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No. 1430

S.P. 516

In Senate, April 23, 2013

An Act To Clarify the Permitted Use of Aquatic Pesticides

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.

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 2007, c. 291, §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 10
7 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 and
13 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;

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. When the department issues a license for
23 the discharge of aquatic pesticides authorized under this division, the
24 department shall notify the municipality in which the application is licensed
25 to occur and post the notice on the department's publicly accessible website;
26 and

27 (f) Discharges of pesticides approved by the department are exempt from
28 this subparagraph that are:

29 (i) Unintended and an incidental result of the spraying of pesticides;

30 (ii) Applied in compliance with federal labeling restrictions; and

31 (iii) Applied in compliance with statute, Board of Pesticides Control
32 rules and best management practices.

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

35 (3) Any discharge into a tributary of GPA waters that by itself or in combination
36 with other activities causes water quality degradation that would impair the
37 characteristics and designated uses of downstream GPA waters or causes an
38 increase in the trophic state of those GPA waters except for ~~aquatic pesticide or~~
39 ~~chemical discharges approved by the department and conducted by the~~
40 ~~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; the~~
3 ~~following:~~

4 (a) Aquatic pesticide or chemical discharges approved by the department and
5 conducted by the department, the Department of Inland Fisheries and
6 Wildlife or an agent of either agency for the purpose of restoring biological
7 communities affected by an invasive species in the GPA waters or a tributary
8 to the GPA waters; or

9 (b) Discharges of pesticides approved by the department that are:

10 (i) Unintended and an incidental result of the spraying of pesticides;

11 (ii) Applied in compliance with federal labeling restrictions; and

12 (iii) Applied in compliance with statute, Board of Pesticides Control
13 rules and best management practices.

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

17 (5) Discharge of pollutants to any water of the State that violates sections 465,
18 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh
19 waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and
20 marine waters to fall outside of the 7.0 to 8.5 range;

21 (6) New discharges of domestic pollutants to the surface waters of the State that
22 are not conveyed and treated in municipal or quasi-municipal sewage facilities.
23 For the purposes of this subparagraph, "new discharge" means any overboard
24 discharge that was not licensed as of June 1, 1987, except discharges from
25 vessels and those discharges that were in continuous existence for the 12 months
26 preceding June 1, 1987, as demonstrated by the applicant to the department with
27 clear and convincing evidence. The volume of the discharge from an overboard
28 discharge facility that was licensed as of June 1, 1987 is determined by the actual
29 or estimated volume from the facilities connected to the overboard discharge
30 facility during the 12 months preceding June 1, 1987 or the volume allowed by
31 the previous license, whichever is less, unless it is found by the department that
32 an error was made during prior licensing. The months during which a discharge
33 may occur from an overboard discharge facility that was licensed as of June 1,
34 1987 must be determined by the actual use of the facility at the time of the most
35 recent license application prior to June 1, 1987 or the actual use of the facility
36 during the 12 months prior to June 1, 1987, whichever is greater. If the
37 overboard discharge facility was the primary residence of an owner at the time of
38 the most recent license application prior to June 1, 1987 or during the 12 months
39 prior to June 1, 1987, then the facility is considered a year-round residence.
40 "Year-round residence" means a facility that is continuously used for more than 8
41 months of the year. For purposes of licensing, the department shall treat an
42 increase in the licensed volume or quantity of an existing discharge or an
43 expansion in the months during which the discharge takes place as a new
44 discharge of domestic pollutants;

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

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

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

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

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

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

24 **Sec. 2. 38 MRSA §465, sub-§1, ¶C**, as amended by PL 2007, c. 291, §2, is
25 further amended to read:

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

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

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

39 (a) The department may issue no more than a total of 3 discharge licenses
40 pursuant to this subparagraph and subsection 2, paragraph C, subparagraph
41 (2).

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

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

7 (4) Discharges of aquatic pesticides approved by the department for the control of
8 mosquito-borne diseases in the interest of public health and safety using materials
9 and methods that provide for protection of nontarget species are allowed. When
10 the department issues a license for the discharge of aquatic pesticides authorized
11 under this subparagraph, the department shall notify the municipality in which
12 the application is licensed to occur and post the notice on the department's
13 publicly accessible website.

