

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 229

S.P. 79

January 27, 2009

An Act To Promote Clean Waters in the State

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

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator NUTTING of Androscoggin.

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

2 **Sec. 1. 38 MRSA §414-B, sub-§5** is enacted to read:

3 **5. Penalty for untreated sewage discharge.** Beginning January 1, 2013, a
4 municipality that discharges untreated sewage to any water of the State may not receive
5 state-municipal revenue sharing funds under Title 30-A, section 5681.

6 **Sec. 2. 38 MRSA §464, sub-§2-B,** as enacted by PL 1995, c. 284, §1, is repealed.

7 **Sec. 3. 38 MRSA §464, sub-§4, ¶A,** as amended by PL 2007, c. 291, §1, is
8 further amended to read:

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

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

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

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

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

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

24 (e) Discharges of aquatic pesticides approved by the department for the
25 control of mosquito-borne diseases in the interest of public health and safety
26 using materials and methods that provide for protection of nontarget species
27 are exempt from this subparagraph. When the department issues a license for
28 the discharge of aquatic pesticides authorized under this division, the
29 department shall notify the municipality in which the application is licensed
30 to occur and post the notice on the department's publicly accessible website.

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

33 (3) Any discharge into a tributary of GPA waters that by itself or in combination
34 with other activities causes water quality degradation that would impair the
35 characteristics and designated uses of downstream GPA waters or causes an
36 increase in the trophic state of those GPA waters except for aquatic pesticide or
37 chemical discharges approved by the department and conducted by the
38 department, the Department of Inland Fisheries and Wildlife or an agent of either

1 agency for the purpose of restoring biological communities affected by an
2 invasive species in the GPA waters or a tributary to the GPA waters;

3 (4) Discharge of pollutants to waters of the State that imparts color, taste,
4 turbidity, toxicity, radioactivity or other properties that cause those waters to be
5 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,
7 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh
8 waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and
9 marine waters to fall outside of the 7.0 to 8.5 range;

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

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

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

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

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

3 (11) Discharges that would cause unreasonable degradation of marine waters or
4 when insufficient information exists to make a reasonable judgment whether the
5 discharge would cause unreasonable degradation of marine waters; and

6 (12) Beginning January 1, 2013, any discharge of untreated sewage, including a
7 combined sewer overflow discharge, to any water of the State by a municipal or
8 quasi-municipal sewerage system.

9 Notwithstanding subparagraph (6), the department may issue a wastewater discharge
10 license allowing for an increase in the volume or quantity of discharges of domestic
11 pollutants from any university, college or school administrative unit sewage facility,
12 as long as the university, college or school administrative unit has a wastewater
13 discharge license valid on the effective date of this paragraph and the increase in
14 discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11)
15 or other applicable laws.

16 SUMMARY

17 The bill prohibits the Department of Environmental Protection from licensing a
18 discharge of untreated sewage to any water of the State by a municipal or quasi-municipal
19 sewerage system beginning January 1, 2013. It also provides that beginning January 1,
20 2013 a municipality that discharges untreated sewage to any water of the State may not
21 receive state-municipal revenue sharing.