



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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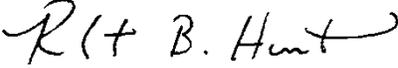
H.P. 895

House of Representatives, April 4, 2017

### An Act To Update Maine's Water Quality Standards

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

  
ROBERT B. HUNT  
Clerk

Presented by Representative HARLOW of Portland.

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

2 **Sec. 1. 38 MRSA §361-A, sub-§1-L** is enacted to read:

3 **1-L. CFU. "CFU" means colony-forming units.**

4 **Sec. 2. 38 MRSA §464, sub-§4, ¶A**, as amended by PL 2013, c. 193, §1, is  
5 further amended to read:

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

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

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

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

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

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

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

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

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

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

33 (iii) Applied in compliance with statute, Board of Pesticides Control  
34 rules and best management practices;

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

37 (3) Any discharge into a tributary of GPA waters that by itself or in combination  
38 with other activities causes water quality degradation that would impair the

1 characteristics and designated uses of downstream GPA waters or causes an  
2 increase in the trophic state of those GPA waters ~~except for the following:~~;

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

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

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

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

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

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

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

20 (6) New discharges of domestic pollutants to the surface waters of the State that  
21 are not conveyed and treated in municipal or quasi-municipal sewage facilities.  
22 For the purposes of this subparagraph, "new discharge" means any overboard  
23 discharge that was not licensed as of June 1, 1987, except discharges from  
24 vessels and those discharges that were in continuous existence for the 12 months  
25 preceding June 1, 1987, as demonstrated by the applicant to the department with  
26 clear and convincing evidence. The volume of the discharge from an overboard  
27 discharge facility that was licensed as of June 1, 1987 is determined by the actual  
28 or estimated volume from the facilities connected to the overboard discharge  
29 facility during the 12 months preceding June 1, 1987 or the volume allowed by  
30 the previous license, whichever is less, unless it is found by the department that  
31 an error was made during prior licensing. The months during which a discharge  
32 may occur from an overboard discharge facility that was licensed as of June 1,  
33 1987 must be determined by the actual use of the facility at the time of the most  
34 recent license application prior to June 1, 1987 or the actual use of the facility  
35 during the 12 months prior to June 1, 1987, whichever is greater. If the  
36 overboard discharge facility was the primary residence of an owner at the time of  
37 the most recent license application prior to June 1, 1987 or during the 12 months  
38 prior to June 1, 1987, then the facility is considered a year-round residence.  
39 "Year-round residence" means a facility that is continuously used for more than 8  
40 months of the year. For purposes of licensing, the department shall treat an  
41 increase in the licensed volume or quantity of an existing discharge or an  
42 expansion in the months during which the discharge takes place as a new  
43 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. 3. 38 MRSA §464, sub-§4, ¶D**, as amended by PL 1991, c. 159, is further  
25 amended to read:

26 D. Except as otherwise provided in this paragraph, for the purpose of computing  
27 whether a discharge will violate the classification of any river or stream, the  
28 assimilative capacity of the river or stream must be computed using the minimum 7-  
29 day low flow ~~which~~ that can be expected to occur with a frequency of once in 10  
30 years. The department may use a different flow rate only for those toxic substances  
31 regulated under section 420 and for those nutrients specified in department rules. To  
32 use a different flow rate, the department must find that the flow rate is consistent with  
33 the risk being addressed.

34 **Sec. 4. 38 MRSA §465, sub-§3, ¶B**, as amended by PL 2005, c. 409, §1, is  
35 further amended to read:

36 B. The dissolved oxygen content of Class B waters may not be less than 7 parts per  
37 million or 75% of saturation, whichever is higher, except that for the period from  
38 October 1st to May 14th, in order to ensure spawning and egg incubation of  
39 indigenous fish species, the 7-day mean dissolved oxygen concentration may not be  
40 less than 9.5 parts per million and the 1-day minimum dissolved oxygen  
41 concentration may not be less than 8.0 parts per million in identified fish spawning  
42 areas. Between May 15th and September 30th, the number of Escherichia coli

1 bacteria of human and domestic animal origin in these waters may not exceed a  
2 geometric mean of ~~64~~ 100 CFU per 100 milliliters over a 90-day interval or ~~an~~  
3 ~~instantaneous level of 236~~ 320 CFU per 100 milliliters in more than 10% of the  
4 samples in any 90-day interval. In determining human and domestic animal origin,  
5 the department shall assess licensed and unlicensed sources using available  
6 diagnostic procedures.