14 (5) Discharges of pesticides approved by the department are allowed that are:

15 (a) Unintended and an incidental result of the spraying of pesticides;

16 (b) Applied in compliance with federal labeling restrictions; and

17 (c) Applied in compliance with statute, Board of Pesticides Control rules and
18 best management practices.

19 **Sec. 3. 38 MRSA §465, sub-§2, ¶C**, as amended by PL 2007, c. 291, §3, is
20 further amended to read:

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

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

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

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

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

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

10 (4) For the purpose of allowing the discharge of aquatic pesticides approved by
11 the department for the control of mosquito-borne diseases in the interest of public
12 health and safety, the department may find that the discharged effluent will be
13 equal to or better than the existing water quality of the receiving waters as long as
14 the materials and methods used provide protection for nontarget species. When
15 the department issues a license for the discharge of aquatic pesticides authorized
16 under this subparagraph, the department shall notify the municipality in which
17 the application is licensed to occur and post the notice on the department's
18 publicly accessible website.

19 (5) This paragraph does not apply to discharges of pesticides approved by the
20 department that are:

21 (a) Unintended and an incidental result of the spraying of pesticides;

22 (b) Applied in compliance with federal labeling restrictions; and

23 (c) Applied in compliance with statute, Board of Pesticides Control rules and
24 best management practices.

25 **Sec. 4. 38 MRSA §465-A, sub-§1, ¶C**, as amended by PL 2007, c. 291, §5, is
26 further amended to read:

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

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

31 (2) Aquatic pesticide or chemical discharges approved by the department and
32 conducted by the department, the Department of Inland Fisheries and Wildlife or
33 an agent of either agency for the purpose of restoring biological communities
34 affected by an invasive species;

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

37 (4) Discharges of aquatic pesticides approved by the department for the control
38 of mosquito-borne diseases in the interest of public health and safety using
39 materials and methods that provide for protection of nontarget species. When the
40 department issues a license for the discharge of aquatic pesticides authorized
41 under this subparagraph, the department shall notify the municipality in which

1 the application is licensed to occur and post the notice on the department's
2 publicly accessible website; and

3 (5) Discharges of pesticides approved by the department that are:

4 (a) Unintended and an incidental result of the spraying of pesticides;

5 (b) Applied in compliance with federal labeling restrictions; and

6 (c) Applied in compliance with statute, Board of Pesticides Control rules and
7 best management practices.

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

17 **Sec. 5. 38 MRSA §465-B, sub-§1, ¶C**, as amended by PL 2009, c. 654, §7, is
18 further amended to read:

19 C. There may be no direct discharge of pollutants to Class SA waters, except for the
20 following:

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

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

30 (3) An overboard discharge licensed prior to January 1, 1986 if no practicable
31 alternative exists; and

32 (4) Discharges of pesticides approved by the department that are:

33 (a) Unintended and an incidental result of the spraying of pesticides;

34 (b) Applied in compliance with federal labeling restrictions; and

35 (c) Applied in compliance with statute, Board of Pesticides Control rules and
36 best management practices.

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SUMMARY

2 Due to a federal court decision, all discharges of pesticides to waters of the United
3 States are now required to obtain a National Pollutant Discharge Elimination System
4 permit. Previously certain discharges of pesticides were exempt as long as the
5 application of the pesticide was managed in accordance with the Federal Insecticide,
6 Fungicide and Rodenticide Act. This bill allows the Department of Environmental
7 Protection to issue permits for certain discharges of pesticides to Class AA, A, SA and
8 GPA waters, tributaries of Class GPA waters and waters having a drainage area of less
9 than 10 square miles where, with limited exceptions, discharges are currently prohibited,
10 allowing compliance with the federal court decision. The discharges of pesticides that
11 may be approved under this bill are discharges that are unintended and an incidental
12 result of the spraying of pesticides, applied in compliance with federal labeling
13 restrictions and applied in compliance with statute, Board of Pesticides Control rules and
14 best management practices.