

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION-2006

Legislative Document

No. 1888

H.P. 1328

House of Representatives, January 3, 2006

An Act To Amend Certain Laws Administered by the Department of Environmental Protection

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.

Received by the Clerk of the House on December 28, 2005. Referred to the Committee on Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KOFFMAN of Bar Harbor.
Cosponsored by Senator COWGER of Kennebec.

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

Sec. 1. 38 MRSA §410-N, sub-§1, ¶B, as enacted by PL 1999, c. 722, §1, is amended to read:

B. "Invasive aquatic plant" means a species identified by the department ~~through rulemaking~~ as an invasive aquatic plant or one of the following species:

- (1) Eurasian water milfoil, *Myriophyllum spicatum*;
- (2) Variable-leaf water milfoil, *Myriophyllum heterophyllum*;
- (3) Parrot feather, *Myriophyllum aquaticum*;
- (4) Water chestnut, *Trapa natans*;
- (5) Hydrilla, *Hydrilla verticillata*;
- (6) Fanwort, *Cabomba caroliniana*;
- (7) Curly pondweed, *Potamogeton crispus*;
- (8) European naiad, *Najas minor*;
- (9) Brazilian elodea, *Egeria densa*;
- (10) Frogbit, *Hydrocharis morsus-ranae*; and
- (11) Yellow floating heart, *Nymphoides peltata*.

~~Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

Sec. 2. 38 MRSA §490-D, sub-§8, as amended by PL 2005, c. 158, §4, is further amended to read:

8. Erosion and sedimentation control. ~~All reclaimed and unreclaimed areas, except for access roads,~~ A working pit must be naturally internally drained at all times unless a variance is obtained from the department.

A. The area of a working pit may not exceed 10 acres.

B. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.

2 C. Sediment may not leave the parcel or enter a protected
natural resource.

4 D. Grubbed areas not internally drained must be stabilized.

6 E. Erosion and sedimentation control for access roads must
be conducted in accordance with the department's best
8 management practices for erosion and sedimentation control.
10 ~~Areas for access roads that are not naturally internally
drained must meet the erosion and sedimentation control
standards of section 420-C.~~

12 F. All areas other than a working pit area that are not
14 naturally internally drained must meet the erosion and
16 sedimentation control standards of section 420-C.

18 The department may grant a variance from this subsection, except
for paragraphs C, D and E and F. Areas are not considered
"naturally internally drained" if surface discharge is impeded
20 through the use of structures such as detention ponds, retention
ponds and undersized culverts.

22 **Sec. 3. 38 MRSA §490-W, sub-§24** is enacted to read:

24 24. Working pit. "Working pit" means the extraction area,
26 including overburden, of an excavation for rock. "Working pit"
28 does not include a stockpile area or an area that has a permanent
30 fixed structure such as an office building, permanent processing
32 facility or fixed fuel storage structure.

34 **Sec. 4. 38 MRSA §490-Z, sub-§8**, as amended by PL 2005, c. 158,
§12, is further amended to read:

36 **8. Erosion and sedimentation control.** ~~All reclaimed and~~
~~unreclaimed areas, except for access roads,~~ A working pit must be
naturally internally drained at all times unless a variance is
38 obtained from the department. Stockpiles consisting of topsoil
to be used for reclamation must be seeded, mulched or otherwise
temporarily stabilized.

40 A. Sediment may not leave the parcel or enter a protected
42 natural resource.

44 B. Grubbed areas not internally drained must be stabilized.

46 C. Erosion and sedimentation control for access roads must
be conducted in accordance with the department's best
48 management practices for erosion and sedimentation control.
50 ~~Areas for access roads that are not naturally internally
drained must meet the standards of section 420-C.~~

2 D. All areas other than a working pit area that are not
3 naturally internally drained must meet the erosion and
4 sedimentation control standards of section 420-C.

