

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1095

H. P. 821

House of Representatives, February 24, 1971

Referred to Committee on Natural Resources. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Whitson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Relating to Enforcement Options under the Environmental Laws.

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

Sec. 1. R. S., T. 38, § 451, sub-§ 2, repealed and replaced. Subsection 2 of section 451 of Title 38 of the Revised Statutes, as repealed and replaced by section 1 of chapter 528 of the public laws of 1967 and as amended, is repealed and the following enacted in place thereof:

2. Hearing and order for violation. Whenever it appears to the commission or its authorized employee after investigation that there is a violation of this subchapter, the commission or its authorized employee may schedule a hearing thereon and shall notify the alleged violator in writing of the date, time and place of said hearing and shall set forth in said writing the alleged violation.

At such hearing the alleged violator may appear in person or by attorney and answer the allegations of violations, and file a statement of facts, including the methods, practices and procedures, if any, adopted or used by the alleged violator to comply with this subchapter and present such evidence as may be pertinent and relevant to the alleged violation.

The member or authorized employee of the commission presiding at such hearings is authorized to administer oaths and affirmations to witnesses testifying at such hearings. A complete verbatim transcript shall be made of all hearings held under this section.

Sec. 2. R. S., T. 38, § 451, amended. The 3rd paragraph from the end of section 451 of Title 38 of the Revised Statutes, as repealed and replaced by

section 2 of chapter 528 of the public laws of 1967, is repealed and the following enacted in place thereof:

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the commission shall, as soon thereafter as practicable, make findings of fact based on the record and, if it finds that a violation exists, it shall issue an order aimed at ending the violation.

Sec. 3. R. S., T. 38, § 451, amended. The last sentence of the next to the last paragraph of section 451 of Title 38 of the Revised Statutes, as repealed and replaced by section 11 of chapter 475 of the public laws of 1967, and as amended, is further amended to read as follows:

Within ~~30~~ 10 days thereafter, the Attorney General shall forthwith commence an action in the Superior Court of any county where the violation of the commission's order has occurred.

Sec. 4. R. S., T. 38, § 454, repealed and replaced. Section 454 of Title 38 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 454. Injunctions, civil and criminal actions

In the event of any violation of any of the provisions of this subchapter, or of any order or decision of the commission or decree of the court as the case may be, the Attorney General may institute injunction proceedings to enjoin the further violation thereof, a civil or criminal action under sections 416, 417 and 453, or any appropriate combination thereof, without recourse to section 451.

STATEMENT OF FACT

This bill is designed to speed up administrative anti-pollution law enforcement by allowing designated employees of the Environmental Improvement Commission to schedule and conduct enforcement hearings. The bill preserves the final decision, however, to the commission itself. Other changes include a requirement of a verbatim transcript of enforcement hearings and a reduction from 30 days to 10 of the time within which the Attorney General is required to act on enforcing commission orders.

In addition this bill will make it clear that the Attorney General may act against environmental law violators independently, on his own initiating, and regardless of whether or not the EIC has first processed the violator administratively. At least one judge has read section 454 as prohibiting the Attorney General from moving until the EIC has issued an order to a violator. This bill would bar that interpretation.