7 **Sec. 5. 38 MRSA §465, sub-§3, ¶C**, as amended by PL 2007, c. 291, §4, is  
8 further amended to read:

9 C. Discharges to Class B waters may not cause adverse impact to aquatic life in that  
10 the receiving waters must be of sufficient quality to support all aquatic species  
11 indigenous to the receiving water without detrimental changes in the resident  
12 biological community.

13 ~~(1) This paragraph does not apply to aquatic pesticide or chemical discharges~~  
14 ~~approved by the department and conducted by the department, the Department of~~  
15 ~~Inland Fisheries and Wildlife or an agent of either agency for the purpose of~~  
16 ~~restoring biological communities affected by an invasive species.~~

17 (2) For the purpose of allowing the discharge of aquatic pesticides approved by  
18 the department for the control of mosquito-borne diseases in the interest of public  
19 health and safety, the department may find that the discharged effluent will not  
20 cause adverse impact to aquatic life as long as the materials and methods used  
21 provide protection for nontarget species. When the department issues a license  
22 for the discharge of aquatic pesticides authorized under this subparagraph, the  
23 department shall notify the municipality in which the application is licensed to  
24 occur and post the notice on the department's publicly accessible website.

25 **Sec. 6. 38 MRSA §465, sub-§4, ¶B**, as repealed and replaced by PL 2005, c.  
26 409, §2, is amended to read:

27 B. The dissolved oxygen content of Class C water may be not less than 5 parts per  
28 million or 60% of saturation, whichever is higher, except that in identified salmonid  
29 spawning areas where water quality is sufficient to ensure spawning, egg incubation  
30 and survival of early life stages, that water quality sufficient for these purposes must  
31 be maintained. In order to provide additional protection for the growth of indigenous  
32 fish, the following standards apply.

33 (1) The 30-day average dissolved oxygen criterion of a Class C water is 6.5 parts  
34 per million using a temperature of 22 degrees centigrade or the ambient  
35 temperature of the water body, whichever is less, if:

36 (a) A license or water quality certificate other than a general permit was  
37 issued prior to March 16, 2004 for the Class C water and was not based on a  
38 6.5 parts per million 30-day average dissolved oxygen criterion; or

39 (b) A discharge or a hydropower project was in existence on March 16, 2005  
40 and required but did not have a license or water quality certificate other than  
41 a general permit for the Class C water.

1 This criterion for the water body applies to licenses and water quality certificates  
2 issued on or after March 16, 2004.

3 (2) In Class C waters not governed by subparagraph (1), dissolved oxygen may  
4 not be less than 6.5 parts per million as a 30-day average based upon a  
5 temperature of 24 degrees centigrade or the ambient temperature of the water  
6 body, whichever is less. This criterion for the water body applies to licenses and  
7 water quality certificates issued on or after March 16, 2004.

8 The department may negotiate and enter into agreements with licensees and water  
9 quality certificate holders in order to provide further protection for the growth of  
10 indigenous fish. Agreements entered into under this paragraph are enforceable as  
11 department orders according to the provisions of sections 347-A to 349.

12 Between May 15th and September 30th, the number of Escherichia coli bacteria of  
13 human and domestic animal origin in Class C waters may not exceed a geometric  
14 mean of ~~126~~ 100 CFU per 100 milliliters over a 90-day interval or ~~an instantaneous~~  
15 ~~level of 236~~ 320 CFU per 100 milliliters in more than 10% of the samples in any 90-  
16 day interval. In determining human and domestic animal origin, the department shall  
17 assess licensed and unlicensed sources using available diagnostic procedures. The  
18 board shall adopt rules governing the procedure for designation of spawning areas.  
19 Those rules must include provision for periodic review of designated spawning areas  
20 and consultation with affected persons prior to designation of a stretch of water as a  
21 spawning area.

