

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND NINETEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 2, 1998 to June 19, 1999**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 18, 1999**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1999**

who have allowed their names to be placed on the list along with reasons for and against the applicants;

See title page for effective date.

## CHAPTER 530

S.P. 846 - L.D. 2246

### An Act to Amend the Nutrient Management Laws

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the nutrient management laws need to be amended prior to full implementation of those laws; and

**Whereas,** implementation is important to the agriculture community and the waters of this State; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 7 MRSA §4201, sub-§6,** as enacted by PL 1997, c. 642, §2, is amended to read:

**6. Regulated residual.** "Regulated residual" means a residual regulated by the Department of Environmental Protection pursuant to Title 38, chapter 13 that is used primarily for its nitrogen and phosphorous value as determined by the Department of Agriculture, Food and Rural Resources. "Regulated residual" does not include wood ash or compost.

**Sec. 2. 7 MRSA §4202, sub-§§2 and 3,** as enacted by PL 1997, c. 642, §2, are amended to read:

**2. Certification of persons to prepare nutrient management plans.** The commissioner shall develop a program to train and certify persons in the prepara-

tion of nutrient management plans. The commissioner may establish minimum educational requirements for persons eligible for certification. The commissioner may revoke a certification in accordance with section 4210.

**3. Livestock operations permits.** The commissioner shall issue livestock operations permits in accordance with section 4205. The commissioner may revoke a livestock operations permit in accordance with section 4211.

**Sec. 3. 7 MRSA §4203, sub-§1, ¶B,** as enacted by PL 1997, c. 642, §2, is amended to read:

B. When an aggrieved party within 30 days of the commissioner's decision appeals a decision of the commissioner regarding a livestock operations permit required under section 4205, a request for a variance under section 4204, subsection 8 or a certification under section 4210, the board shall hold a hearing in accordance with Title 5, chapter 375, subchapter IV. The board may affirm, amend or reverse a permit or certification decision made by the commissioner. The board's decision is a final agency action.

**Sec. 4. 7 MRSA §§4204 and 4205,** as enacted by PL 1997, c. 642, §2, are amended to read:

#### §4204. Nutrient management plan

**1. Nutrient management plan required.** ~~Except as provided in subsection 4, beginning on December 1, 1998, a~~ A person who owns or operates a farm that meets the criteria established in subsection 2 shall have a nutrient management plan for that farm and shall implement the provisions in that plan by the dates specified for that category of farm in subsection 4, 5, 6 or 7. The nutrient management plan must be prepared by a person certified in accordance with section 4202, subsection 2 and must address the storage and utilization of all farm nutrients generated on or transported to the farm. A nutrient management plan developed by a farm owner or operator is deemed to have been prepared by a certified nutrient management specialist if a certified nutrient management specialist reviews the plan for compliance with this chapter, signs the plan and notifies the department in accordance with subsection 3. For livestock farms, the nutrient management plan must address storage and utilization of farm nutrients for the entire farm operation including leased or rented land. For crop farms, the plan must address storage and utilization of farm nutrients on land on which manure is utilized or stored. The plan must establish minimum distances between manure storage, stacking and spreading areas and property lines and surface water based on site-specific factors. The plan must provide for manure storage for a minimum of 180 days. A copy of a

nutrient management plan required under this section must be available to the commissioner or the commissioner's designee upon request. A nutrient management plan must include the following:

- A. Provisions for soil erosion control;
- B. Minimum distances between manure storage, stacking and spreading areas and property lines and surface waters;
- C. Results of soil tests for land designated in the plan for manure spreading or manure irrigation;
- D. Results of manure tests;
- E. Statement of yield goals for land receiving farm nutrients; and
- F. Additional information established through rulemaking;
- G. Site-specific dates recommended for the spreading of manure and spraying or irrigation of liquid manure. In compliance with section 4207, the plan may not recommend spreading between December 1st of a calendar year and March 15th of the following calendar year; and
- H. A recommended timetable for implementing the plan.

**2. Farms requiring a nutrient management plan.** A farm that meets one or more of the following criteria is required to have a nutrient management plan:

- A. A farm that confines and feeds 50 or more animal units at any one time;
- B. A farm that utilizes more than 100 tons of manure per year not generated on that farm;
- C. A farm that, ~~after December 1, 1998,~~ is the subject of a verified complaint of improper manure handling; or
- D. A farm that stores or utilizes regulated residuals.

