

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1406, L.D. 1986)
2 (New Title)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2368

8
9 H.P. 1681 House of Representatives, April 10, 1986
10 Reported by the Majority from the Committee on Energy and Natural
11 Resources and printed under Joint Rule 2. Original bill sponsored by
12 Representative Michaud of Medway. Cosponsored by Representative Jacques
of Waterville, Senator Usher of Cumberland and Representative Ridley of
Shapleigh.

EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT to Amend the Laws Relating to and
20 Administered by the Department of
21 Environmental Protection.
22

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

25 Sec. 1. 2 MRSA §6, sub-§4, as repealed and re-
26 placed by PL 1981, c. 705, Pt. L, §§1 to 3, is
27 amended to read:

28 4. Range 88. The salaries of the following
29 state officials and employees shall be within salary
30 range 88:

31 State Purchasing Agent;

32 Director, Arts and Humanities Bureau;

33 Director, State Museum Bureau;

1 Director of the Bureau of Parks and Recreation;
2 State Director of Alcoholic Beverages;
3 Executive Director, Retirement System;
4 Director of Public Lands; and
5 State Librarian;
6 Director, Bureau of Air Quality Control;
7 Director, Bureau of Land Quality Control;
8 Director, Bureau of Water Quality Control; and
9 Director, Bureau of Oil and Hazardous Materials
10 Control.

11 Sec. 2. 4 MRSA §152, sub-§6, as amended by PL
12 1985, c. 162, §1, is further amended to read:

13 6. Land use laws. Original jurisdiction, con-
14 current with that of the Superior Court, to grant eq-
15 uitable relief in proceedings involving alleged vio-
16 lations of a local land use ordinance or regulation
17 or a state land use statute or regulation, which
18 shall include, but shall not be limited to, the fol-
19 lowing: The laws pertaining to the Maine Land Use
20 Regulation Commission, Title 12, chapter 206-A; mini-
21 mum lot size law, Title 12, sections 4807 to 4807-G;
22 shoreland zoning ordinances adopted pursuant to Title
23 12, sections 4811 to 4817; the Alteration of Rivers,
24 Streams and Brooks law, Title ~~12~~ 38, sections ~~7776 to~~
25 ~~7780~~ 425 to 431; the plumbing and subsurface
26 wastewater disposal rules adopted by the Department
27 of Human Services pursuant to Title 22, section 42;
28 laws pertaining to public water supplies, Title 22,
29 sections 2642, 2647 and 2648; local ordinances pursu-
30 ant to Title 22, section 2642; local ordinances
31 adopted pursuant to Title 30, section 1917; local
32 building codes adopted pursuant to Title 30, sections
33 1917 and 2151; Title 30, chapter 215, subchapter I,
34 automobile junkyards and subchapter X, regulation and
35 inspection of plumbing; Title 30, section 4359,
36 malfunctioning domestic sewage disposal units; Title
37 30, section 4956, the subdivision law, and local sub-

1 division ordinances adopted pursuant to Title 30,
2 section 1917 and subdivision regulations adopted pur-
3 suant to Title 30, section 4956; local zoning ordi-
4 nances adopted pursuant to Title 30, section 1917 and
5 in accordance with Title 30, section 4962; the Great
6 Ponds Act, Title 38, sections 386 to 396; laws per-
7 taining to the discharge of wastes, Title 38, sec-
8 tions 413, 414, 417, 418 and 420; the Alteration of
9 Coastal Wetlands Act, Title 38, sections 471 to 476
10 and 478; the Site Location of Development Act, Title
11 38, sections 481 to 485 and 488 to 490; and the Oil
12 Discharge Prevention and Pollution Control laws, Ti-
13 tle 38, sections 543, 545, 545-A and 560 563, 564,
14 565, 566, 567 and 568.

