

SENATE No. 2394

The Commonwealth of Massachusetts

—
In the One Hundred and Ninetieth General Court
(2017-2018)
—

SENATE, Thursday, April 5, 2018

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petitions (accompanied by bill, Senate, No. 448) of Patricia D. Jehlen, James M. Cantwell, Daniel J. Ryan, James B. Eldridge and other members of the General Court for legislation to promote awareness of safe recreation in public waterways; and (accompanied by bill, House, No. 2935) of Denise Provost and others for legislation to further regulate the discharge of pollutants into waters,- reports the accompanying bill (Senate, No. 2394).

For the committee,
Anne M. Gobi

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act promoting awareness of sewage pollution in public waters.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith certain requirements and procedures to notify the public of sewage discharges into the waters of the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

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. Chapter 21 of the General Laws, is hereby amended by inserting after
2 section 43 the following section:-

3 Section 43A. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:-

5 "Combined sewer system", a sewer system designed to collect and convey, storm
6 water runoff and sewage in shared piping.

7 "Department", the department of environmental protection.

8 "Discharge" or "discharging", a release or diversion of sewage, industrial waste or
9 other effluent, which is untreated or partially treated, including from a combined sewer overflow,
10 that is emitted from an outfall directly or indirectly into waters of the commonwealth.

11 “Outfall”, an outlet designed for the purpose to allow a discharge that is part of, or
12 connected to a combined sewer system, sanitary sewer system or treatment works, including a
13 connection to any such system or facility, intended to allow wastewater to divert or bypass
14 treatment by a facility.

15 “Permittee”, a person granted a permit under section 43, to operate and maintain a
16 particular outlet for the discharge of pollutants into waters of the commonwealth; and, to include
17 for the purposes of this definition, a person discharging pollutants from an outlet, without a
18 required permit or in violation of the conditions of a valid permit.

19 (b) A permittee shall issue a public advisory when there is a discharge from
20 permittee’s outfall in accordance with the provisions of this section. The department may allow a
21 permittee to issue a combined advisory message when a weather event or other related
22 occurrence involves more than 1 outfall of the permittee discharging into the same water body or
23 waterway. To continue to inform the public about a discharge or potential environmental hazard
24 from a discharge, a permittee shall update its advisory as required by regulation or directive of
25 the department.

26 A public advisory shall, to the extent a permittee has available information, describe
27 in plain language the (1) outfall’s location, (2) approximate time, date and duration of the
28 discharge, (3) estimated discharge volume, (4) overall discharge water quality determined by any
29 pre-treatment of the effluent to remove bacteria, solid wastes, and other pollutants, (5) waters
30 and land areas affected or expected to be affected by such discharge, (6) identity of the outfall
31 permittee, (7) precautionary measures for the public to avoid health risks from contact with
32 effluent, and (8) information as the department shall prescribe by regulation or directive.

33 (c) A permittee shall issue a public advisory no later than 2 hours after discovery of a
34 discharge or an expected discharge, from the permittee's outfall to the department of public
35 health, the municipal board of health or its health department where the outfall is located, and to
36 the department. The permittee shall also send the advisory to other municipal boards of health or
37 their health departments in cities and towns with waters and land areas that are affected, and in
38 those municipalities that are expected to be affected, by such discharge as defined by the
39 department. Notwithstanding, where a city or town obtains its public water supply from, or near
40 a water body or waterway that could be affected by such discharge, the permittee shall send an
41 advisory without delay to its municipal health board or department. Advisories shall be
42 communicated in the manner prescribed by regulation or directive of the commissioner. The
43 commissioner may, for discharges that need emergency notification, require by regulation or
44 directive that such advisory be issued in less than 2 hours.

45 (d) The permittee shall also issue a public advisory by email or text messaging to the
46 public that subscribe to receive notifications about a discharge from permittee's outfall, to
47 include any subscription requests shared by the department that relate to permittee's outfall. An
48 advisory shall issue no later than 4 hours after discovery of a discharge, or after a discharge is
49 expected to occur, from the permittee's outfall as defined by the department. The permittee shall
50 also send the advisory to the 2 largest news organizations that report on local news in
51 communities near the outfall.

52 A permittee of an outfall shall establish a public website to post advisories when
53 issued and to receive requests from the public to subscribe to permittee's discharge notifications.
54 The department by regulation may require that permittees provide advisories by other means,
55 including, without limitation, telephone voice messaging and social media.

56 (e) The department in consultation with the department of public health shall by
57 regulation, establish standards and guidelines requiring municipal boards of health or their health
58 departments to issue public health warnings when notified by a permittee about a discharge
59 under subsection (c). When warnings are necessary, a municipal health board or its health
60 department shall utilize the municipality's existing emergency notification system, including if
61 available reverse 911 emergency calls. To protect public health, the commissioner may direct a
62 municipal health official of a board or department to issue a public warning about a discharge.
63 Nothing in this subsection shall preempt municipal boards of health or their health departments
64 from issuing necessary public warnings concerning an outfall discharge.