**3. Responsibility of person preparing nutrient management plans.** Upon completion of a nutrient management plan, a person certified to prepare nutrient management plans in accordance with this chapter shall notify the department. The notification must include the name and address of the owner or operator of the farm and the location of the farm for which the plan was prepared. A person preparing a nutrient management plan required by this chapter shall adhere to rules adopted in accordance with this chapter pertaining to the preparation and requirements of the plan.

**4. Compliance date for farms operational on March 31, 1998.** ~~Notwithstanding the provisions of subsections 1 to 3, Except for a farm requiring a livestock operations permit under section 4205, an owner or operator of a farm that is was operational on the effective date of this chapter March 31, 1998 and meets the criteria established in subsection 2, paragraph A; or B or D is not required to shall have a nutrient management plan prepared for that farm until no later than January 1, 2001. A nutrient management plan must be prepared in accordance with this chapter no later than January 1, 2001. The Except as provided in subsection 8, the plan must be implemented no later than October 1, 2005 2007.~~

**5. Compliance date for farms that were operational on March 31, 1998 that store or use regulated residuals.** An owner or operator of a farm that is required to have a nutrient management plan under subsection 2, paragraph D and that was operational on March 31, 1998 shall have that plan prepared by January 1, 2000. Except as provided in subsection 8, the plan must be implemented no later than January 1, 2000.

**6. Compliance date for farms becoming operational after March 31, 1998.** An owner or operator of a farm that is required to have a nutrient management plan under subsection 2 and that was not operational on March 31, 1998 shall have a nutrient management plan prepared before the farm becomes operational. Except as provided in subsection 8, the plan must be implemented at the time the farm becomes operational.

**7. Compliance date for farms subject of verified complaint.** When a farm is required to have a nutrient management plan under subsection 2, paragraph C, the commissioner shall establish a date by which the plan must be developed and a date for implementation of the plan.

**8. Variances.** The commissioner may grant a variance from the implementation date in subsection 4, 5 or 6 when the commissioner finds that implementation of the plan would cause undue hardship. A person requesting a variance shall submit a request in writing to the commissioner at least 90 days prior to the applicable implementation date. The commissioner shall establish by rule criteria and a process for granting a variance. Factors considered must include protection of groundwater and surface water, cost of implementing the plan and availability of financial assistance to implement the plan. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. Notwithstanding the provisions of this subsection, a variance may not extend an implementation date beyond December 31, 2008. A person denied a

variance by the commissioner may appeal that decision to the board.

### **§4205. Livestock operations permit**

**1. Operations requiring a livestock operations permit.** Beginning on ~~May 1, 1999~~ January 1, 2000, a permit issued by the commissioner pursuant to subsection 2 is required for an animal feeding operation that meets one or more of the following criteria:

A. The operation is a concentrated animal feeding operation as defined by rules adopted pursuant to this section;

B. The operation confines and feeds 300 or more animal units and prior to April 15, 1998 the operation did not confine and feed 300 or more animal units; or

C. Proposes an expansion beyond the operation's manure storage capacity or land base used for spreading.

### **2. Criteria for issuing permits; rulemaking.**

An applicant for a permit required under this section must submit to the commissioner a nutrient management plan that meets the requirements established pursuant to section 4204. A nutrient management plan submitted in accordance with this subsection is confidential and is not a public record as defined in Title 1, section 402, subsection 3. Prior to issuing a permit, the commissioner or a designee of the commissioner shall inspect the operation and determine that the operation is in compliance with the nutrient management plan. The commissioner may issue a provisional permit in accordance with subsection 3. The commissioner shall adopt rules in accordance with Title 5, chapter 375 to establish a process for application review and issuing permits required under this section. The rules may establish permit application fees, inspection requirements and procedures for review by the board of permitting decisions. Rules initially adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. After July 1, 1999, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**3. Provisional permit.** The commissioner may issue a provisional permit to an operation that is not in compliance with the farm's nutrient management plan at the time of inspection. In issuing a provisional permit, the commissioner shall consider existing nutrient management practices on the farm, the protection of groundwater and surface water, the cost of implementing the plan and the availability of financial assistance to implement the plan. A provisional permit must state the date by which the farm

must be in compliance with the plan and may not be issued for a period of more than one year. Upon inspection and determination of compliance, the commissioner shall issue a permit in accordance with subsection 3 and the provisional permit expires. The commissioner shall adopt rules in accordance with Title 5, chapter 375 to establish a process for application review and issuing of provisional permits. Rules adopted in accordance with this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**Sec. 5. 7 MRSA §4206**, as enacted by PL 1997, c. 642, §2, is repealed.

