

HOUSE No. 4921

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 water
6 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 other
9 effluent, which is untreated or partially treated, including from a combined sewer system
10 overflow, that is emitted from an outfall directly or indirectly into waters of the commonwealth.

11 “Outfall”, an outlet designed for the purpose of allowing 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 or a person
17 discharging pollutants from an outlet without a required permit or in violation of the conditions
18 of a valid permit.

19 (b) A permittee shall issue a public advisory when there is a discharge from the
20 permittee’s outfall in accordance with this section. The department may allow a permittee to
21 issue a combined advisory message when a weather event or other related occurrence involves
22 more than 1 of the permittee’s outfalls discharging into the same water body or waterway. A
23 permittee shall update its advisory as required by the department. A permittee shall issue an
24 updated public advisory every 8 hours for an ongoing discharge and within 2 hours when a
25 discharge ceases or is projected to cease, unless the department requires otherwise.

26 A public advisory shall, to the extent a permittee has the information available, describe
27 in plain language the: (i) outfall’s location; (ii) approximate time, date and duration of the
28 discharge; (iii) estimated volume of the outfall discharge based on the average discharge from
29 data reported to the department for the prior 3 calendar years; (iv) waters and land areas affected
30 or expected to be affected by the discharge; (v) identity of the outfall permittee; (vi)
31 precautionary measures for the public to avoid health risks from contact with effluent; and (vii)

32 any other information required by the department. In addition, the public advisory shall include a
33 statement that the outfall discharge consists, or likely consists, of untreated sewage and waste.

34 (c) As soon as possible, but no later than 2 hours after the discovery of a discharge from
35 the permittee's outfall, a permittee shall issue a public advisory and any updates required by
36 subsection (b) to the department of public health, the municipal board of health or the health
37 department where the outfall is located, any municipality directly impacted by the discharge and
38 to the department.

39 (d) Not later than 2 hours after discovery of a discharge from the permittee's outfall, the
40 permittee shall issue a public advisory and any updates required by subsection (b) by email or
41 text messaging to individuals subscribed to receive notifications about a discharge from the
42 permittee's outfall. The permittee shall also send the advisory and any updates required by
43 subsection (b) to the 2 largest news organizations that report on local news in communities near
44 the outfall.

45 (e) A permittee of an outfall shall establish a public website to post advisories when
46 issued and to receive requests from the public to subscribe to permittee's discharge notifications.
47 The department may require that permittees provide advisories by other means, including, but
48 not limited to, telephone voice messaging and social media.

49 (f) The department, in consultation with the department of public health, shall establish
50 standards for municipal boards of health or their health departments to issue public health
51 warnings when notified by a permittee about a discharge pursuant to subsection (c). When
52 warnings are necessary, as determined by the department, a municipal health board or its health
53 department shall utilize the municipality's existing emergency notification system, including, if

54 available, reverse 911 emergency calls. The commissioner may direct a municipal health official
55 of a board or department to issue a public warning about a discharge in order to protect public
56 health. Nothing in this subsection shall preempt a municipal board of health or health department
57 from issuing necessary public warnings concerning an outfall discharge.

58 (g) A permittee shall coordinate with the department to establish the metering, modeling
59 or other method the permittee shall use to determine or discover when a discharge occurs at its
60 outfall to comply with the notification requirements of this section. If an outfall will not have
61 metering equipment to detect and transmit reliable information about a discharge within the
62 timeframes established by subsections (c) and (d), the permittee shall apply to the commissioner
63 for authorization to use another method. The commissioner shall approve the proposed method,
64 provided the permittee can obtain reliable information by such method about any discharge from
65 its outfall and issue public advisories within said established timeframes.

66 If the proposed method or the current discharge detection capabilities of the permittee's
67 outfall will not provide timely or reliable information, the commissioner may extend the time for
68 a permittee to issue a public advisory; provided, that such time shall be extended only as
69 necessary, and by not more than 24 hours after discovery of the discharge. A permittee that has
70 been granted an extension shall make necessary improvements to its outfall, if any, to detect an
71 outfall discharge within the timeframes established pursuant to subsections (c) and (d).

72 Upon application of the permittee, the commissioner may waive any requirement under
73 this section related to a permittee's outfall; provided, that: (i) the outfall is decommissioned; or
74 (ii) there has not been significant discharge from the outfall, as determined by the department,
75 during the preceding 5 years; and (iii) the waiver will not pose a substantial threat to public

76 health or to the environment. A waiver shall be valid for not more than 5 years. Authorizations
77 and waivers allowed by the commissioner under this subsection shall be in writing and shall
78 specify the conditions for each waiver.

79 (h) The department may require a permittee to install and maintain conspicuous warning
80 signage at the location of its outfall and at public access points to waters affected by a potential
81 discharge from permittee's outfall as determined by the department, including entrances to boat
82 ramps, piers and designated swimming areas. Signage shall be suitable for its location and be of
83 the size and form of notice as the department shall prescribe in accordance with this subsection.
84 Each sign shall: (i) identify the existence of the outfall; (ii) inform about weather events that may
85 cause a discharge; (iii) warn of the potential threat to public health by recreating in, or using
86 waters and shores affected by a discharge; (iv) provide information for the public to subscribe to
87 notifications about outfall discharges in local area waters; and (v) provide other information as
88 required by the department. Such signage shall conform to all applicable provisions of federal
89 law and regulations. The department shall coordinate with the department of conservation and
90 recreation, municipalities and other landowners that have public access points that may be
91 affected by a discharge, for the placement and maintenance of such signage on public and private
92 property.

93 (i) The department shall provide information about discharge notifications sent by
94 permittees to the department under subsection (c) on its website. The website shall: (i) display
95 information about current outfall discharges in the commonwealth, which shall be posted within
96 24 hours of the department receiving such data; and (ii) provide access to public advisories and
97 timely updates regarding discharges.

98 (j) Not later than May 15 of each year, the department shall issue a report providing a
99 summary of all outfall discharge activity reported for the previous calendar year, including
100 information about total discharge volumes, frequencies and pretreatment of effluent from any
101 outfall discharging during that year into water bodies or waterways of defined regional areas.
102 Annual reports shall be posted on the department's website.

103 (k) The department shall promulgate regulations to carry out this section.

104 SECTION 2. The department of environmental protection shall promulgate regulations to
105 carry out the purposes of section 1 no later than 1 year after passage of this act.

106 SECTION 3. Section 1 shall take effect 540 days after passage of this act.