65 (f) The permittee shall install and maintain conspicuous warning signage at the
66 location of its outfall and at public access points to waters affected by a potential discharge from
67 permittee's outfall as determined by the department, including entrances to boat ramps, piers and
68 designated swimming areas. Signage shall be suitable for its location and be of the size and form
69 of notice as the department shall prescribe in compliance with this section. Each sign shall
70 include the following information using plain language and symbols to (1) identify the existence
71 of the outfall, (2) inform about any weather events that can cause a discharge, (3) warn of the
72 potential threat to public health by recreating in, or using waters and shores affected by a
73 discharge, (4) recommend precautions for safe recreation around affected waters and shores, and
74 (5) provide information for the public to subscribe to notifications about discharges in area
75 waters. Such signage shall conform to all applicable provisions of federal law and related rules
76 and regulations.

77 The department shall coordinate with the department of conservation and recreation,
78 municipalities, and other landowners that have public access points that may be affected by a
79 discharge, for the placement and maintenance of such signage on public and private property.

80 (g) A permittee shall provide the department with a plan that details the type of
81 metering, modeling or other method, permittee will use to determine when a discharge occurs at
82 its outfall to comply with the notification requirements of this section. Such plan shall, be
83 submitted no later than 6 months after the department adopts regulations for this section under
84 subsection (j), and when application is made for a permit or renewal of permit, to operate and
85 maintain an outlet under section 43.

86 If an outfall will not have metering equipment to detect and transmit reliable
87 information about a discharge in real-time, the permittee shall apply to the commissioner for
88 authorization to use another method. The commissioner shall approve the proposed method,
89 provided the permittee by such method can obtain reliable information about any discharge from
90 its outfall and issue public advisories within the times required by this section.

91 If the proposed method or the current discharge detection capabilities of permittee's
92 outfall will not provide timely or reliable information, the commissioner may extended the time
93 for a permittee to issue a public advisory, provided such time shall be extended only as
94 necessary, not to exceed 24 hours. An extension may, be authorized only after the permittee
95 provides to the commissioner an amended plan of permittee's intended improvements to its
96 system to better detect an outfall discharge that is acceptable to the commissioner.

97 Upon application of the permittee, the commissioner may waive any requirement
98 under this section related to permittee's outfall, provided the outfall is decommissioned, or any

99 discharge from the outfall has occurred rarely, in the prior 5 years and will pose no substantial
100 threat to public health or the environment. A waiver shall be valid for 5 years.

101 Authorizations and waivers allowed by the commissioner under this subsection shall
102 be in writing and specify the conditions for each exception.

103 (h) The department shall establish and maintain a public website to provide
104 information about discharge notifications sent by permittees to the department under subsection
105 (b). The website shall display information about any current outfall discharge in the
106 commonwealth and any updates about a discharge within 24 hours after the department's
107 receives such data. Information posted on the website from permittees shall be indexed by
108 municipality, and by affected area water bodies and waterways, and shall be accessible for not
109 less than 10 years after posting. The website shall display an online application, clearly identified
110 and accessible, which the public may use to self-subscribe to receive electronic discharge
111 notifications for specific area water bodies or waterways. The department shall share public
112 notification request information it receives with respective permittees. An electronic link to
113 access the website shall be conspicuously placed on the executive office of energy and
114 environmental affairs' public website.

115 (i) The department shall issue an annual report by May 15th of each year, which shall
116 provide a summary of all outfall discharge activity reported for the previous calendar year,
117 including information about total discharge volumes, frequencies and pretreatment of effluent
118 from any outfall discharging during such year into water bodies or waterways of defined regional
119 areas. The report shall also contain discharge notifications received from permittees for the prior
120 year; and information about projects or improvements that are planned, or being undertaken to

121 reduce the discharge of sewage from outfalls, and to better detect when discharging of such
122 sewage occurs. Information about current permits granted to permittees to operate and maintain
123 an outlet for the discharge of sewage and other pollutants into the commonwealth's waters, shall
124 be included with each report. Annual reports shall be posted on the department's public website
125 and shall be sent electronically to the department of public health and all municipal boards of
126 health or their health departments. Information to access the report electronically, shall be sent
127 by the department to its current public subscribers of discharge notifications.

128 (j) The department shall adopt regulations for the implementation and administration
129 of this section not later than 8 months after the date of enactment of this act.

130 SECTION 2. Section 1, except for subsections (g) and (j) of said section, shall take
131 effect 14 months after the enactment date of this act.