

## 130th MAINE LEGISLATURE

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**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.

ROBERT B. HUNT

R(+ 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 existing discharges of storm water, and potential future discharges of storm water, to Class 7 8 AA and SA waters; and 9 Whereas, this uncertainty may have significant economic impacts on certain dischargers of storm water to Class AA and SA waters; and 10 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 the meaning of the Constitution of Maine and require the following legislation as 15 immediately necessary for the preservation of the public peace, health and safety; now, 16 17 therefore, 18 Be it enacted by the People of the State of Maine as follows: Sec. 1. 38 MRSA §464, sub-§4, ¶F, as amended by PL 1991, c. 66, Pt. B, §1, is 19 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 paragraph, the following waters are considered outstanding national resources: 23 those water bodies in national and state parks and wildlife refuges; public reserved 24 25 lands; and those water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and, unless otherwise 26 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 further amended by amending subparagraph (1) to read: 29 30 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 Class AA with a designation as an outstanding national resource as described 33 34 in section 464, subsection 4, paragraph F, subparagraph (2), including storm water discharges that existed prior to designation of the waters as an 35 outstanding national resource and are not licensed by the department or were 36 not relicensed for some duration after the waters' designation as an outstanding 37 national resource. This division does not authorize new or increased storm 38 39 water discharge; 40 (b) For storm water discharges requiring a general permit for construction, the discharge is temporary and short term and does not permanently degrade water 41 quality. For the purposes of this division, a discharge is temporary and short 42

1 2 3	term if the discharge occurs only during the time necessary to construct a facility to make it operational. Best management practices must be used during such construction; or
4 5 6	(c) The Class AA water is not designated as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2) and sections 467 and 468.
7 8	Sec. 3. 38 MRSA §465-B, sub-§1, ¶C, as amended by PL 2013, c. 193, §5, is further amended by amending subparagraph (1) to read:
9 10	(1) Storm water discharges that are in compliance with state and local requirements; if one or more of the following conditions are met:
11 12 13 14 15 16 17	(a) The storm water discharge existed prior to the waters' being classified as Class SA with a designation as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2), including storm water discharges that existed prior to designation of the waters as an outstanding national resource and are not licensed by the department or were not relicensed for some duration after the waters' designation as an outstanding national resource. This division does not authorize new or increased storm water discharge;
19 20 21 22 23 24	(b) For storm water discharges requiring a general permit for construction, the discharge is temporary and short term and does not permanently degrade water quality. For the purposes of this division, a discharge is temporary and short term if the discharge occurs only during the time necessary to construct a facility to make it operational. Best management practices must be used during such construction; or
25 26 27	(c) The Class SA water is not designated as an outstanding national resource as described in section 464, subsection 4, paragraph F, subparagraph (2) and section 469;
28 29	<b>Sec. 4. 38 MRSA §467, sub-§6-A, ¶B,</b> as amended by PL 2017, c. 137, Pt. B, §6, is further amended by amending subparagraph (2) to read:
30 31 32 33 34	(2) West Branch of the Narraguagus River in T.22 M.D. B.P.P., T.16 M.D. B.P.P., T.10 S.D. B.P.P. and Cherryfield - Class AA. <u>Pursuant to section 464, subsection 4, paragraph F, subparagraph (2), the segment from the confluence of Pork Brook to the confluence of Manhanon Brook is not designated as an outstanding national resource.</u>
35 36	<b>Sec. 5. 38 MRSA §467, sub-§14, ¶A,</b> as repealed and replaced by PL 1999, c. 277, §17, is amended by amending subparagraph (2) to read:
37 38 39 40 41	(2) From a point located 2,000 feet below the outlet of Little Pond to the confluence with Stevens Pond, from the outlet of Stevens Pond to the confluence with Trues Pond and from the outlet of Trues Pond to the confluence with Sennebec Pond - Class AA. Pursuant to section 464, subsection 4, paragraph F, subparagraph (2), the segment from the Ghent Road bridge to the Camden Road/Route 105
41 42	bridge is not designated as an outstanding national resource.

1 2	<b>Sec. 6. 38 MRSA §467, sub-§15,</b> ¶ <b>C,</b> as amended by PL 2019, c. 333, §8 and c. 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. <u>Pursuant to section 464</u> , <u>subsection</u>
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 11	<b>Sec. 7. 38 MRSA §467, sub-§15,</b> ¶C, as amended by PL 2019, c. 333, §8 and c. 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. <u>Pursuant</u>
26	to section 464, subsection 4, paragraph F, subparagraph (2), those waters lying
27 28	within 500 feet of a stormwater discharge licensed by the department on December
28 29	31, 2021 in accordance with rules adopted by the department are not designated as outstanding national resources.
30	<b>Emergency clause.</b> 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.