15 Sec. 3. 5 MRSA §938, sub-§1, as amended by PL
16 1983, c. 862, §13, is further amended to read:

17 1. Major policy-influencing positions. The fol-
18 lowing positions are major policy-influencing posi-
19 tions within the Department of Environmental Protec-
20 tion. Notwithstanding any other provision of law,
21 these positions and their successor positions shall
22 be subject to this chapter:

23 A. Deputy Commissioner;

24 C. Assistant to the commissioner;

25 D. Director, Bureau of Air Quality Control;

26 E. Director, Bureau of Land Quality Control;

27 F. Director, Bureau of Water Quality Control;
28 and

29 G. Director, Bureau of Oil and Hazardous Materi-
30 als Control.

31 Sec. 4. 38 MRSA §342, sub-§2, as enacted by PL
32 1971, c. 618, §8, is amended to read:

33 2. Employment of personnel. He may employ, sub-
34 ject to the Personnel Law, such personnel and pre-
35 scribe the duties of such employees, ~~including bureau~~
36 ~~directors,~~ except persons occupying the positions de-
37 defined in Title 5, section 938, subsection 1, as he

1 deems necessary, to fulfill the duties of the depart-
2 ment and of the Board of Environmental Protection.

3 Sec. 5. 38 MRSA §342, sub-§5, as repealed and
4 replaced by PL 1983, c. 743, §2, is repealed.

5 Sec. 6. 38 MRSA §342, sub-§5-A is enacted to
6 read:

7 5-A. Designation of deputy commissioner and bu-
8 reau directors. The commissioner may employ, to
9 serve at his pleasure, the following:

10 A. A deputy commissioner;

11 B. An assistant to the commissioner; and

12 C. Bureau directors as defined in Title 5, sec-
13 tion 938, subsection 1.

14 Sec. 7. 38 MRSA §344, sub-§1, ¶¶A and B, as en-
15 acted by PL 1983, c. 453, §1, are amended to read:

16 A. For those applications delegated to the com-
17 missioner under subsection 2 which do not fall
18 under the permit by rule provisions of subsection
19 7, the commissioner shall, if requested by the
20 applicant or any interested party, issue a draft
21 permit or license and shall give reasonable no-
22 tice to the applicant and to any other person who
23 has notified the commissioner of his interest in
24 the application before he takes final action on
25 the application. The draft permit or license
26 shall be made available to the applicant and to
27 all interested persons at the Augusta office of
28 the department at least 5 working days before the
29 commissioner takes final action on the applica-
30 tion.

31 B. For those applications not delegated to the
32 commissioner under subsection 2, the commissioner
33 shall provide a summary of the application to the
34 board and all interested governmental agencies
35 and other interested parties in a manner pre-
36 scribed by the board in the regulations. At least
37 10 working days shall be provided for the receipt
38 of comments on the application prior to the prep-

1 aration of a draft permit or license. The commis-
2 sioner shall, if requested by the applicant or
3 any interested party, prepare a draft permit or
4 license and shall give reasonable notice to the
5 applicant and to any other person who has noti-
6 fied the commissioner of his interest in the ap-
7 plication of the date the board will act on the
8 application. The draft permit or license shall be
9 made available to the applicant and to all inter-
10 ested persons at the Augusta office of the de-
11 partment at least 15 working days before the
12 board acts on the application.

13 Sec. 8. 38 MRSA §344, sub-§2, ¶B, as repealed
14 and replaced by PL 1983, c. 453, §1, is amended to
15 read:

16 B. Applications under section 413 for a waste
17 discharge license with a maximum daily discharge
18 of less than 100,000 gallons per day and for a
19 cooling water waste discharge license, regardless
20 of the amount;

21 Sec. 9. 38 MRSA §344, sub-§2, ¶E, as enacted by
22 PL 1983, c. 453, §1, is amended to read:

23 E. Applications under section 483 for site loca-
24 tion development permits for subdivisions of less
25 than 75 acres, with fewer than 25 lots to contain
26 fewer than 25 housing units;

