

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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No. 1274

H.P. 902

House of Representatives, March 8, 2007

**An Act To Allow the Discharge of Aquatic Pesticides Approved by
the Department of Environmental Protection for the Control of
Mosquito-borne Diseases in the Interest of Public Health and Safety**

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative AYOTTE of Caswell.
Cosponsored by Senator BRANNIGAN of Cumberland and
Representative: DUCHESNE of Hudson, Senator: NASS of York.

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

2 **Sec. 1. 38 MRSA §464, sub-§4, ¶A,** as amended by PL 2005, c. 182, §1, is
3 further amended to read:

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

6 (1) Direct discharge of pollutants to waters having a drainage area of less than
7 10 square miles, except that:

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

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

12 (c) Aquatic pesticide or chemical discharges approved by the department
13 and conducted by the department, the Department of Inland Fisheries and
14 Wildlife or an agent of either agency for the purpose of restoring biological
15 communities affected by an invasive species are exempt from this
16 subparagraph; ~~and~~

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

19 (e) Discharges of aquatic pesticides approved by the department for the
20 control of mosquito-borne diseases in the interest of public health and safety
21 using materials and methods that provide for protection of nontarget species
22 are exempt from this subparagraph.

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

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

33 (4) Discharge of pollutants to waters of the State that imparts color, taste,
34 turbidity, toxicity, radioactivity or other properties that cause those waters to be
35 unsuitable for the designated uses and characteristics ascribed to their class;

36 (5) Discharge of pollutants to any water of the State that violates sections 465,
37 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh
38 waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and
39 marine waters to fall outside of the 7.0 to 8.5 range;

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

25 (7) After the Administrator of the United States Environmental Protection
26 Agency ceases issuing permits for discharges of pollutants to waters of this State
27 pursuant to the administrator's authority under the Federal Water Pollution
28 Control Act, Section 402(c)(1), any proposed license to which the administrator
29 has formally objected under 40 Code of Federal Regulations, Section 123.44, as
30 amended, or any license that would not provide for compliance with applicable
31 requirements of that Act or regulations adopted thereunder;

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

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

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

39 (11) Discharges that would cause unreasonable degradation of marine waters or
40 when insufficient information exists to make a reasonable judgment whether the
41 discharge would cause unreasonable degradation of marine waters.

42 Notwithstanding subparagraph (6), the department may issue a wastewater discharge
43 license allowing for an increase in the volume or quantity of discharges of domestic
44 pollutants from any university, college or school administrative unit sewage facility,
45 as long as the university, college or school administrative unit has a wastewater

1 discharge license valid on the effective date of this paragraph and the increase in
2 discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11)
3 or other applicable laws.

4 **Sec. 2. 38 MRSA §465, sub-§1, ¶C**, as amended by PL 2005, c. 182, §2, is
5 further amended to read:

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

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

10 (2) A discharge to Class AA waters that are or once were populated by a distinct
11 population segment of Atlantic salmon as determined pursuant to the United
12 States Endangered Species Act of 1973, Public Law 93-205, as amended, is
13 allowed if, in addition to satisfying all the requirements of this article, the
14 applicant, prior to issuance of a discharge license, objectively demonstrates to the
15 department's satisfaction that the discharge is necessary, that there are no other
16 reasonable alternatives available and that the discharged effluent is for the
17 purpose of and will assist in the restoration of Atlantic salmon and will return the
18 waters to a state that is closer to historically natural chemical quality.

19 (a) The department may issue no more than a total of 3 discharge licenses
20 pursuant to this subparagraph and subsection 2, paragraph C, subparagraph
21 (2).

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

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

28 (4) Discharges of aquatic pesticides approved by the department for the control
29 of mosquito-borne diseases in the interest of public health and safety using
30 materials and methods that provide for protection of nontarget species are
31 allowed.

32 **Sec. 3. 38 MRSA §465, sub-§2, ¶C**, as amended by PL 2005, c. 182, §3, is
33 further amended to read:

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

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

3 (2) This paragraph does not apply to a discharge to Class A waters that are or
4 once were populated by a distinct population segment of Atlantic salmon as
5 determined pursuant to the United States Endangered Species Act of 1973, Public
6 Law 93-205, as amended, if, in addition to satisfying all the requirements of this
7 article, the applicant, prior to issuance of a discharge license, objectively
8 demonstrates to the department's satisfaction that the discharge is necessary, that
9 there are no other reasonable alternatives available and that the discharged
10 effluent is for the purpose of and will assist in the restoration of Atlantic salmon
11 and will return the waters to a state that is closer to historically natural chemical
12 quality.

13 (a) The department may issue no more than a total of 3 discharge licenses
14 pursuant to this subparagraph and subsection 1, paragraph C, subparagraph
15 (2).