6 The department may not grant a variance from the provisions of
7 paragraph A, B ~~or~~, C or D. Areas are not considered "naturally
8 internally drained" if surface discharge is impeded through the
9 use of structures such as detention ponds, retention ponds and
10 undersized culverts.

12 **Sec. 5. 38 MRSA §551, sub-§1-B**, as amended by PL 2003, c. 137,
13 §1, is further amended to read:

14 **1-B. Research and development.** The Legislature may allocate
15 not more than \$250,000 per annum of the amount currently in the
16 fund to be devoted to research and development in the causes,
17 effects and removal of pollution caused by oil, petroleum
18 products and their by-products ~~on--the--marine--environment.~~
19 Researchers receiving funds under this subsection shall use
20 vessels based in this State as platforms when practicable. Such
21 allocations must be made in accordance with section 555. This
22 ~~subsection-takes-effect-July-17-1996.~~

24 **Sec. 6. 38 MRSA §563-C, sub-§2**, as enacted by PL 2001, c. 302,
25 §1, is amended to read:

28 **2. Exemptions.** The prohibitions in subsection 1 do not
29 apply to:

30 A. Replacement or expansion of a facility registered and
31 installed on or before September 30, 2001, provided the
32 replacement or expansion occurs on the same property and the
33 owner or operator continues to pay the annual registration
34 fee as required under section 563. Failure to pay the
35 annual fee disqualifies a facility from being considered
36 exempt under this section;

38 B. Conversion of an aboveground oil storage facility
39 registered permitted by the Department of Public Safety,
40 Office of the State Fire Marshal and installed on or before
41 September 30, 2001 to an underground oil storage facility,
42 provided the conversion occurs on the same property;

44 C. A facility used solely for the storage of heating oil
45 that is consumed on site;

48 D. Underground piping associated with an aboveground oil
49 storage facility; or

2 E. A well located on the same property as a facility and
serving only users on that property.

4 Notwithstanding paragraphs A and B, the prohibitions in
6 subsection 1 apply if a facility has been out of service for more
8 than 12 consecutive months unless, as provided in rules adopted
10 under section 566-A, the commissioner has approved an application
12 allowing the facility to remain temporarily out of service for a
14 longer period.

16 **Sec. 7. 38 MRSA §1310-B, sub-§2**, as amended by PL 2003, c.
18 661, §1 and c. 689, Pt. B, §6, is further amended to read:

20 **2. Hazardous waste information and information on**
22 **mercury-added products and electronic devices.** Information
24 relating to hazardous waste submitted to the department under
26 this subchapter, information relating to mercury-added products
28 submitted to the department under chapter 16-B or information
30 relating to electronic devices submitted to the department under
32 section 1609 1610, subsection 6, paragraph A, subparagraph (4),
34 division (i) and paragraph B may be designated by the person
36 submitting it as being only for the confidential use of the
38 department, its agents and employees, the Department of
40 Agriculture, Food and Rural Resources and the Department of
42 Health and Human Services and their agents and employees, other
44 agencies of State Government, as authorized by the Governor,
46 employees of the United States Environmental Protection Agency
48 and the Attorney General and employees of the municipality in
50 which the waste is located. The designation must be clearly
indicated on each page or other portion of information. The
commissioner shall establish procedures to ~~insure~~ ensure that
information so designated is segregated from public records of
the department. The department's public records must include the
indication that information so designated has been submitted to
the department, giving the name of the person submitting the
information and the general nature of the information. Upon a
request for information, the scope of which includes information
so designated, the commissioner shall notify the submitter.
Within 15 days after receipt of the notice, the submitter shall
demonstrate to the satisfaction of the department that the
designated information should not be disclosed because the
information is a trade secret, production, commercial or
financial information, the disclosure of which would impair the
competitive position of the submitter and would make available
information not otherwise publicly available. Unless such a
demonstration is made, the information must be disclosed and
becomes a public record. The department may grant or deny
disclosure for the whole or any part of the designated
information requested and within 15 days shall give written
notice of the decision to the submitter and the person requesting

2 the designated information. A person aggrieved by a decision of
the department may appeal only to the Superior Court in
4 accordance with the provisions of section 346. All information
provided by the department to the municipality under this
6 subsection ~~must-be~~ is confidential and not a public record under
Title 1, chapter 13. In the event a request for such information
8 is submitted to the municipality, the municipality shall submit
that request to the commissioner to be processed by the
department as provided in this subsection.