27 Sec. 10. 38 MRSA §345-A, sub-§4 is enacted to
28 read:

29 4. Subpoena power. The board and commissioner
30 may each issue subpoenas to compel the production of
31 books, records and other data related to the matters
32 in issue at any hearing. If any person served with a
33 subpoena demonstrates to the satisfaction of the is-
34 suer of the subpoena that the production of the in-
35 formation would, if made public, divulge methods or
36 processes which are entitled to protection as trade
37 secrets, the information shall be disclosed only at a
38 nonpublic portion of the hearing and shall be confi-
39 dential and not available for public inspection. If
40 any person fails or refuses to obey such a subpoena,

1 the issuer of the subpoena may apply to any Justice
2 of the Superior Court for an order compelling that
3 person to comply with the subpoena. The Superior
4 Court may issue an order and may punish failure to
5 obey the order as civil contempt.

6 Sec. 11. 38 MRSA §347, sub-§5, as enacted by PL
7 1977, c. 300, §9, is repealed.

8 Sec. 12. 38 MRSA §349, sub-§3, as amended by PL
9 1977, c. 510, §90, is further amended to read:

10 3. Falsification and tampering. Notwithstanding
11 Title 17-A, section 4-A, any person who knowingly
12 makes any false statement, representation or certifi-
13 cation in any application, record, report, plan or
14 other document filed or required to be maintained by
15 any provision of law administered by the department,
16 or by any rule, regulation, license, permit, approval
17 or decision of the board, or who tampers with or ren-
18 ders inaccurate any monitoring devices or method re-
19 quired by any provision of law, or any rule, regula-
20 tion, license, permit, approval or decision of the
21 board or who fails to comply with any information
22 submittal required by the commissioner pursuant to
23 section 1364, subsection 3 shall, upon conviction, be
24 subject to a fine of not more than \$10,000, or by im-
25 prisonment for not more than 6 months, or both.

26 Sec. 13. 38 MRSA §352, sub-§2, ¶D is enacted to
27 read:

28 D. Certification fees shall be assessed for di-
29 rect costs incurred in issuing a certification.

30 Sec. 14. 38 MRSA §352, sub-§4, as amended by PL
31 1983, c. 743, §5, is repealed and the following en-
32 acted in its place:

33 4. Accounting system. In order to determine the
34 extent to which the functions set out in this section
35 are necessary for the licensing process, or are being
36 performed in an efficient and expeditious manner, the
37 commissioner shall require that all employees of the
38 department involved in any aspect of these functions
39 shall keep accurate and regular daily time records

1 describing the matters worked on, services performed
 2 and amount of time devoted to those matters and ser-
 3 vices, as well as amounts of money expended in per-
 4 forming these functions for a sufficient duration as
 5 determined by the commissioner to establish to his
 6 satisfaction that the fees are appropriate.

7

TABLE I

8

MAXIMUM FEES IN DOLLARS

	<u>FILING</u>	<u>PROCESSING</u>	<u>CERTI-</u>
<u>Title 36</u>	<u>FEE</u>	<u>FEE</u>	<u>FICATION</u>
<u>SECTION</u>			<u>FEE</u>
12 <u>656, sub-§1, ¶E, Pollution</u>			
13 <u>Control Facilities</u>			
14 <u>A. Water pollution control</u>			
15 <u>facilities with capacities</u>			
16 <u>at least 4,000 gallons of</u>			
17 <u>waste per day</u>	<u>\$20.00</u>	<u>\$ 200.00</u>	<u>\$ 20.00</u>
18 <u>B. Air pollution control</u>			
19 <u>facilities</u>	<u>20.00</u>	<u>200.00</u>	<u>20.00</u>
20 <u>1760, sub-§29, Water pollution</u>			
21 <u>control facilities</u>	<u>20.00</u>	<u>200.00</u>	<u>20.00</u>
22 <u>1760, sub-§30, Air pollution</u>			
23 <u>control facilities</u>	<u>20.00</u>	<u>200.00</u>	<u>20.00</u>
24 <u>Title 38</u>	<u>FILING</u>	<u>PROCESSING</u>	<u>LICENSE</u>
25 <u>SECTION</u>	<u>FEE</u>	<u>FEE</u>	<u>FEE</u>
26 <u>362-A, Experiments</u>	<u>\$10.00</u>	<u>\$ 30.00</u>	<u>\$ 160.00</u>
27 <u>393, Great Ponds</u>	<u>10.00</u>	<u>65.00</u>	<u>50.00</u>
28 <u>410-E, Freshwater wetlands</u>	<u>10.00</u>	<u>65.00</u>	<u>50.00</u>
29 <u>413, Waste Discharge license</u>			
30 <u>A. Residential</u>	<u>5.00</u>	<u>15.00</u>	<u>10.00</u>
31 <u>B. Commercial</u>	<u>10.00</u>	<u>30.00</u>	<u>160.00</u>
32 <u>C. Industrial minor</u>			
33 <u>(based upon EPA list of</u>			
34 <u>major and minor source</u>			
35 <u>discharges)</u>			
36 <u>1. Discharges of cooling</u>	<u>25.00</u>	<u>450.00</u>	<u>160.00</u>
37 <u>water, sanitary waste</u>			
38 <u>water or treated storm</u>			
39 <u>water only</u>			

