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Public Law
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Chapter 654
H.P. 1111 - L.D. 1573

An Act To Improve Water Quality through the Phaseout of Overboard Discharges and the Improvement of the Boat Pump-out Laws

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

Sec. 1. 38 MRSA §411-A, sub-§1, as enacted by PL 1989, c. 442, §1 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §25, is repealed and the following enacted in its place:

1. General authority. Subject to the availability of funds under section 411, the commissioner shall pay a portion of an alternative to an overboard discharge system as provided in this section. In the event the overboard discharge owner is not eligible for complete funding through a grant, the commissioner may loan the balance of the eligible alternative system costs not funded through a grant as provided in this section.

A. Pursuant to the cost-share schedule in subsection 2-A, the commissioner shall pay a portion of the expense of a technologically proven alternative system construction project that results in the elimination of an overboard discharge to the waters of the State when that elimination is required under section 414-A, subsection 1-B. The department may not provide grant funds to an overboard discharge owner for the removal of an overboard discharge at a residence unless the residence is the owner's primary residence.

B. If the overboard discharge owner is not eligible for complete funding through a grant, the overboard discharge owner may be eligible for funding provided by the revolving loan fund established by Title 30-A, section 6006-A as administered through the Maine Municipal Bond Bank or its designee for the expense of a technologically proven alternative system construction project that results in the elimination of an overboard discharge to the waters of the State when that elimination is required under section 414-A, subsection 1-B.

C. The costs eligible for payment through a grant or loan under this section include the costs that the department requires for abandonment of the overboard discharge and the design, engineering and construction costs of the replacement system. Grants or loans made under this section may be made directly to the owners of the overboard discharges and may also be made to sanitary and sewer districts that have agreed to establish operation and maintenance programs for holding tanks within their boundaries.

Sec. 2. 38 MRSA §411-A, sub-§2-A, as enacted by PL 2003, c. 246, §4, is amended to read:

2-A. Cost-share. The commissioner shall determine the portion of project expenses eligible for grants under this section as follows:

- A. For an owner of an overboard discharge with an annual income less than \$25,000, 100%;
- B. For an owner of an overboard discharge with an annual income between from \$25,000 and to \$50,000, 90%;
- C. For an owner of an overboard discharge with an annual income between from \$50,001 and to \$75,000, 50%;
- D. For an owner of an overboard discharge with an annual income between from \$75,001 and to \$100,000, 35%;
- E. For an owner of an overboard discharge with an annual income ~~over \$100,000~~ from \$100,001 to \$125,000, 25%; and
- E-1. For an owner of an overboard discharge with an annual income over \$125,000, \$0; and
- F. For a publicly owned overboard discharge facility, 50% to a maximum of \$150,000.

~~For purposes of this subsection, "annual income" means the sum of all the property owner's federal taxable income for the previous year for single family dwellings, gross profits for the previous year for commercial establishments and gross rents for the previous year for rental properties, as listed on the relevant federal income tax returns.~~

For purposes of this subsection, annual income is determined separately for residential property owners and commercial establishments. For a residential property owner, including a trust, "annual income" means the sum of the taxable incomes of each owner of the property if it is jointly owned or of each beneficiary and grantor if the property owner is a trust for the previous year as listed on the relevant federal income tax returns for the previous year. For a commercial establishment, "annual income" means taxable income or ordinary business income for the previous year as listed on the relevant federal income tax return plus any depreciation or other noncash expense that was deducted to compute taxable or ordinary business income on that return. A rental property must be considered a commercial establishment or as contributing to annual income depending on how it is reported on the overboard discharge owner's federal income tax return from the previous year.

Sec. 3. 38 MRSA §413, sub-§3, as amended by PL 2007, c. 292, §18, is further amended to read:

3. Transfer of ownership. Application for transfer of a license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, except that the parties to the transfer are jointly and severally liable for any violation until such time as the department approves transfer or issuance of a

waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

Except when it has been demonstrated within 5 years prior to a transfer, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42 based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharge. If an alternative to the overboard discharge is identified, the alternative system must be installed within 90 days of property transfer, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A.

This subsection applies to licenses issued before September 1, 2010.

Sec. 4. 38 MRSA §413, sub-§3-A is enacted to read:

3-A. Transfer of ownership, significant expansion, division and public sewer connection. Beginning September 1, 2010, if property containing an overboard discharge is transferred or a significant action is proposed, the following procedures apply. For purposes of this subsection, "significant action" means a single construction project performed on a primary residence with an overboard discharge when the total material and labor cost of the construction project exceeds \$50,000. "Significant action" does not include construction that makes the residence accessible to a person with a disability who resides in or regularly uses the residence or reconstruction performed in response to an event beyond the control of the owner, such as a hurricane, flood, fire or the unanticipated physical destruction of the residence.

A. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license as long as the parties to the transfer are jointly and severally liable for any violation thereof until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

B. If there is a transfer, or if a significant action is proposed, the owner of an overboard discharge must conduct an alternatives analysis and may be required to remove the overboard discharge system as provided in this paragraph.