10
12 **Sec. 8. 38 MRSA §1610, sub-§6**, as amended by PL 2005, c. 330,
§39, is further amended to read:

14 **6. Manufacturer plan and reporting requirements.** A
manufacturer shall develop a plan and submit a report as required
16 in this subsection.

18 A. A manufacturer shall develop a plan for the collection
and recycling or reuse of computer monitors and televisions
20 as follows.

22 (1) By March 1, 2005, a manufacturer of computer
monitors and a manufacturer of televisions shall
24 develop and submit to the department a plan for the
collection and recycling or reuse of computer monitors
26 and televisions produced by the manufacturer and
generated as waste by households in this State. This
28 plan must be based on the manufacturer's taking
responsibility for its products upon receipt at
30 consolidation facilities in the State. Following
submission of the original plan, manufacturers may
32 revise their plans at any time as they may consider
appropriate in response to changing circumstances or
34 needs ~~provided that~~ only if these revisions conform to
the provisions of this section and rules adopted
36 pursuant to this section, and are submitted to the
department in a timely fashion.

38 (2) ~~By January 1, 2006~~ Ninety days after the
40 department adopts rules under subsection 5, paragraph
D, subparagraph (1), a manufacturer of computer
42 monitors and a manufacturer of televisions shall
implement and finance the implementation of this plan
44 for the collection and recycling or reuse of computer
monitors and televisions produced by the manufacturer
46 and generated as waste by households in this State.

48 (3) Notwithstanding subparagraphs (1) and (2), a
manufacturer may satisfy the plan requirements of this
50 paragraph by agreeing to participate in a collective

2 recovery plan with other manufacturers. The collective
3 recovery plan must meet the same standards and
4 requirements of the plans submitted by individual
5 manufacturers.

6 (4) The plan developed by the manufacturer must
7 include, at a minimum:

8 (a) A description of the collection system,
9 including the methods of convenient collection;

10 (b) A public education element to inform the
11 public about the collection system, including
12 details about meeting all consumer notification
13 and labeling requirements;

14 (c) Details for implementing and financing the
15 handling of computer monitors and televisions
16 produced by the manufacturer and orphan waste
17 computer monitors and televisions that are
18 generated as waste by households in this State and
19 received by consolidation facilities in this State;

20 (d) Details for the method of reimbursing
21 consolidation facilities for the costs of handling
22 and recycling the household computer monitors and
23 televisions;

24 ~~(e)---Documentation--of--the--willingness--of--all
25 necessary-parties-to-implement-the-plan--including
26 the--parties--that--will--participate--in--the
27 consolidation,--treatment,--recovery,--reuse--and
28 recycling-of-the-computer-monitors-and-televisions;~~

29 ~~(f)---Assurances--that--the--plan--and--all--necessary
30 parties--will--operate--in--compliance--with--local,
31 state-and-federal-waste-management-laws,-rules-and
32 regulations;~~

33 (g) Descriptions of the performance measures that
34 will be used and reported by the manufacturer to
35 report recovery and recycling rates for computer
36 monitors and televisions at the end of life of
37 those computer monitors and televisions; and

38 ~~(h)---Descriptions--of--additional--or--alternative
39 actions-that-will-be-taken-to-improve-recovery-and
40 recycling-rates,-if-needed;-and~~

2 (i) Annual sales data on the number and type of
3 computer monitors and televisions sold by the
4 manufacturer in this State over the 5 years
5 preceding the filing of the plan. The department
6 may keep information submitted pursuant to this
7 division confidential as provided under section
8 1310-B.

