

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 261

H.P. 214

House of Representatives, February 1, 2011

### An Act To Eliminate Combined Sewer Overflows in Maine Waters

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative OLSEN of Phippsburg.  
Cosponsored by Senator SAVIELLO of Franklin and  
Representatives: DUNPHY of Embden, FITTS of Pittsfield, MacDONALD of Boothbay,  
O'CONNOR of Berwick, SIROCKI of Scarborough, WEAVER of York, Senator: SULLIVAN  
of York.

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

3           **Whereas,** statewide approximately 1.5 to 2.5 billion gallons of untreated combined  
4 sanitary sewage and storm water are discharged annually from licensed combined sewer  
5 overflows; and

6           **Whereas,** these discharges impair water quality, close shellfishing areas and  
7 beaches and threaten drinking water supplies; and

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

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

13           **Sec. 1. 38 MRSA §464, sub-§2-B,** as enacted by PL 1995, c. 284, §1, is repealed.

14           **Sec. 2. 38 MRSA §464, sub-§4, ¶A,** as amended by PL 2007, c. 291, §1, is  
15 further amended to read:

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

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

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

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

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

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

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

- 1 (2) New direct discharge of domestic pollutants to tributaries of Class-GPA  
2 waters;
- 3 (3) Any discharge into a tributary of GPA waters that by itself or in combination  
4 with other activities causes water quality degradation that would impair the  
5 characteristics and designated uses of downstream GPA waters or causes an  
6 increase in the trophic state of those GPA waters except for aquatic pesticide or  
7 chemical discharges approved by the department and conducted by the  
8 department, the Department of Inland Fisheries and Wildlife or an agent of either  
9 agency for the purpose of restoring biological communities affected by an  
10 invasive species in the GPA waters or a tributary to the GPA waters;
- 11 (4) Discharge of pollutants to waters of the State that imparts color, taste,  
12 turbidity, toxicity, radioactivity or other properties that cause those waters to be  
13 unsuitable for the designated uses and characteristics ascribed to their class;
- 14 (5) Discharge of pollutants to any water of the State that violates sections 465,  
15 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh  
16 waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and  
17 marine waters to fall outside of the 7.0 to 8.5 range;
- 18 (6) New discharges of domestic pollutants to the surface waters of the State that  
19 are not conveyed and treated in municipal or quasi-municipal sewage facilities.  
20 For the purposes of this subparagraph, "new discharge" means any overboard  
21 discharge that was not licensed as of June 1, 1987, except discharges from  
22 vessels and those discharges that were in continuous existence for the 12 months  
23 preceding June 1, 1987, as demonstrated by the applicant to the department with  
24 clear and convincing evidence. The volume of the discharge from an overboard  
25 discharge facility that was licensed as of June 1, 1987 is determined by the actual  
26 or estimated volume from the facilities connected to the overboard discharge  
27 facility during the 12 months preceding June 1, 1987 or the volume allowed by  
28 the previous license, whichever is less, unless it is found by the department that  
29 an error was made during prior licensing. The months during which a discharge  
30 may occur from an overboard discharge facility that was licensed as of June 1,  
31 1987 must be determined by the actual use of the facility at the time of the most  
32 recent license application prior to June 1, 1987 or the actual use of the facility  
33 during the 12 months prior to June 1, 1987, whichever is greater. If the  
34 overboard discharge facility was the primary residence of an owner at the time of  
35 the most recent license application prior to June 1, 1987 or during the 12 months  
36 prior to June 1, 1987, then the facility is considered a year-round residence.  
37 "Year-round residence" means a facility that is continuously used for more than 8  
38 months of the year. For purposes of licensing, the department shall treat an  
39 increase in the licensed volume or quantity of an existing discharge or an  
40 expansion in the months during which the discharge takes place as a new  
41 discharge of domestic pollutants;
- 42 (7) After the Administrator of the United States Environmental Protection  
43 Agency ceases issuing permits for discharges of pollutants to waters of this State  
44 pursuant to the administrator's authority under the Federal Water Pollution  
45 Control Act, Section 402(c)(1), any proposed license to which the administrator

1 has formally objected under 40 Code of Federal Regulations, Section 123.44, as  
2 amended, or any license that would not provide for compliance with applicable  
3 requirements of that Act or regulations adopted thereunder;

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

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

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

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

13 (12) Any combined sewer overflow.

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

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

23 **SUMMARY**

24 This bill prohibits the Department of Environmental Protection from licensing  
25 combined sewer overflows.