

# HOUSE . . . . . No. 6314

---

---

## The Commonwealth of Massachusetts

---

HOUSE OF REPRESENTATIVES, May 1, 1980.

The committee on Natural Resources and Agriculture, to whom was referred the petition (accompanied by bill, House, No. 2488) of Roger R. Goyette, Thomas K. Lynch, Richard R. Silva and Howard C. Cahoon, Jr., relative to clarifying certain permit provisions of the Clean Waters Act; and the petition (accompanied by bill, House, No. 2489) of Thomas K. Lynch for legislation to clarify certain permit provisions of the Clean Waters Act, reports recommending that the accompanying bill (House, No. 6314) ought to pass.

For the committee,

RICHARD J. DWINELL

The Commonwealth of Massachusetts

---

In the Year One Thousand Nine Hundred and Eighty.

---

AN ACT CLARIFYING CERTAIN PERMIT PROVISIONS OF THE MASSACHUSETTS CLEAN WATERS ACT.

*Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:*

1 SECTION 1. Section twenty-six A of chapter twenty-one of the  
2 General Laws, as most recently added by section two of chapter  
3 five hundred and forty-six of the acts of nineteen hundred and  
4 seventy-three, is hereby amended by adding thereto the following  
5 two definitions:

6 "Permit proceeding", the consideration of any application for a  
7 permit and of any proposal or request to suspend, revoke, modify  
8 or renew a permit.

9 "Permit determination", the decision of the director upon a  
10 permit proceeding.

1 SECTION 2. Section thirty-three D of chapter twenty-one of  
2 the General Laws, as added by section six of chapter one thousand  
3 seventy-four of the acts of nineteen hundred and seventy-three, is  
4 hereby repealed.

1 SECTION 3. Section forty-three of chapter twenty-one of the  
2 General Laws, as most recently amended by section nine of chapter  
3 five hundred forty-six of the acts of nineteen hundred and seventy-  
4 three, is hereby further amended by striking said section and  
5 substituting in place thereof the following two sections: —

6 *Section 43. Discharge Permits.* (a) No person shall discharge  
7 pollutants into waters of the commonwealth or construct, install,  
8 modify, operate or maintain an outlet for such discharge, or engage  
9 in any other activity which may be reasonably expected to result,  
10 directly or indirectly, in a discharge of pollutants to said waters,  
11 without a currently valid permit issued by the director pursuant to  
12 this section.

13 (b) The director shall adopt such regulations as he deems neces-  
14 sary for the administration of this section. Said regulations shall  
15 prescribe forms by which application may be made for the issu-  
16 ance, modification or revocation of the permits prescribed by this  
17 section, may prescribe such fees as the director deems reasonable  
18 and appropriate for processing such applications, and shall pre-  
19 scribe procedures for the conduct of permit proceedings under this  
20 section. The director by regulation may exempt classes and catego-  
21 ries of sources from the permit requirements of this section.

22 (c) Any person may apply to the division for a permit to author-  
23 ize a discharge prohibited by paragraph (a) of this section. Any  
24 person to whom a permit has been issued under this section may  
25 apply to the division for the modification or revocation of such  
26 permit. Each applicant shall file with the division an application  
27 providing thereon such information as the division shall require  
28 and shall pay therewith the appropriate application fee. The direc-  
29 tor shall give public notice of every permit proceeding and, if the  
30 applicant so requests or the director finds that the public interest so  
31 requires, the division shall hold a public hearing on the matter in a  
32 community within the affected area of the discharge at least ten  
33 days after giving public notice thereof.

34 (d) The director shall determine to issue or amend a permit if he  
35 finds that the discharge and the treatment works proposed will  
36 conform to applicable effluent limitations, to regulations, receiv-  
37 ing water standards and comprehensive plans adopted by the  
38 division, and to applicable provisions of federal law and rules and  
39 regulations adopted thereunder. The director may issue such per-  
40 mits subject to such terms, conditions, restrictions and require-  
41 ments as it deems necessary. A permit may specify effluent  
42 limitations, interim and final deadlines for compliance, the term  
43 for which the permit is issued which may not be in excess of five  
44 years, and such requirements of proper operation and mainte-  
45 nance, monitoring, sampling, recording, reporting and inspection  
46 as the director may prescribe. Permits may prescribe additional  
47 requirements, including technical controls, management practices,  
48 provisions for insuring payments of user charges, and other con-  
49 trols which the director deems necessary to safeguard the quality of  
50 the receiving waters or to comply with pertinent provisions of the  
51 laws of the commonwealth or federal law. A permit for a discharge

52 from publicly-owned treatment works shall require the permittee:  
53 (i) to have in effect or to establish without delay, and to enforce, an  
54 adequate sewer ordinance that prohibits the introduction of  
55 incompatible wastes and slug loadings into the works, and that  
56 imposes pretreatment requirements that at a minimum are as  
57 stringent as pretreatment standards adopted pursuant to para-  
58 graphs (6) and (9) of section twenty-seven of this chapter and  
59 pursuant to federal law and regulations adopted thereunder; (ii) to  
60 monitor and report periodically to the division upon waste flows to  
61 the treatment works; (iii) to adopt procedures that will assist in  
62 identifying and reporting to the division the source and nature of  
63 any new source of discharge to the works and any significant  
64 change in flow to the works; and (iv) to adopt procedures to  
65 safeguard against excessive or improper loadings or the collection  
66 and treatment system.

