

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Update the Dioxin Monitoring Program

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

Sec. 1. 38 MRSA §420, sub-§2, ¶I, as amended by PL 2003, c. 165, §1, is further amended to read:

I. Notwithstanding any other provision of this section, the following standards apply only to a bleach kraft pulp mill, referred to in this paragraph as a “mill.”

(1) After July 31, 1998, a mill may not have a detectable quantity of 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin as measured in any internal waste stream of its bleach plant. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter ~~H-A2-A~~, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency.

(2) After December 31, 1999, a mill may not have a detectable quantity of 2, 3, 7, 8 - tetrachlorodibenzo-p-furan as measured in any internal waste stream of its bleach plant. The commissioner may extend this time frame up to 6 months for a mill if the commissioner determines, based on information presented by the mill, that compliance is not achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower level of detection by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter ~~H-A2-A~~, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency. If a mill fails to achieve this requirement, as documented by confirmatory sampling, it shall conduct a site-specific evaluation of feasible technologies or measures to achieve it. This evaluation must be submitted to the commissioner within 6 months of the date of confirmatory sampling and include a timetable for implementation, acceptable to the commissioner, with an implementation date no later than December 31, 2002. The commissioner may establish a procedure for confirmatory sampling.

(3) After December 31, 2002, a mill may not discharge dioxin into its receiving waters. For purposes of this subparagraph, a mill is considered to have discharged dioxin into its receiving waters if 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8 - tetrachlorodibenzo-p-furan is detected in any of the mill's internal waste streams of its bleach plant and in a confirmatory sample at levels exceeding 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter

375, subchapter 2-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency, or if levels of dioxin, as defined in section 420-A, ~~subsection 1~~420-B, ~~subsection 1-A, paragraph A~~ detected in fish tissue sampled below the mill's wastewater outfall are higher than levels in fish tissue sampled at an upstream reference site not affected by the mill's discharge or on the basis of a comparable surrogate procedure acceptable to the commissioner. The commissioner shall consult with the technical advisory group established in section 420-B, subsection 1, paragraph B, subparagraph (5) in making this determination and in evaluating surrogate procedures. The fish-tissue sampling test must be performed with differences between the average concentrations of dioxin in the fish samples taken upstream and downstream from the mill measured with at least 95% statistical confidence. If the mill fails to meet the fish-tissue sampling-result requirements in this subparagraph and does not demonstrate by December 31, 2004 and annually thereafter to the commissioner's satisfaction that its wastewater discharge is not the source of elevated dioxin concentrations in fish below the mill, then the commissioner may pursue any remedy authorized by law.

(4) For purposes of documenting compliance with subparagraphs (1) ~~to (3)~~ and (2) the internal waste stream of a bleach plant must be sampled twice per quarter by the mill. The department may conduct its own sampling and analysis of the internal waste stream of a bleach plant. Analysis of the samples must be conducted by a 3rd-party laboratory using methodology approved by the United States Environmental Protection Agency. A mill shall report to the department for informational purposes the actual laboratory results including sample detection limits on a frequency to be established by the commissioner.

The commissioner shall assess the mill for the costs of any sampling performed by the department and any analysis performed for the department under this paragraph and credit funds received to the Maine Environmental Protection Fund.

The commissioner may reduce the frequency of sampling required by a mill after 3 consecutive years of sampling have demonstrated the mill does not have a detectable quantity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8-tetrachlorodibenzo-p-furan.

Sec. 2. 38 MRSA §420-A, as amended by PL 2001, c. 626, §10, is repealed.

Sec. 3. 38 MRSA §420-B, sub-§1-A is enacted to read:

1-A. Dioxin monitoring. In order to determine the nature of dioxin contamination in the waters and fisheries of the State, the commissioner shall conduct a monitoring program as described in this subsection. This monitoring must be undertaken to determine the need for fish consumption advisories on affected waters.

A. As used in this subsection, the term "dioxin" means any polychlorinated dibenzo-para-dioxins.

PCDDs, and any polychlorinated dibenzo-para-furans, PCDFs.