1	2. All Others	25.00	450.00	1,985.00
2	D. Industrial major (based			
3	upon EPA list of major and			
4	minor source discharges			
5	1. Discharges of cooling	35.00	1,130.00	750.00
6	water or sanitary waste			
7	water only			
8	2. All others	35.00	1,130.00	2,170.00
9	E. Publicly owned treatment			
10	works			
11	1. Flow of less than 0.5	15.00	40.00	10.00
12	million gallons/day and			
13	no significant industrial			
14	component			
15	2. Flow of at least 0.5	15.00	60.00	1,785.00
16	million gallons/day but			
17	less than 5 million gal-			
18	lons/ day and no signifi-			
19	cant industrial component			
20	3. Flow of at least 5	15.00	80.00	1,785.00
21	million gallons/day or a			
22	significant industrial			
23	component			
24	F. Special discharges			
25	1. Aquatic pesticides	10.00	30.00	10.00
26	2. Dredge spoils	10.00	30.00	10.00
27	418, Log storage	10.00	45.00	5.00
28	421, Solid waste disposal areas	12.00	1,375.00	100.00
29	427, Alteration of rivers,	10.00	65.00	50.00
30	streams and brooks			
31	451, Mixing zones	35.00	1,130.00	2,170.00
32	451-A, Time schedule variances	5.00	10.00	5.00
33	471, Coastal wetlands and sand	10.00	115.00	100.00
34	dunes			
35	483, Site location			
36	A. Subdivisions	25.00	25.00/lot	25.00
37	B. Structures	25.00	1,000.00	500.00
38	C. Mining	25.00	750.00	500.00
39	D. Other	25.00	750.00	500.00
40	543, Oily waste discharge	10.00	30.00	160.00
41	560, Vessels at anchorage	10.00	115.00	100.00
42	587, Ambient air quality or	50.00	5,000.00	50.00
43	emissions standards			
44	variances			
45	590, Air emissions licenses			
46	A. Greater than or equal	50.00	10,000.00	1,200.00
47	to 1,000 tons/year of any			

