

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-TWO

—  
H.P. 1342 - L.D. 1801

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

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

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

**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 AA and SA waters; and

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

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

**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 immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**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 further amended by amending subparagraph (2) to read:

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality must be maintained and protected. For purposes of this paragraph, the following waters are considered outstanding national resources: those water bodies in national and state parks and wildlife refuges; public reserved 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 specified, listed under sections 467, 468 and 469.

**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:

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

(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 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;

(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

(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.

**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:

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

(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;

(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

(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;

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

(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. 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.

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

(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 bridge is not designated as an outstanding national resource.

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

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

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

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

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

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W., except those waters of Broad Cove lying west of a line running from the point of land immediately south of the cove northerly to Navigation Can #7 - Class SA. Pursuant

to section 464, subsection 4, paragraph F, subparagraph (2), those waters lying within 500 feet of a stormwater discharge licensed by the department on December 31, 2021 in accordance with rules adopted by the department are not designated as outstanding national resources.

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