H. Richardson

APPROVED	CHAPTER
APR 22 '04	650
BY GOVERNOR	PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOUR

S.P. 378 - L.D. 1158

An Act To Protect Maine's Coastal Water

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

Sec. 1. 38 MRSA §417, sub-§3, as affected by PL 1989, c. 890, Pt. A, §40 and enacted by Pt. B, §34, is amended to read:

3. Refuse. Any scrap metal, junk, paper, garbage, ~~septic tank~~ septage, sludge, rubbish, old automobiles or similar refuse.

Sec. 2. 38 MRSA §423-D is enacted to read:

§423-D. Graywater and blackwater discharges from commercial passenger vessels

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Blackwater" means human bodily wastes and the wastes from toilets and other receptacles intended to receive or retain human bodily wastes.

B. "Coastal waters" means those portions of the Atlantic Ocean within the jurisdiction of the State and all other waters of the State subject to the rise and fall of the tide.

C. "Commercial passenger vessel" means a large or small commercial passenger vessel.

D. "Graywater" means galley, dishwasher, bath and laundry wastewater. "Graywater" does not include other wastes or waste streams.

E. "Large commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for 250 or more passengers for hire, determined with reference to the number of lower berths.

F. "No-discharge zone" means an area within coastal waters that has been designated by the United States Environmental Protection Agency pursuant to 33 United States Code, Section 1322, to be an area in which discharge of blackwater is prohibited.

G. "Small commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for fewer than 250 passengers for hire, determined with reference to the number of lower berths.

2. Licensing exemptions. A license is not required pursuant to section 413 prior to the discharge of graywater to coastal waters from:

A. A small commercial passenger vessel;

B. A commercial passenger vessel operated by the United States or a foreign government; or

C. A commercial passenger vessel if the discharge is made for the purpose of securing the vessel or saving life at sea, and as long as all reasonable precautions have been taken to prevent or minimize the discharge. A discharge as described in this paragraph must be reported in accordance with subsection 3.

3. Report of unauthorized discharge. Discharges of blackwater or graywater from a large commercial passenger vessel to coastal waters must be reported to the department as provided in this subsection.

A. The owner or operator of a large commercial passenger vessel that discharges blackwater within a no-discharge zone or discharges blackwater in violation of federal law outside a no-discharge zone shall immediately report that discharge to the department. The owner or operator shall submit a written report concerning the discharge to the department within 30 days of the discharge.

B. Beginning January 1, 2006, the owner or operator of a large commercial passenger vessel that discharges graywater without a license or in a manner inconsistent with a license issued pursuant to section 413 shall immediately report that discharge to the department. The owner or operator shall also submit a written report concerning the discharge to the department within 30 days of the discharge.

4. Prohibited discharges; exemption; general permit requirement. The following provisions govern the discharge of graywater and a mixture of graywater and blackwater from large commercial passenger vessels.

A. The owner or operator of a large commercial passenger vessel may not discharge graywater or a mixture of graywater and blackwater to coastal waters.

B. Notwithstanding paragraph A, beginning January 1, 2006, the owner or operator of a large commercial passenger vessel may discharge graywater or a mixture of graywater and blackwater to coastal waters if:

(1) The discharge is permitted and meets standards for continuous discharge under the federal Consolidated Appropriations Act of 2001, Public Law 106-554, Section 1(a)(4) and Appendix D, Division B, Title XIV, Section 1404(b) or (c), 114 Stat. 2763, 2763A-316;

(2) While operating in coastal waters, the owner or operator of the large commercial passenger vessel maintains a discharge record book as required by 33 Code of Federal Regulations 159.315 (2003);

(3) The owner or operator of the large commercial passenger vessel meets the sampling and reporting requirements of 33 Code of Federal Regulations 159.317 (2003) prior to and while operating in coastal waters, except that instead of meeting the requirements in 33 Code of Federal Regulations 159.317(a)(2) the owner or operator of the large commercial passenger vessel shall, not less than 30 days nor more than 120 days prior to the large commercial passenger vessel's initial entry into the coastal waters during any calendar year, provide a certification to the department that the large commercial passenger vessel's graywater and mixture of graywater and blackwater meets the standards specified in subparagraph (1); and

(4) The department issues the owner or operator of the large commercial passenger vessel a general permit to

discharge graywater or a mixture of graywater and blackwater.