B. The commissioner shall:

(1) Select a representative sample of wastewater treatment plant sludges from municipal wastewater treatment plants, bleached pulp mills or other sources. These facilities must be selected on the basis of known or likely dioxin contamination of their discharged effluent;

(2) Sample and test the sludge of selected facilities for dioxin contamination at least once during each season of the year. The commissioner shall specify which congeners of dioxin will be analyzed;

(3) At appropriate intervals, sample and test for dioxin contamination in a selection of fish representative of those species present in the receiving waters or where there are consumption advisories for dioxin. Sufficient numbers of fish must be analyzed to provide a reasonable estimate of the level of contamination in the population of each water body affected; and

(4) Assess the selected facilities for the costs of sample collection and analysis except that, if the selected facility is a publicly owned treatment works, the commissioner may assess the primary industrial generator discharging effluent into the treatment facility if the generator is known or likely to be discharging dioxin into the treatment facility. Fees received under this subparagraph must be credited to the Maine Environmental Protection Fund. Payment of these fees is a condition of the discharge license issued pursuant to section 413 for continued operation of the selected facilities, except that, if the selected facility is a publicly owned treatment works and the commissioner assesses the fee on an industrial generator, payment of the fee is not a condition of the discharge license of the selected facility. The fees assessed under this subparagraph may not exceed a total of \$250,000 in any fiscal year. A facility subject to section 420, subsection 2, paragraph I may not be assessed a fee under this subparagraph.

Sec. 4. 38 MRSA §420-B, sub-§3, as enacted by PL 1993, c. 720, §1, is amended to read:

3. Coordination and notice of monitoring. The commissioner shall coordinate the monitoring program established under this section with other toxics monitoring programs conducted by the department, the Maine Center for Disease Control and Prevention, the United States Environmental Protection Agency and other federal agencies or dischargers of wastewater. At least 30 days prior to submitting the plan described under subsection 1, paragraph A to the technical advisory group, the commissioner shall notify the owners or operators of each selected facility proposed for dioxin monitoring of the facility's inclusion in the plan.

Sec. 5. 38 MRSA §420-B, sub-§4, ¶E, as enacted by PL 1997, c. 179, §4, is amended to read:

E. The report on the results of the dioxin monitoring program required under section 420-A, subsection 4 subsection 1-A.

SUMMARY

This bill repeals the laws governing the dioxin monitoring program, which under current law are scheduled to be repealed on December 31, 2007.

The bill changes the laws governing the surface water ambient toxic monitoring program to include the relevant portions of the laws governing the dioxin monitoring program. Certain provisions of the dioxin monitoring program are continued in order to determine the status of fish consumption advisories on Maine rivers, streams and lakes.

The bill provides that the Commissioner of Environmental Protection shall notify the owners or operators of selected facilities proposed for dioxin monitoring of each facility's inclusion in the commissioner's plan for monitoring pollutants.

Donna,

Here is link to LD1392.

<http://www.mainelegislature.org/legis/bills/billtexts/LD139201.asp>

And here are some discussion points/bullets to help you with developing testimony...

1. While we are in favor of continuing the Dioxin Monitoring Program, we are opposed to the proposed bill because as written it allows the mills that have been previously subjected to the above/below test to not have to pay. The bill accesses fees from facilities to pay for monitoring, but specifically excludes the kraft pulp and paper mills from having to pay.
2. The kraft mills should have to pay for monitoring associated with their discharge because they are the ones responsible for the dioxin being in the environment. They would have you believe that because they have passed the Above and Below Test (which Penobscot Nation believes has major flaws and has been opposed to) they are no longer responsible for any dioxins and furans in the environment. However, dioxin is still present in our fish and consumption advisories for dioxins and PCBs still prevent our people from being able carry out sustenance fishing. If the dioxin is not coming from current discharge it is coming from historical discharge from these mills that has settled out and remains in sediments and the food chain. (Dioxin is very long lived in the environment.-)
3. Maine DEP should continue to require the mills to pay for dioxin monitoring above and below their facilities. Lincoln Paper and Tissue is a good example of this. They tested out of the Above and Below test in 2005. However, sampling in 2006 showed that concentrations of dioxin in fish downstream of Lincoln increased significantly from 2004 and 2005. The 2006 sampling showed concentrations downstream of the Lincoln mill were significantly higher than those in fish upstream of the mill.
4. The Surface Water Ambient Toxics (SWAT) Program is a very important program for assessing and understanding toxics in our aquatic environment. Budgets for the program have been severely cut over the past few years. We are very concerned that joining the SWAT and Dioxin monitoring programs together without requiring the kraft mills to pay for their associated monitoring will mean that SWAT will be able to do even less. This would be very bad for the health and welfare of people and the environment of Maine.

1:00 pm / Natural Resources