

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1801

H.P. 1342

House of Representatives, December 9, 2021

**An Act To Modify Exemptions for Certain Storm Water Discharges
to Class AA and SA Waters**

(EMERGENCY)

Submitted by the Department of Environmental Protection pursuant to Joint Rule 203.
Received by the Clerk of the House on December 7, 2021. Referred to the Committee on
Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant
to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ZEIGLER of Montville.

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,** current law enacted in 1999 that established an exemption for certain
4 discharges of storm water to Class AA and SA waters has been disapproved by the United
5 States Environmental Protection Agency; and

6 **Whereas,** this disapproval creates regulatory uncertainty for the legality of certain
7 existing discharges of storm water, and potential future discharges of storm water, to Class
8 AA and SA waters; and

9 **Whereas,** this uncertainty may have significant economic impacts on certain
10 dischargers of storm water to Class AA and SA waters; and

11 **Whereas,** in order to avoid these adverse consequences, modification of the
12 exemption for certain discharges of storm water to Class AA and SA waters is appropriate
13 and necessary; and

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

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

19 **Sec. 1. 38 MRSA §464, sub-§4, ¶F,** as amended by PL 1991, c. 66, Pt. B, §1, is
20 further amended by amending subparagraph (2) to read:

21 (2) Where high quality waters of the State constitute an outstanding national
22 resource, that water quality must be maintained and protected. For purposes of this
23 paragraph, the following waters are considered outstanding national resources:
24 those water bodies in national and state parks and wildlife refuges; public reserved
25 lands; and those water bodies classified as Class AA and SA waters pursuant to
26 section 465, subsection 1; section 465-B, subsection 1; and, unless otherwise
27 specified, listed under sections 467, 468 and 469.

28 **Sec. 2. 38 MRSA §465, sub-§1, ¶C,** as amended by PL 2021, c. 50, §§1 and 2, is
29 further amended by amending subparagraph (1) to read:

30 (1) Storm water discharges that are in compliance with state and local
31 requirements are allowed: if one or more of the following conditions are met:

32 (a) The storm water discharge existed prior to the waters' being classified as
33 Class AA with a designation as an outstanding national resource as described
34 in section 464, subsection 4, paragraph F, subparagraph (2), including storm
35 water discharges that existed prior to designation of the waters as an
36 outstanding national resource and are not licensed by the department or were
37 not relicensed for some duration after the waters' designation as an outstanding
38 national resource. This division does not authorize new or increased storm
39 water discharge;

40 (b) For storm water discharges requiring a general permit for construction, the
41 discharge is temporary and short term and does not permanently degrade water
42 quality. For the purposes of this division, a discharge is temporary and short

1 term if the discharge occurs only during the time necessary to construct a
2 facility to make it operational. Best management practices must be used during
3 such construction; or

4 (c) The Class AA water is not designated as an outstanding national resource
5 as described in section 464, subsection 4, paragraph F, subparagraph (2) and
6 sections 467 and 468.

7 **Sec. 3. 38 MRSA §465-B, sub-§1, ¶C**, as amended by PL 2013, c. 193, §5, is
8 further amended by amending subparagraph (1) to read:

9 (1) Storm water discharges that are in compliance with state and local
10 requirements; if one or more of the following conditions are met:

11 (a) The storm water discharge existed prior to the waters' being classified as
12 Class SA with a designation as an outstanding national resource as described
13 in section 464, subsection 4, paragraph F, subparagraph (2), including storm
14 water discharges that existed prior to designation of the waters as an
15 outstanding national resource and are not licensed by the department or were
16 not relicensed for some duration after the waters' designation as an outstanding
17 national resource. This division does not authorize new or increased storm
18 water discharge;

19 (b) For storm water discharges requiring a general permit for construction, the
20 discharge is temporary and short term and does not permanently degrade water
21 quality. For the purposes of this division, a discharge is temporary and short
22 term if the discharge occurs only during the time necessary to construct a
23 facility to make it operational. Best management practices must be used during
24 such construction; or

25 (c) The Class SA water is not designated as an outstanding national resource
26 as described in section 464, subsection 4, paragraph F, subparagraph (2) and
27 section 469;

28 **Sec. 4. 38 MRSA §467, sub-§6-A, ¶B**, as amended by PL 2017, c. 137, Pt. B, §6,
29 is further amended by amending subparagraph (2) to read:

30 (2) West Branch of the Narraguagus River in T.22 M.D. B.P.P., T.16 M.D. B.P.P.,
31 T.10 S.D. B.P.P. and Cherryfield - Class AA. Pursuant to section 464, subsection
32 4, paragraph F, subparagraph (2), the segment from the confluence of Pork Brook
33 to the confluence of Manhanon Brook is not designated as an outstanding national
34 resource.

35 **Sec. 5. 38 MRSA §467, sub-§14, ¶A**, as repealed and replaced by PL 1999, c. 277,
36 §17, is amended by amending subparagraph (2) to read:

37 (2) From a point located 2,000 feet below the outlet of Little Pond to the
38 confluence with Stevens Pond, from the outlet of Stevens Pond to the confluence
39 with Trues Pond and from the outlet of Trues Pond to the confluence with Sennebec
40 Pond - Class AA. Pursuant to section 464, subsection 4, paragraph F, subparagraph
41 (2), the segment from the Ghent Road bridge to the Camden Road/Route 105
42 bridge is not designated as an outstanding national resource.

1 **Sec. 6. 38 MRSA §467, sub-§15, ¶C**, as amended by PL 2019, c. 333, §8 and c.
2 463, §11, is further amended by amending subparagraph (1), division (a) to read:

3 (a) From the confluence of Millinocket Stream and Munsungan Stream to the
4 Route 11 bridge - Class AA. This segment is subject to a sustenance fishing
5 designated use pursuant to section 466-A. Pursuant to section 464, subsection
6 4, paragraph F, subparagraph (2), the segment from the confluence of St. Croix
7 Stream to the confluence of Scopan Stream and the segment starting 1,500 feet
8 upstream from the confluence of the Machias River to the Route 11 bridge are
9 not designated as outstanding national resources.

10 **Sec. 7. 38 MRSA §467, sub-§15, ¶C**, as amended by PL 2019, c. 333, §8 and c.
11 463, §11, is further amended by amending subparagraph (2), division (d) to read:

12 (d) Machias River, from the outlet of Big Machias Lake to the Aroostook
13 River - Class AA. This segment is subject to a sustenance fishing designated
14 use pursuant to section 466-A. Pursuant to section 464, subsection 4, paragraph
15 F, subparagraph (2), the segment from one mile upstream of the Garfield Road
16 bridge to the confluence with the Aroostook River is not designated as an
17 outstanding national resource.

18 **Sec. 8. 38 MRSA §469, sub-§2, ¶D**, as amended by PL 2017, c. 137, Pt. B, §18,
19 is further amended by amending subparagraph (2) to read:

20 (2) Tidal waters of Somes Sound lying northerly of a line beginning at a point
21 located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude
22 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National
23 Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W., except those
24 waters of Broad Cove lying west of a line running from the point of land
25 immediately south of the cove northerly to Navigation Can #7 - Class SA. Pursuant
26 to section 464, subsection 4, paragraph F, subparagraph (2), those waters lying
27 within 500 feet of a stormwater discharge licensed by the department on December
28 31, 2021 in accordance with rules adopted by the department are not designated as
29 outstanding national resources.

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

32 SUMMARY

33 This bill amends the law governing exemptions for storm water discharges to Class AA
34 and Class SA waters and provides that certain segments of waters classified as Class AA
35 and Class SA are not designated as outstanding national resources.