For purposes of this paragraph, the department shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, to implement the requirements in the federal Consolidated Appropriations Act of 2001, Public Law 106-554, Section 1(a)(4) and Appendix D, Division B, Title XIV, Section 1404(b) or (c), 114 Stat. 2763, 2763A-316 and Code of Federal Regulations 159.315 and 159.317 (2003) with the following changes: "Maine" is substituted for "Alaska," "Department of Environmental Protection" is substituted for "Captain of the Port" and for "Coast Guard," and "graywater or a mixture of graywater and blackwater" is substituted for "treated sewage and/or graywater."

The department shall enter into a memorandum of agreement with the United States Coast Guard to consolidate information requirements of the department and the United States Coast Guard to the extent acceptable to the United States Coast Guard.

5. Agent for service of process. The owner or operator of a commercial passenger vessel shall continuously maintain a designated agent for service of process whenever the commercial passenger vessel is in coastal waters. The agent must be an individual resident of the State, a domestic corporation or a foreign corporation having a place of business in and authorized to do business in the State. "Agent for service of process" means an agent upon whom process, notice of or demand required or permitted by law to be served upon the owner or operator may be served.

6. Innocent passage. This section does not apply to a commercial passenger vessel that operates in the coastal waters of the State solely in innocent passage. For purposes of this paragraph, a commercial passenger vessel is engaged in innocent passage if its operation in coastal waters of the State, regardless of whether the vessel is a United States or foreign-flag vessel, would constitute innocent passage under the:

A. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, 15 U.S.T. 1606; or

B. United Nations Convention on the Law of the Sea 1982, December 10, 1982, United Nations publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel.

Sec. 3. 38 MRSA §464, sub-§4, ¶A, as amended by PL 2003, c. 246, §14 and c. 318, §2, is further amended by amending subparagraph (6) to read:

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

Sec. 4. PL 1999, c. 655, Pt. A, §1, sub-§6 is amended to read:

6. No later than January 15, 2005, apply to the United States Environmental Protection Agency for designation of up to 50 significant harbors or bays in the territorial waters of the State, as identified by the Commissioner of Environmental Protection, as "no-discharge zones" pursuant to 33 United States Code, Section 1322. In identifying significant harbors and bays,

the commissioner shall give priority to areas that are potentially commercially significant shellfish harvesting resources and areas that have significant boat traffic. The department may also recommend to the joint standing committee of the Legislature having jurisdiction over natural resources matters that application be made by the Department of Environmental Protection for additional no-discharge zones, including all or part of the coast, as appropriate at future dates; and

Sec. 5. Report concerning graywater discharges from small commercial passenger vessels. The Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 1, 2006 concerning whether small commercial passenger vessels, or a subset of small commercial passenger vessels, should be required to seek authorization to discharge graywater. The department may include any recommended legislation concerning vessel discharges. The committee may report out legislation during the Second Regular Session of the 122nd Legislature concerning graywater discharges from small commercial passenger vessels.

Sec. 6. Report concerning air emissions. The Department of Environmental Protection shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2005 concerning issues related to air emissions from vessels. The report must include draft legislation necessary to implement any proposal. The committee may report out legislation during the First Regular Session of the 122nd Legislature relating to air emissions from vessels.

Sec. 7. Discharge prior to January 1, 2006. Notwithstanding the Maine Revised Statutes, Title 38, section 423-D, subsection 4, paragraph A, beginning on the effective date of this Act and ending January 1, 2006, the owner or operator of a large commercial passenger vessel may discharge graywater or a mixture of graywater and blackwater to coastal waters if the vessel is authorized to discharge graywater or a mixture of graywater and blackwater in Alaska pursuant to the federal Consolidated Appropriations Act of 2001, Public Law 106-554, Section 1(a)(4) and Appendix D, Division B, Title XIV, Section 1404(b) or (c), 114 Stat. 2763, 2763A-316.

Sec. 8. General permit; legislative intent. It is the intent of the Legislature that the regulation of graywater and graywater and blackwater mixture discharges from large commercial passenger vessels that are equipped with wastewater treatment systems that require continuous discharge be consistent with the

regulation of similar vessels in Alaska. A general permit issued under the Maine Revised Statutes, Title 38, section 423-D, subsection 4, paragraph B, subparagraph (4) must be consistent with:

1. The requirements in Title 38, section 423-D, subsection 4, paragraph B; and

2. The requirements in rules adopted by the Department of Environmental Protection regarding general permits for certain wastewater discharges, except that the rule provision that authorizes the Department of Environmental Protection to require a person otherwise authorized under a general permit to apply for an individual permit does not apply.