1	<u>criteria air pollutant</u>			
2	<u>B. Greater than or equal</u>	<u>50.00</u>	<u>5,000.00</u>	<u>400.00</u>
3	<u>to 100 tons/year but less</u>			
4	<u>than 1,000 tons/year of</u>			
5	<u>any criteria air pollutant</u>			
6	<u>C. Greater than or equal</u>	<u>50.00</u>	<u>1,000.00</u>	<u>100.00</u>
7	<u>to 50 tons/year but less</u>			
8	<u>than 100 tons/year of any</u>			
9	<u>criteria air pollutant</u>			
10	<u>D. Less than 50 tons/year</u>	<u>25.00</u>	<u>500.00</u>	<u>50.00</u>
11	<u>of any criteria air</u>			
12	<u>pollutant</u>			
13	<u>633, Hydropower projects</u>			
14	<u>A. New or expanded</u>	<u>25.00</u>	<u>300.00/MW</u>	<u>200.00/MW</u>
15	<u>generating capacity</u>		<u>up to</u>	<u>up to</u>
16			<u>\$1,500</u>	<u>\$1,000</u>
17	<u>B. Maintenance and re-</u>	<u>10.00</u>	<u>40.00</u>	<u>10.00</u>
18	<u>pair or other structural</u>			
19	<u>alterations not involving</u>			
20	<u>an increase in generating</u>			
21	<u>capacity</u>			
22	<u>1101, Sanitary districts</u>	<u>50.00</u>	<u>100.00</u>	<u>50.00</u>
23	<u>1304, Waste facilities</u>			
24	<u>A. Septage facilities,</u>	<u>12.00</u>	<u>250.00</u>	<u>250.00</u>
25	<u>other than landfill or</u>			
26	<u>landspreading sites</u>			
27	<u>B. Sludge facilities,</u>	<u>12.00</u>	<u>500.00</u>	<u>500.00</u>
28	<u>other than landfill or</u>			
29	<u>landspreading sites</u>			
30	<u>C. Landspreading sites</u>	<u>12.00</u>	<u>35.00</u>	<u>35.00</u>
31	<u>D. Transfer stations</u>	<u>12.00</u>	<u>500.00</u>	<u>500.00</u>
32	<u>E. Landfills</u>	<u>75.00</u>	<u>1,500.00</u>	<u>1,500.00</u>
33	<u>F. Resources recovery and</u>	<u>75.00</u>	<u>1,500.00</u>	<u>1,500.00</u>
34	<u>volume reduction</u>			
35	<u>facilities</u>			
36	<u>G. Other, including land-</u>	<u>12.00</u>	<u>500.00</u>	<u>250.00</u>
37	<u>applied waste utilization</u>			
38	<u>programs</u>			

39 Sec. 15. 38 MRSA §353, sub-§3-A is enacted to
40 read:

41 3-A. Certification fee. A certification fee
42 shall be paid prior to the issuance of any certifica-
43 tion. If the certification fee is paid prior to the
44 certification and the certification is not issued,
45 the department shall refund the certification fee.

1 Sec. 16. 38 MRSA §353, sub-§8 is enacted to
2 read:

3 8. Processing fee for certification. The pro-
4 cessing fee for certification shall be assessed on
5 the actual direct costs incurred by the department,
6 but not greater than the processing fee found on Ta-
7 ble I, section 352. The processing fee found on Ta-
8 ble I shall be due according to subsection 2. Upon
9 completion of processing, where direct costs are less
10 than the processing fee found in section 352 on Table
11 I, a refund shall be made to the applicant.

12 Sec. 17. 38 MRSA §361, first ¶, as amended by PL
13 1983, c. 812, §290, is further amended to read:

14 The Board of Environmental Protection, as estab-
15 lished by Title 5, section 12004, subsection 5, and
16 in this subchapter called the "board," shall consist
17 of 10 members appointed by the Governor, subject to
18 review by the joint standing committee of the Legis-
19 lature having jurisdiction over energy and natural
20 resources and to confirmation by the Legislature.
21 Members of the board shall be chosen to represent the
22 broadest possible interest and experience which can
23 be brought to bear in the implementation of this Ti-
24 tle and all other laws which the board is charged
25 with the duty of administering. The members shall be
26 appointed for a term of 4 years ~~and until their suc-~~
27 ~~cessors are appointed and duly qualified.~~ The Gover-
28 nor shall appoint one member to serve as chairman.
29 Any member who has not been renominated by the Gover-
30 nor within 90 days of the expiration of his term
31 shall not continue to serve on the board unless the
32 Governor notifies the Legislature, in writing and
33 within 90 days of the expiration of that member's
34 term, of his finding that extension of that member's
35 term is required to ensure fair consideration of spe-
36 cific major applications pending before the board.
37 That member's term shall terminate upon final board
38 decisions on the specific applications identified in
39 the Governor's communication.