67 (e) The director may propose and determine to modify, suspend  
68 or revoke any permit, or deny any permit application, at any time,  
69 in whole or in part, for cause, including, but not limited to: viola-  
70 tion of any permit term or condition; violation of any standard,  
71 regulation or order issued under the provisions of this chapter;  
72 obtaining a permit by misrepresentation; failure to disclose fully all  
73 relevant facts; or any change in or discovery of conditions that calls  
74 for reduction or discontinuance of the authorized discharge or  
75 denial of the proposed discharge. The director may also modify a  
76 schedule of compliance in a permit at the request of a permittee  
77 upon a showing, satisfactory to the director, that the requested  
78 modification is appropriate in view of circumstances for which the  
79 permittee is not at fault.

80 *Section 43A. Sewer Permits.* (a) No person shall construct,  
81 maintain, modify or use any sewer extension or connection, or any  
82 treatment works, or discharge to any sewer system, without a  
83 currently valid permit issued by the director to this section.

84 (b) The director shall adopt such regulations as he deems neces-  
85 sary for the administration of this section. Said regulations shall  
86 prescribe forms by which application may be made for the issu-  
87 ance, modification or revocation of the permits prescribed by this  
88 section, may prescribe such fees as the director deems reasonable  
89 and appropriate, and shall prescribe procedures for the conduct of  
90 permit proceedings under this section. The director by regulation

91 may exempt classes and categories of sources from the permit  
92 requirements of this section.

93 (c) Any person may apply to the division for a permit to author-  
94 ize an action prohibited by paragraph (a) of this section. Any  
95 person to whom a permit has been issued may apply to the division  
96 for the modification or revocation of such permit. Each applicant  
97 shall file with the division an application providing thereon such  
98 information as the division may require and shall pay therewith the  
99 appropriate application fee. The director shall give public notice of  
100 every permit proceeding and, if the applicant so requests or if the  
101 director finds that the public interest so requires, the division shall  
102 hold a public hearing on the matter in a community within the  
103 affected area of the sewer extension or connection at least ten days  
104 after giving notice thereof.

105 (d) The director shall determine to issue or amend a permit if he  
106 finds: that there is adequate capacity to receive the flows to be  
107 discharged; that the discharge will not result in violation of any  
108 standard, regulation or plan adopted by the division or any federal  
109 law or standard or regulation adopted thereunder; and that the  
110 discharge will not create a condition which presents a substantial  
111 threat to the public health, safety and environment. The director  
112 may issue such permits subject to such terms, conditions and  
113 requirements as it deems necessary. A permit may specify effluent  
114 limitations, interim and final deadlines for compliance where  
115 appropriate, the term for which the permit is issued, and such  
116 requirements of proper operation and maintenance, monitoring,  
117 sampling, recording, reporting and inspection as the director may  
118 prescribe. Said permits may require any user to comply with  
119 pretreatment standards and other safeguards to prevent improper  
120 or excessive waste loadings of the receiving collection and treat-  
121 ment facilities.

122 (e) The director may propose and determine to modify, suspend  
123 or revoke any permit, or deny any permit application, at any time,  
124 in whole or in part, for cause, including, but not limited to: viola-  
125 tion of any permit term or condition; violation of any regulation,  
126 standard or order issued under the provisions of this chapter;  
127 obtaining a permit by misrepresentation; failure to disclose all  
128 relevant facts; or any change in or discovery of conditions that call  
129 for reduction in or discontinuance of the authorized discharge or

130 denial of the proposed discharge. The director may also modify a  
131 permit, at the request of a permittee, upon a showing satisfactory  
132 to the director that the requested modification is appropriate in  
133 view of circumstances for which the permittee is not at fault.

134 (f) Nothing in this section shall be construed as superseding the  
135 powers of any district or municipality under other law to enact and  
136 enforce sewer ordinances and to issue permits for sewer connec-  
137 tions consistent with the provisions of this section and regulations  
138 adopted hereunder.