**Sec. 6. 7 MRSA §4209**, as enacted by PL 1997, c. 642, §2, is amended to read:

### **§4209. Penalties**

Failure to develop a nutrient management plan in accordance with section 4204 or to obtain a ~~manure management~~ livestock operations permit in accordance with section 4205 constitutes a civil violation for which a forfeiture of up to \$1,000 plus up to \$250 per day for every day that the violation continues may be adjudged.

Failure to implement a nutrient management plan according to the requirements of section 4204 and the rules adopted pursuant to that section constitutes a civil violation for which a forfeiture of up to ~~\$1000~~ \$1,000 with an additional penalty of up to \$250 per day for every day that the violation continues may be adjudged. Prior to development of a plan, a person is not subject to a penalty for failure to implement a nutrient management plan.

Failure to comply with the conditions set forth in a livestock operations permit or a variance constitutes a civil violation for which a forfeiture of up to ~~\$1000~~ \$1,000 with an additional penalty of up to \$250 per day for every day that the violation continues may be adjudged.

Winter spreading of manure in violation of section 4207 constitutes a civil violation for which a forfeiture of up to ~~\$1000~~ \$1,000 per day for every day that spreading occurs may be adjudged.

**Sec. 7. 7 MRSA §§4210 to 4213** are enacted to read:

### **§4210. Revocation of certification**

If the commissioner finds that a person certified to prepare nutrient management plans has failed to comply with section 4204, subsection 3, the commissioner may revoke that person's certification in accordance with this section.

**1. Notice.** The commissioner shall give written notice of a revocation immediately following a decision to revoke. A notice of revocation must state the reason the certification is being revoked and the effective date of the revocation and must inform the person of the hearing provisions under subsection 2 and the appeals process before the board.

**2. Hearing.** A person receiving a notice of revocation under subsection 1 may request a hearing on that revocation. A request for a hearing must be in writing and must be made no later than 30 days after receipt of the revocation notice required under subsection 1. The commissioner shall notify the person of the date and location of the hearing.

A person may present evidence at a hearing that might justify reinstatement of the certification.

**3. Decisions; appeal.** Decisions of the commissioner must be in writing. The commissioner may reinstate the certification if the commissioner finds that the person has complied with section 4204, subsection 3. A person whose certification is revoked by the commissioner may appeal that decision to the board.

#### **§4211. Revocation of livestock operations permit**

If the commissioner finds that a person issued a livestock operations permit has failed to comply with the provisions of that permit, the commissioner may revoke that person's permit.

**1. Notice.** The commissioner shall give written notice of a revocation immediately following a decision to revoke. A notice of revocation must state the reason the permit is being revoked and the effective date of the revocation and must inform the person of the hearing provisions under subsection 2 and the appeals process before the board.

**2. Hearing.** A person receiving a notice of revocation under subsection 1 may request a hearing on that revocation. A request for a hearing must be in writing and must be made not later than 30 days after receipt of the revocation notice required under subsection 1. The commissioner shall notify the person of the date and location of the hearing.

A person may present evidence at a hearing that might justify reinstatement of the permit.

**3. Decisions; appeal.** Decisions of the commissioner must be in writing. A person whose permit is revoked by the commissioner may appeal that decision to the board.

#### **§4212. Moratorium on swine feeding operation**

Notwithstanding section 4205, a person may not construct or operate a new swine feeding operation

that confines and feeds 500 or more swine. For the purposes of this section, "new swine feeding operation that confines and feeds 500 or more swine" means a lot or facility where 500 or more swine are confined and fed that was not operating as a swine feeding operation on March 1, 1998. This section is repealed October 1, 2001.