40 Sec. 18. 38 MRSA §394, as amended by PL 1983, c.
41 743, §10, is further amended to read:

42 §394. Exemptions

1 Maintenance and minor repair above the high water
2 line causing no additional intrusion of an existing
3 structure into the great pond ~~is~~, the placement of
4 water lines to serve a single-family house, installa-
5 tion of cables for utilities, such as telephone and
6 power cables, provided that the excavated trench to
7 access the great pond is backfilled and riprapped to
8 prevent erosion and that the excavated trench on the
9 landward side of the riprapped area is seeded and
10 mulched to prevent erosion, are exempt from this sub-
11 chapter.

12 Sec. 19. 38 MRSA §410-E is enacted to read:

13 §410-E. Fees

14 The department shall charge applicants for actual
15 direct costs incurred in reviewing permit applica-
16 tions. The maximum allowable fees shall not exceed
17 the following: Filing fee, \$10; processing fee, \$65;
18 and license fee, \$50.

19 Sec. 20. 38 MRSA §430, sub-§4 is enacted to
20 read:

21 4. Notwithstanding section 425, a permit shall
22 not be required for panning gold, provided that no
23 power equipment is used.

24 Sec. 21. 38 MRSA §484, first ¶, as repealed and
25 replaced by PL 1977, c. 300, §30, is amended to read:

26 In the event that the board determines to hold a
27 hearing on a notification submitted to it pursuant to
28 section 483, it shall hold ~~such~~ the hearing ~~within 30~~
29 ~~days of such determination, and shall cause notice of~~
30 ~~the date, time and place thereof to be given in ac-~~
31 ~~cordance with the Maine Administrative Procedure Act,~~
32 Title 5, chapter 375.

33 Sec. 22. 38 MRSA §551, sub-§6, as amended by PL
34 1985, c. 496, Pt. A, §13, is further amended to
35 read:

36 6. Reimbursements to Maine Coastal and Inland
37 Surface Oil Clean-up Fund. The department shall seek
38 recovery to the use of the fund all sums expended

1 therefrom, including overdrafts, for the following
2 purposes, including interest computed at 15% a year
3 from the date of expenditure, unless the department
4 finds the amount involved too small or the likelihood
5 of success too uncertain; provided that recoveries
6 resulting from damage due to an oil pollution disaster
7 declared by the Governor pursuant to section 547
8 shall be apportioned between the Maine Coastal and
9 Inland Surface Oil Clean-up Fund and the General Fund
10 so as to repay the full costs to the General Fund of
11 any bonds issued as a result of the disaster:

12 A. All disbursements made by the fund pursuant
13 to subsection 5, paragraphs B, D, E and H in con-
14 nection with a prohibited discharge;

15 B. In the case of a licensee promptly reporting
16 a discharge as required by this subchapter, dis-
17 bursement made by the fund pursuant to subsection
18 5, paragraphs B, D and E in connection with any
19 single prohibited discharge including 3rd party
20 claims in excess of \$15,000, except to the extent
21 that the costs are covered by payments received
22 under any federal program;

23 C. Requests for reimbursement to the fund if not
24 paid within 30 days of demand shall be turned
25 over to the Attorney General for collection; and

26 D. The department may file claims with appropri-
27 ate federal agencies to recover for the use of
28 the fund all disbursement from the fund in con-
29 nection with a prohibited discharge.

30 Sec. 23. 38 MRSA §552, as amended by PL 1977, c.
31 375, §17, is further amended to read:

32 §552. Liability

33 1. Licensee shall be liable. A licensee shall be
34 liable for all acts and omissions of its servants and
35 agents, and carriers destined for the licensee's fa-
36 cilities from the time such carrier shall enter state
37 waters until such time as the carrier shall leave
38 state waters.