22 **Sec. 7. 38 MRSA §465, sub-§4, ¶C**, as amended by PL 2005, c. 182, §5, is  
23 further amended to read:

24 C. Discharges to Class C waters may cause some changes to aquatic life, except that  
25 the receiving waters must be of sufficient quality to support all species of fish  
26 indigenous to the receiving waters and maintain the structure and function of the  
27 resident biological community. ~~This paragraph does not apply to aquatic pesticide or~~  
28 ~~chemical discharges approved by the department and conducted by the department,~~  
29 ~~the Department of Inland Fisheries and Wildlife or an agent of either agency for the~~  
30 ~~purpose of restoring biological communities affected by an invasive species.~~

31 **Sec. 8. 38 MRSA §465-A, sub-§1, ¶B**, as amended by PL 2007, c. 292, §23, is  
32 further amended to read:

33 B. Class GPA waters must be described by their trophic state based on measures of  
34 the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and  
35 other appropriate criteria. Class GPA waters must have a stable or decreasing trophic  
36 state, subject only to natural fluctuations and must be free of culturally induced algal  
37 blooms that impair their use and enjoyment. The number of Escherichia coli bacteria  
38 of human and domestic animal origin in these waters may not exceed a geometric  
39 mean of ~~29~~ 100 CFU per 100 milliliters over a 90-day interval or ~~an instantaneous~~  
40 ~~level of 194~~ 320 CFU per 100 milliliters in more than 10% of the samples in any 90-  
41 day interval.

42 **Sec. 9. 38 MRSA §465-B, sub-§2, ¶B**, as amended by PL 2005, c. 409, §3, is  
43 further amended to read:

1 B. The dissolved oxygen content of Class SB waters must be not less than 85% of  
2 saturation. Between May 15th and September 30th, the numbers of enterococcus  
3 bacteria of human and domestic animal origin in these waters may not exceed a  
4 geometric mean of ~~8~~ 30 CFU per 100 milliliters in any 90-day interval or ~~an~~  
5 ~~instantaneous level of 54~~ 110 CFU per 100 milliliters in more than 10% of the  
6 samples in any 90-day interval. In determining human and domestic animal origin,  
7 the department shall assess licensed and unlicensed sources using available  
8 diagnostic procedures. The numbers of total coliform bacteria or other specified  
9 indicator organisms in samples representative of the waters in shellfish harvesting  
10 areas may not exceed the criteria recommended under the National Shellfish  
11 Sanitation Program, United States Food and Drug Administration.

12 **Sec. 10. 38 MRSA §465-B, sub-§3, ¶B**, as amended by PL 2005, c. 409, §4, is  
13 further amended to read:

14 B. The dissolved oxygen content of Class SC waters must be not less than 70% of  
15 saturation. Between May 15th and September 30th, the numbers of enterococcus  
16 bacteria of human and domestic animal origin in these waters may not exceed a  
17 geometric mean of ~~44~~ 30 CFU per 100 milliliters in any 90-day interval or ~~an~~  
18 ~~instantaneous level of 94~~ 110 CFU per 100 milliliters in more than 10% of the  
19 samples in any 90-day interval. In determining human and domestic animal origin,  
20 the department shall assess licensed and unlicensed sources using available  
21 diagnostic procedures. The numbers of total coliform bacteria or other specified  
22 indicator organisms in samples representative of the waters in restricted shellfish  
23 harvesting areas may not exceed the criteria recommended under the National  
24 Shellfish Sanitation Program, United States Food and Drug Administration.

25 **SUMMARY**

26 This bill updates Maine's water quality standards by aligning state law with the  
27 federal Clean Water Act regarding pesticide application to control invasive plants and  
28 mosquito-borne disease and authorizing the Department of Environmental Protection to  
29 use an alternative low-flow requirement when assessing the impact of nutrients on water  
30 quality, contingent upon the department's adopting nutrient rules.