#### **§4213. Annual report; Department of Agriculture, Food and Rural Resources**

The commissioner shall report to the joint standing committee having jurisdiction over agricultural matters no later than February 15th of each year on the implementation of this chapter. The report must include the number of people certified to prepare nutrient management plans, a summary of the notifications received for nutrient management plans, the number of applications for livestock operations permits and the number of permits issued, availability of financing or financial assistance for animal waste storage facilities and barriers to implementation of this chapter. The report must also include a summary of permitting activity for animal feeding operations in this State under the National Pollutant Discharge Elimination System.

**Sec. 8. 12 MRSA §685-A, sub-§5,** as amended by PL 1997, c. 642, §3, is further amended to read:

**5. Considerations, application and exemptions.** A land use standard may not deprive an owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of that standard. Year-round and seasonal single residences and operating farms in existence and use as of September 23, 1971, while so used, and new accessory buildings or structures or renovations of the buildings or structures that are or may be necessary to the satisfactory and comfortable continuation of these residential and farm uses are exempt from the requirements of section 685-B, subsection 1.

Land use standards adopted pursuant to this chapter for management districts may not limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms. Notwithstanding this subsection, a permit from the commission is required for roads covering a ground area of 3 acres or more constructed in management districts, unless those roads are constructed and maintained in accordance with the guidelines of the commission's Land Use Handbook, Section 6, "Erosion Control on Logging Jobs," or as revised. The commission may require a person

constructing a road to notify the commission of the location of the road within 21 days. ~~Notwithstanding this subsection, the commission may adopt rules in accordance with Title 7, section 4206 to regulate large concentrated animal feeding operations.~~

Land use standards adopted pursuant to this chapter must establish a minimum setback of 100 feet for all structures within a commercial sporting camp complex that are constructed solely for the housing of guests, including structures within a main sporting camp complex and an outpost camp. The standards must establish a minimum setback of 150 feet for all other structures within a sporting camp complex, including, but not limited to, a main lodge, a dining area, a workshop and a parking area.

In adopting district boundaries and land use standards, the commission shall give consideration to public and private planning reports and other data available to it, and shall give weight to existing uses of land and to any reasonable plan of its owner as to its future use.

A permit from the commission is not required for the repair or maintenance of county-owned roads, bridges or culverts as long as the repair or maintenance is conducted in accordance with commission standards that pertain to these activities.

**Sec. 9. 36 MRSA §656, sub-§1, ¶J** is enacted to read:

J. An animal waste storage facility. For the purposes of this section, "animal waste storage facility" means a structure or pit constructed and used solely for storing manure, animal bedding waste or other wastes generated by animal production. For a facility to be eligible for this exemption, the Commissioner of Agriculture, Food and Rural Resources must certify that a nutrient management plan has been prepared in accordance with Title 7, section 4204 for the farm utilizing that animal waste storage facility.

**Sec. 10. 36 MRSA §1760, sub-§81** is enacted to read:

**81. Animal waste storage facility.** Any materials for the construction, repair or maintenance of an animal waste storage facility. For the purposes of this section, "animal waste storage facility" means a structure or pit constructed and used solely for storing manure, animal bedding waste or other wastes generated by animal production. For a facility to be eligible for this exemption, the Commissioner of Agriculture, Food and Rural Resources must certify that a nutrient management plan has been prepared in accordance with Title 7, section 4204 for the farm utilizing that animal waste storage facility.

**Sec. 11. Memorandum of understanding.**

No later than 30 days after the effective date of this Act, the Department of Agriculture, Food and Rural Resources and the Department of Environmental Protection shall enter into a memorandum of understanding, setting forth a process to ensure a coordinated review of animal feeding operations pursuant to applicable environmental and land use laws, including administration of the National Pollutant Discharge Elimination System permit program as it applies to animal feeding operations.

**Sec. 12. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**2000-01**

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

**Waste Facility Tax Reimbursement**

All Other	\$5,650
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Provides funds to reimburse municipalities for 50% of the property tax revenue lost as a result of the new property tax exemption for qualified animal waste storage facilities.

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

<b>TOTAL</b>	\$5,650
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**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 17, 1999.

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**CHAPTER 531**

**H.P. 1612 - L.D. 2255**

**An Act to Make Corrections to Laws Recently Enacted by the 119th Legislature**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and