1 2. State need not plead or prove negligence. Be-
2 cause it is the intent of this subchapter to provide
3 the means for rapid and effective clean-up and to
4 minimize direct damages as well as indirect damages
5 and the proliferation of 3rd party claims, any per-
6 son, vessel, licensee, agent or servant, including
7 carriers destined for or leaving a licensee's facili-
8 ty while within state waters, who permits or suffers
9 a prohibited discharge or other polluting condition
10 to take place shall be liable to the State of Maine
11 for all disbursements made by it pursuant to section
12 551, subsection 5, paragraphs B, D and E, or other
13 damage incurred by the State. In any suit to enforce
14 claims of the State under this section, to establish
15 liability, it shall not be necessary for the State to
16 plead or prove negligence in any form or manner on
17 the part of the person causing or suffering the dis-
18 charge or licensee responsible for the discharge. The
19 State need only plead and prove the fact of the pro-
20 hibited discharge or other polluting condition and
21 that the discharge occurred at facilities under the
22 control of the ~~person causing the discharge or the~~
23 licensee or was attributable to carriers or others
24 for whom the licensee is responsible as provided in
25 this subchapter or occurred at or involved any real
26 property, structure, equipment or conveyance under
27 the custody or control of the person causing or suf-
28 fering the discharge.

29 Sec. 24. 38 MRSA §569, sub-§6, as enacted by PL
30 1985, c. 496, Pt. A, §14, is amended to read:

31 6. Reimbursements to the Ground Water Oil
32 Clean-up Fund. The department shall seek recovery ~~to~~
33 for the use of the fund of all sums expended from the
34 fund, including overdrafts, for the purposes de-
35 scribed in subsection 5, paragraphs B, D, E and G in
36 connection with a prohibited discharge, including in-
37 terest computed at 15% a year from the date of ex-
38 penditure, unless the department finds the amount in-
39 volved too small or the likelihood of success too un-
40 certain. Requests for reimbursement to the fund if
41 not paid within 30 days of demand shall be turned
42 over to the Attorney General for collection.

43 Sec. 25. 38 MRSA §583, sub-§1-A, as enacted by
44 PL 1975, c. 669, §1, is amended to read:

1 1-A. Portland Peninsula Air Quality Region. The
2 Portland Peninsula Air Quality Region shall consist
3 of that section of the City of Portland bordered on
4 the west by Interstate 95 295, on the south and east
5 by the Fore River and on the north by Casco Bay and
6 the inlet to Back Bay.

7 Sec. 26. 38 MRSA §586, as amended by PL 1971, c.
8 618, §12, is repealed.

9 Sec. 27. 38 MRSA §606, as enacted by PL 1975, c.
10 282, §6, is repealed.

11 Sec. 28. 38 MRSA §611, sub-§4, as enacted by PL
12 1983, c. 359, §2, is amended to read:

13 4. Exemptions. Chromium emissions resulting
14 from metal plating operations; the preparation of
15 chrome tanning liquors or from processes, including
16 leather processing, in which chromium is present only
17 in the trivalent oxidation state processes, including
18 leather processing, in which chromium is present only
19 in the trivalent oxidation state; from metal plating
20 operations; and from the preparation of chrome tan-
21 ning liquors shall not be subject to these emission
22 requirements.

23 Sec. 29. 38 MRSA §1304, sub-§12 is enacted to
24 read:

25 12. Compliance orders. The commissioner may is-
26 sue compliance orders subject to the provisions of
27 this subsection.

28 A. Whenever, after investigation, the commis-
29 sioner determines that there is or has been an
30 unauthorized discharge of hazardous waste, con-
31 stituents of hazardous waste, or waste oil into
32 the environment which is endangering or causing
33 damage to public health or the environment or
34 that any person has violated or is in violation
35 of any requirement of this subchapter, including
36 rules adopted thereunder, relating to hazardous
37 waste which is endangering or causing damage to
38 public health or the environment or waste oil ac-
39 tivities, he may issue an order requiring compli-
40 ance immediately or within a specified time peri-

1 od or requiring corrective action or other re-
2 sponse measures as necessary to remove the dan-
3 gers to public health and safety or the environ-
4 ment.

