13 1. If a person has a project that required approval prior
14 to the effective date of this Act, the project continues to
15 require approval on and after the effective date of this Act.

16
17 2. If a person has a project that did not require approval
18 prior to the effective date of this Act, and the person proposes
19 to construct or cause to be constructed a project that includes
20 one or more acres of disturbed area on or after the effective
21 date of this Act, then approval is required. Only the
22 construction on or after the effective date of this Act requires
23 prior approval.

24
25 3. A disturbed area of less than one acre continues to be
26 counted toward the one-acre permit threshold under this section
27 following permanent stabilization to the extent it is considered
28 developed area as defined in rules adopted by the Department of
29 Environmental Protection.

32 SUMMARY

33 1. This bill amends the laws governing waste discharge in
34 the following ways.

35 A. It provides that the Department of Environmental
36 Protection may exempt or license by rule discharges of storm
37 water to groundwater from surface wastewater disposal
38 systems if such discharges will not have a significant
39 adverse effect on the quality or classification of waters of
40 the State. Rules adopted to implement these provisions are
41 routine technical rules.

42
43 B. It provides that the department may exempt, in addition
44 to license by rule, subsurface discharges to groundwater
45 from subsurface wastewater disposal systems if such
46 discharges will not have a significant adverse effect on the
47 quality or classification of waters of the State. Rules
48

2 adopted to implement these provisions would continue to be
3 routine technical rules.

4 2. This bill amends the laws governing storm water
5 management in the following ways.

6 A. It changes the permitting threshold in the storm water
7 management laws to one acre or more of disturbed area.

8 B. It removes language providing that storm water quality
9 standards only apply in the direct watersheds of water
10 bodies most at risk from development and in sensitive or
11 threatened geographic regions or watersheds.

12 C. It repeals an exemption for construction projects at
13 industrial facilities for which a federal storm water permit
14 application has been made or construction projects at
15 facilities for which storm water is regulated under an
16 existing federal discharge permit.

17 D. It changes the fee provisions in the storm water
18 management laws.

19 E. It authorizes the department to require a person owning
20 or operating a significant existing source of storm water to
21 implement a storm water management system.

22 F. It provides transition provisions.