1 SECTION 4. Section forty-four of chapter twenty-one of the  
2 General Laws, as most recently amended by chapter twenty-six of  
3 the acts of nineteen hundred and seventy-four, is hereby further  
4 amended by striking subsections (1) and (2) of said section forty-  
5 four and inserting in place thereof the following two  
6 subsections: —

7 (1) Whenever it appears to the director that there is a violation  
8 or a potential violation of any provision of this chapter or any  
9 license, order, permit, regulation, standard or plan issued or  
10 adopted thereunder, the director may issue to the persons causing  
11 or contributing or likely to cause or contribute to such violation, an  
12 order requiring the production of samples and records, or impos-  
13 ing such restraints on or requiring such action as he deems neces-  
14 sary. Said order may require that a person cease and desist from  
15 discharging to waters of the commonwealth or from undertaking  
16 any action that may reasonably be expected to result in such  
17 discharge. Said order may also require that persons cease and  
18 desist from making, modifying or utilizing any connection to or  
19 extension of a municipal sewerage system.

20 (2) In order to prevent or reduce discharges to the waters of the  
21 commonwealth or to implement comprehensive river basin or  
22 areawide plans adopted or approved by the division, the director  
23 may order the appropriate municipalities or districts to construct  
24 facilities or to take other corrective action necessary to prevent or  
25 reduce such discharges or to implement such plans.

1 SECTION 5. Said section forty-four is hereby further amended  
2 by inserting, in subsection (3) thereof, after the word "charges" the  
3 phrase "or an industrial cost recovery system or an industrial  
4 pretreatment system,".

1 SECTION 6. Said section forty-four is hereby further amended  
2 by the addition of the following subsection:

3 (4) Issuance of an order under this section shall not preclude  
4 and shall not be deemed an election to forego any action to recover  
5 costs and damages, to seek injunctive relief, or to seek the imposi-  
6 tion of civil penalties or criminal fines and sanctions.

1 SECTION 7. Section forty-five of chapter twenty-one of the  
2 General Laws, as most recently amended by section eleven of chap-  
3 ter five hundred forty-six of the acts of nineteen hundred and  
4 seventy-three, is hereby further amended by striking said section  
5 and substituting in place thereof the following section:

6 *Section 45. Administrative and Judicial Review.* (a) Any per-  
7 son aggrieved by a determination of the director to issue, deny,  
8 revoke, modify or suspend any permit, license or order issued  
9 under the provisions of sections twenty-six through fifty-three of  
10 this chapter may request an adjudicatory hearing thereon before  
11 the division under the provisions of chapter thirty A of the General  
12 Laws. Any such determination shall contain a notice of this right to  
13 request a hearing and shall specify a time limit, not to exceed thirty  
14 days, within which said person shall request said hearing. If no  
15 such request be timely made, the determination shall be deemed  
16 assented to. If a timely request is made, the division shall within a  
17 reasonable time act upon it in accordance with the provisions of  
18 said chapter thirty A. The provisions of this paragraph shall not  
19 apply to: (i) proposals and declarations of the division, and approv-  
20 als thereof by the water resources commission, made pursuant to  
21 section twenty-eight of this chapter, with respect to the formation,  
22 enlargement or consolidation of districts; and (ii) orders issued by  
23 the director pursuant to section forty-four of this chapter to secure  
24 compliance with the terms and conditions of outstanding permits  
25 or licenses issued by the director.

26 (b) A person aggrieved by a final decision of the director in an  
27 adjudicatory hearing held under the provisions of paragraph (a) of  
28 this section may obtain judicial review thereof pursuant to the  
29 provisions of said chapter thirty A.

1 SECTION 8. Section forty-six of chapter twenty-one of the  
2 General Laws, as most recently amended by section twelve of chap-

3 ter five hundred forty-six of the acts of nineteen hundred and  
4 seventy-three, is hereby further amended by striking from the first  
5 sentence the words: "in equity".

1 SECTION 9. Section forty-six A of chapter twenty-one of the  
2 General Laws, as most recently added by section thirteen of chap-  
3 ter five hundred forty-six of the acts of nineteen hundred and  
4 seventy-three, is hereby repealed.

1 SECTION 10. All orders, rules and regulations duly made, and  
2 all licenses, permits, certificates, registrations and approvals duly  
3 issued pursuant to the authority of the laws repealed and amended  
4 by this act, and which are in force and effect immediately prior to  
5 the effective date of this act, shall continue in full force and effect  
6 and the provisions thereof shall be enforceable by the division of  
7 water pollution control until they expire by their terms or until they  
8 are superseded, revised, modified or rescinded by said division.  
9 Any suit, action, cause of action or other proceeding arising or  
10 lawfully commenced prior to the effective date of this act, under the  
11 authority of the laws amended or repealed hereby shall not abate  
12 by reason of the passage of this act.