(1) Except when it has been demonstrated within 5 years prior to a transfer, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard

discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

(2) Except when it has been demonstrated within 5 years prior to the significant action, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to the significant action the owner of the overboard discharge shall determine the feasibility of a technologically proven alternative to the overboard discharge that is consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42.

(3) The determination concerning whether there is a technologically proven alternative to an overboard discharge must be based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection that the system constitutes a best practicable treatment under section 414-A, subsection 1-B. If an alternative to the overboard discharge is identified, the alternative system must be installed within 90 days of property transfer or significant action, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A. On a property transfer, a commercial establishment may request an extension of the 90-day period based on information that an extension is necessary due to technical, economic or environmental considerations. The department may authorize an extension for a commercial establishment for as short an additional period as the department considers reasonable but in no case may an extension be authorized to continue beyond the expiration of the current waste discharge license or 2 years from the property transfer, whichever is later. Within 10 business days of receipt of a complete extension request, the department shall issue a written decision approving or denying the extension.

Nothing in this paragraph requires a municipality to withhold a local permit or approval associated with a significant action until the provisions of this paragraph have been met.

C. An overboard discharge must be removed without regard to available funding from the department where connection to a public sewer is practicable.

Sec. 5. 38 MRSA §414-A, sub-§1-B, as amended by PL 2003, c. 246, §§10 to 13 and c. 689, Pt. B, §6, is further amended to read:

1-B. Licensing of overboard discharges. The following provisions shall govern the ~~relicensing~~ licensing of overboard discharges.

A. The department shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of ~~relicensing~~ licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge, ~~based on documentation from a licensed site evaluator provided by the applicant and approved by the department.~~ The licensed site evaluator shall demonstrate experience

in designing replacement systems for overboard discharges. If a technologically proven alternative is identified, the alternative must be installed within 180 days of the application's being accepted by the department, subject to availability of funding under section 411-A. If the applicant is not eligible for funding under section 411-A, the alternative system must be installed within 180 days. If the applicant is eligible for funding but no funding is available, the installation of an alternative system may be postponed until funding is available.

(1) The department's finding must be based on documentation from a licensed site evaluator provided by the overboard discharge owner and approved by the department. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharges.

(2) If a technologically proven alternative system is identified and is eligible for grant funding according to the cost-share schedule under section 411-A and grant funding is available, the alternative system must be installed within 180 days of written notification from the department, unless soil conditions are poor due to seasonal weather, in which case the alternative may be installed as soon as soil conditions permit.

(3) If a technologically proven alternative system eligible for grant funding according to the cost-share schedule is identified and funding is not available, then the owner of the overboard discharge is not required to install the system until grant funds are available or as provided in section 413, subsection 3. The department may determine that grant funds are not available when there are insufficient funds available for all alternative systems and the alternative system is not one of the systems identified as a priority for funding from available grant funds by the department.

(4) If a technologically proven alternative system for an overboard discharge from a residence is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012.

(5) If a technologically proven alternative system for an overboard discharge from a commercial establishment is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012.

B. For the purposes of this subsection, the department may not require the installation or use of wastewater holding tanks as a "technologically proven alternative method of wastewater disposal" except in the following cases:

(1) Seasonal residential overboard discharges that are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service, when the elimination of the discharge alone or in conjunction with the elimination of other discharges will result in the opening of a shellfish harvesting area or the removal of a public nuisance condition;

(2) All overboard discharges located within the boundaries of a sanitary or sewer district when the district has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district; and

(3) All overboard discharges located within the municipality when the municipality has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the municipality's services who are physically connected to the sewers of the municipality.

E. At the time of each relicensing of an overboard discharge, the department shall impose all conditions necessary to meet the requirements of this section and all other relevant laws.

F. For the purposes of this subsection, the department may not require the installation or use of an identified technologically proven alternative system unless the department finds that the identified alternative constitutes best practicable treatment under subsection 1, paragraph D.

Sec. 6. 38 MRSA §423-B, sub-§2, as enacted by PL 1999, c. 655, Pt. B, §1, is amended to read:

2. Pump-out facilities required. A marina serving coastal or inland waters shall provide a pump-out facility or provide through a written contractual agreement approved by the commissioner a facility to remove sanitary waste from the holding tanks of watercraft. The pump-out facility must be easily accessible and functional during normal working hours and at all stages of the tide. If a marina serves vessels year-round, the provisions of this subsection apply to the marina year-round. The fee charged by the marina is limited to 200% of the fee limit set pursuant to the federal Clean Vessel Act of 1992, 50 Code of Federal Regulations, Section 85.11 (2008) regardless of the pump-out facility funding source.

Sec. 7. 38 MRSA §465-B, sub-§1, ¶C, as amended by PL 2007, c. 291, §6, is further amended to read:

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

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

(2) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species. When the department issues a license for the

discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website; and

(3) An overboard discharge licensed prior to January 1, 1986 if no practicable alternative exists.

Effective July 12, 2010