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

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

22 (4) The department may find that the discharged effluent will be equal to or better
23 than the existing water quality of the receiving waters, in which case the
24 department may allow the discharge of aquatic pesticides approved by the
25 department for the control of mosquito-borne diseases in the interest of public
26 health and safety if the materials and methods used provide protection for
27 nontarget species.

28 **Sec. 4. 38 MRSA §465, sub-§3, ¶C**, as amended by PL 2005, c. 182, §4, is
29 further amended to read:

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

37 (1) This paragraph does not apply to aquatic pesticide or chemical discharges
38 approved by the department and conducted by the department, the Department of
39 Inland Fisheries and Wildlife or an agent of either agency for the purpose of
40 restoring biological communities affected by an invasive species.

41 (2) The department may find that the discharged effluent will not cause adverse
42 impact to aquatic life, in which case the department may allow the discharge of
43 aquatic pesticides approved by the department for the control of mosquito-borne

1 diseases in the interest of public health and safety if the materials and methods
2 used provide protection for nontarget species.

3 **Sec. 5. 38 MRSA §465-A, sub-§1, ¶C**, as repealed and replaced by PL 2005, c.
4 182, §6, is amended to read:

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

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

9 (2) Aquatic pesticide or chemical discharges approved by the department and
10 conducted by the department, the Department of Inland Fisheries and Wildlife or
11 an agent of either agency for the purpose of restoring biological communities
12 affected by an invasive species; ~~and~~

13 (3) Storm water discharges that are in compliance with state and local
14 requirements; ~~and~~

15 (4) Discharges of aquatic pesticides approved by the department for the control
16 of mosquito-borne diseases in the interest of public health and safety using
17 materials and methods that provide for protection of nontarget species.

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

27 **Sec. 6. 38 MRSA §465-B, sub-§1, ¶C**, as amended by PL 1999, c. 243, §10, is
28 further amended to read:

29 C. There may be no direct discharge of pollutants to Class SA waters, except ~~storm~~
30 ~~water discharges that are in compliance with state and local requirements.~~ for the
31 following:

32 (1) Storm water discharges that are in compliance with state and local
33 requirements; and

34 (2) Discharges of aquatic pesticides approved by the department for the control of
35 mosquito-borne diseases in the interest of public health and safety using materials
36 and methods that provide for protection of nontarget species.

37 **Sec. 7. 38 MRSA §465-B, sub-§2, ¶C**, as enacted by PL 1985, c. 698, §15, is
38 amended to read:

39 C. Discharges to Class SB waters ~~shall~~ may not cause adverse impact to estuarine
40 and marine life in that the receiving waters ~~shall~~ must be of sufficient quality to

1 support all estuarine and marine species indigenous to the receiving water without
2 detrimental changes in the resident biological community. There ~~shall~~ may be no
3 new discharge to Class SB waters ~~which that~~ would cause closure of open shellfish
4 areas by the Department of Marine Resources. The department may find that the
5 discharged effluent will not cause adverse impact to estuarine and marine life, in
6 which case the department may allow the discharge of aquatic pesticides approved by
7 the department for the control of mosquito-borne diseases in the interest of public
8 health and safety if the materials and methods used provide protection for nontarget
9 species.

10

SUMMARY

11 This bill adds an exception to the prohibition against issuance of a waste discharge
12 license for the direct discharge of pollutants to waters having a drainage area of less than
13 10 square miles and for the discharge of pollutants to Class AA waters, Class GPA waters
14 and Class SA waters. The new exception is for discharges of aquatic pesticides approved
15 by the Department of Environmental Protection for the control of mosquito-borne
16 diseases in the interest of public health and safety using materials and methods that
17 provide for protection of nontarget species.

18 The bill allows the department to find that discharge of effluent to Class A waters
19 will be equal to or better than the existing water quality of the receiving waters, in which
20 case the department may allow the discharge of aquatic pesticides approved by the
21 department for the control of mosquito-borne diseases in the interest of public health and
22 safety if the materials and methods used provide protection for nontarget species.

23 This bill allows the department to find that discharged effluent to Class B waters will
24 not cause adverse impact to aquatic life, in which case the department may allow the
25 discharge of aquatic pesticides approved by the department for the control of mosquito-
26 borne diseases in the interest of public health and safety if the materials and methods used
27 provide protection for nontarget species.

28 This bill allows the department to find that discharged effluent to Class SB waters
29 will not cause adverse impact to estuarine and marine life, in which case the department
30 may allow the discharge of aquatic pesticides approved by the department for the control
31 of mosquito-borne diseases in the interest of public health and safety if the materials and
32 methods used provide protection for nontarget species.