MAINE STATE LEGISLATURE

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| | SECOND REGULA | AR SESSION |
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| ONE | HUNDRED AND ELEV | VENTH LEGISLATURE |
| Legislative Doc | ument | No. 22 |
| H.P. 1672 | Ног | use of Representatives, March 9, 19 |
| Joint Rule 24. | | vironmental Protection pursuant to |
| | the Committee on Energ and ordered printed. | sy and Natural Resources. Sent up |
| | | EDWIN H. PERT, Cle Waterville. of Freeport and Representative |
| | STATE OF | MAINE |
| NI | IN THE YEAR O | |
| AN | ACT to Repeal th Air Pollu | |
| | ed by the People | of the State of Maine |
| | | |
| follows: Sec. 1. | 38 MRSA §582, 74, §1, is repeal | <pre>sub-§3, as enacted by I .ed.</pre> |
| Sec. 1. 1969, c. 47 Sec. 2. 1979, c. | <pre>74, §1, is repeal 38 MRSA §584, f</pre> | |
| Sec. 1. 1969, c. 47 Sec. 2. 1979, c. read: The boar able stands | 74, §1, is repeal 38 MRSA §584, f 541, Pt. A, §2 rd shall establis ards, in this ch | ed. First ¶, as amended by Particle 172, is further amended to the shad may amend reason apter called "ambient as |
| Sec. 1. 1969, c. 47 Sec. 2. 1979, c. read: The boar able standa quality star | 74, §1, is repeal 38 MRSA §584, f 541, Pt. A, §2 rd shall establis ards, in this chall and ards, "within a | ed. First ¶, as amended by P T72, is further amended to The and may amend reason Tapter called "ambient and Treasonable air qualit |
| follows: Sec. 1. 1969, c. 47 Sec. 2. 1979, c. read: The boar able standa quality star region regu of air conta | 74, §1, is repeal 38 MRSA §584, f 541, Pt. A, §2 rd shall establis ards, in this ch adards, "within a allating and limi aminants which ma | red. Tirst ¶, as amended by P T72, is further amended to The and may amend reason Tapter called "ambient aid Treasonable air quality Ting the amount and type |

tect human plant or animal life and the enjoyment of life and property within such region. An air contaminant source shall be allowed to have a reasonable area in which to allow its emissions to disperse before they are required to meet the applicable ambient air quality standard. The reasonable area allowed for dispersion must be under the exclusive control of the applicant, and must be an area to which the general public does not have rights of access, and may include passage easements, utility easements, private roadways, private rights-of-way and railways. The size of the dispersal area shall be no larger than necessary to accommodate a reasonably engineered source and shall not exceed an area with a diameter of one kilometer.

Sec. 3. 38 MRSA §584, 3rd ¶, as amended by PL 1983, c. 566, §35, is further amended to read:

board shall solicit and consider all available information concerning the existing quality of the ambient air within the region; the recreational, industrial and residential uses of land within the region; the effects of existing air contaminants and air pellution upon the uses; the availability and effectiveness of air pollution control apparatus signed to control and reduce the existing air contaminants and air pollution; the expense of purchasing and installing the same, and such other evidence board's judgment will enable it to determine the and establish the standards of air quality necessary prevent air pollution within the region protect human, plant or animal life and the enjoyment of life and property within that region.

Sec. 4. 38 MRSA §585, first ¶, as amended by PL 1971, c. 618, §12, is further amended to read:

The board may establish and may amend standards, herein called "emission standards", limiting and regulating in a just and equitable manner the amount and type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designed to prevent air pellutien protect human, plant or animal life and the enjoyment of life and property within that region and to achieve and maintain the ambient air quality standards within the region in which applicable.

Sec. 5. 38 MRSA §585-A, first ¶, as amended by PL 1971, c. 618, §12, is further amended to read:

The board may, after the establishment of ambient air quality standards and emission standards, establish and amend reasonable standards and regulations to implement ambient and emission standards established by the board. Such standards and regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and the prevention of air pollution to protect human, plant or animal life and the enjoyment of life and property within any region.

13 STATEMENT OF FACT

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The Department of Environmental Protection was sued by the Natural Resources Council of Maine on the issuance of an air emission license to the Martin Marietta Corporation for the cement manufacturing plant in Thomaston. One aspect of this litigation was the board's jurisdiction regarding where ambient air quality standards must be met. Judae Scolnik of the Superior Court issued a judgment on February 4, 1982, that the provision of the air pollution control statutes used by the board in this air emission license to limit the area where ambient air standards must be met was..... "an unconstitutional delegation of legislative power to private parties in derogation of the overall purposes of the statute as set out in Title 38, section 581." This case was appealed to the Supreme Judicial Court by Martin Corporation, but was withdrawn when Martin Marietta Marietta Corporation sold the plant to Cianbro. Lacking any further judicial guidance, some correction to the air statutes is necessary to correct this unconstitutionality. This legislation removes unconstitutionality by repealing the definition of air pollution which contains the problem and making adjustment to language elsewhere in the air statutes where this definition applied.

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