9 (5) A manufacturer is responsible for all costs
10 associated with the development and implementation of
11 the plan. If the costs are passed on to consumers, the
12 costs must be imposed at the time of purchase and not
13 with a fee imposed at the end of life of the computer
14 monitor or television.

15 B. Beginning July 1, 2007, and annually thereafter, a
16 manufacturer that offers a computer monitor or television
17 for sale in this State shall submit a report to the
18 department that includes the following: a description of the
19 collection, consolidation and recycling services utilized to
20 recover the manufacturer's products; substantiated
21 estimates, on an annual basis for the preceding calendar
22 year, of the quantities of covered electronic devices
23 marketed to retail consumers in this State and collected for
24 recovery in this State; the capture rate for electronics
25 based on sales in this State; ~~substantiated estimates of the~~
26 ~~percentage of collected materials that are reused and~~
27 ~~recycled from its products; the identification of end~~
28 ~~markets for the collected waste;~~ and any systems implemented
29 by the manufacturer to ensure environmentally sound
30 management of its products. The department may keep
31 information submitted pursuant to this paragraph
32 confidential as provided under section 1310-B.

33 **Sec. 9. PL 2003, c. 227, §9** is amended to read:

34 **Sec. 9. Effective date.** Those sections of this Act that amend
35 the Maine Revised Statutes, Title 38, section 465, subsection 1,
36 paragraph A; subsection 2, paragraph A; subsection 3, paragraph
37 A; and subsection 4, paragraph A and section 465-A, subsection 1,
38 paragraph A take effect when the water use standards for
39 maintaining in-stream flows are finally adopted as provided in
40 Title 38, section 470-E 470-H.
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44
45 **SUMMARY**

46
47 This bill amends the Maine Revised Statutes, Title 38,
48 section 410-N, subsection 1, paragraph B to remove a rule-making
49 requirement related to identification of invasive aquatic
50

2 species. This change makes the definition of "invasive aquatic
3 plant" more consistent with the definition of "invasive species"
4 in Title 38, section 466, subsection 8-A.

6 This bill also amends the erosion control standard in the
7 quarry and gravel pit laws. This bill provides that externally
8 drained areas, other than the working pit, must meet the
9 standards of Maine's erosion and sedimentation control law.
10 This standard would not be subject to a variance. The bill also
11 provides that the working pit must be naturally internally
12 drained at all times unless a variance is obtained from the
13 Department of Environmental Protection. The bill changes
14 existing text, which provides that all reclaimed and unreclaimed
15 areas, other than access roads, must be internally drained unless
16 a variance is obtained from the Department of Environmental
17 Protection. This bill adds a definition of "working pit" to the
18 quarry law.

20 This bill allows the Legislature to allocate up to \$250,000
21 per year from the Maine Coastal and Inland Surface Oil Clean-up
22 Fund for research and development. It can do this under existing
23 law, but only if the research and development is related to the
24 causes and effects of oil spills "on the marine environment."
25 The bill also strikes the words "on the marine environment,"
26 thereby allowing the funds to be used for research related to the
27 impact of inland oil spills.

28 The bill amends the law governing the siting of underground
29 oil storage facilities to clarify that the owner of an abandoned
30 underground oil facility may not make use of the statutory
31 exemption allowing expansion of existing facilities within 1,000
32 feet of a public drinking water supply or 300 feet of a private
33 drinking water supply.

34 The bill streamlines the manufacturer reporting requirements
35 under the law governing recycling of televisions and computer
36 monitors, and allows sales figures reported to the Department of
37 Environmental Protection by electronics manufacturers to be kept
38 confidential.

40 This bill amends Public Law 2003, chapter 227, section 9 to
41 change a statutory reference from Title 38, section 470-E to
42 Title 38, section 470-H. Title 38, section 470-E has been
43 repealed. The subject of Title 38, section 470-E, which
44 addresses rulemaking related to water use standards, is now
45 addressed by Title 38, section 470-H.