5 The commissioner may require assurance of finan-
6 cial ability for completing corrective action and
7 may require, where necessary, that corrective ac-
8 tion be taken beyond a facility or site to remove
9 the danger to the public health or the environ-
10 ment unless the person to whom the order is di-
11 rected demonstrates to the commissioner that, de-
12 spite that person's best efforts, he was unable
13 to obtain the necessary permission to undertakè
14 such actions.

15 B. Any order issued under this subsection may be
16 directed to any person who causes or caused or
17 contributes or contributed to the discharge or
18 violation. Such order shall contain findings of
19 fact describing, insofar as possible, and with
20 reasonable specificity, the nature of the dis-
21 charge or violation, the wastes involved, the na-
22 ture of the cause or contribution of the person
23 with respect to the discharge or violation, the
24 site of the activity, the required action, the
25 time period for compliance and the danger to pub-
26 lic health or safety of the environment.

27 C. Service of the commissioner's findings and an
28 order shall be made by hand delivery by an autho-
29 rized representative of the department or by cer-
30 tified mailing, return receipt requested, in ac-
31 cordance with the Maine Rules of Civil Procedure.

32 D. The person to whom the order is directed
33 shall comply immediately or within a specified
34 time period. That person may apply to the board
35 within 10 days after receipt of the order for a
36 hearing on the order. The hearing shall be held
37 by a majority of the board members within 14 days
38 after receipt of the application. Within 7 days
39 after the hearing, the board shall make findings
40 of fact and shall continue, revoke or modify the
41 order. At the hearing, all witnesses shall be
42 sworn and the department shall establish the ba-
43 sis for the order and for naming the person to

1 whom the order was directed. The decision of the
2 board may be appealed to the Superior Court in
3 accordance with the Maine Administrative Proce-
4 dure Act, Title 5, chapter 375, subchapter VII.

5 Sec. 30. 38 MRSA §1319-H, sub-§1, ¶A, as amended
6 by PL 1983, c. 342, §7, is further amended to read:

7 A. Any person who applies for a license for a
8 hazardous waste facility shall pay the appropri-
9 ate fee. An application for a license will not be
10 considered complete and will not be processed un-
11 til this fee is received. Application fees are as
12 follows.

- 13 (1) Disposal facility \$10,000
- 14 (2) Commercial treatment facility ... 7,000
- 15 (3) On-site treatment facility 4,000
- 16 (4) Other waste facility for hazardous
17 waste, including treatment facilities other
18 than on-site and commercial treatment facil-
19 ities 2,500
- 20 (5) Waste oil storage facility2,500
- 21 (6) Treatment facility under license by
22 rule provisions where the hazardous waste
23 treated is less than 200 kilograms per cal-
24 endar month75

25 Sec. 31. 38 MRSA §1319-H, sub-§2, ¶E is enacted
26 to read:

27 E. Treatment facility under license by rule pro-
28 visions where the hazardous waste treated is less
29 than 200 kilograms per calendar month100

30 Sec. 32. 38 MRSA §1362, sub-§1, as enacted by PL
31 1983, c. 569, §1, is amended to read:

32 1. Hazardous substance. "Hazardous substance"
33 means:

34 A. Any substance identified by the board under
35 section 1303-A;

1 B. Any substance identified by the board under
2 section 1319;

3 C. Any substance designated pursuant to the
4 ~~Federal~~ United States Comprehensive Environmental
5 Response, Compensation and Liability Act of 1980,
6 Public Law 96-510, ~~Section~~ Sections 101 and 102
7 (Superfund);

8 D. Any toxic pollutant listed under the United
9 States Federal Water Pollution Control Act, Sec-
10 tion 307(a);

11 E. Any hazardous air pollutant listed under the
12 United States Clean Air Act, Section 112; ~~and~~

13 F. Any imminently hazardous chemical substance
14 or mixture with respect to which the Administra-
15 tor of the United States Environmental Protection
16 Agency has taken action pursuant to the United
17 States Toxic Substances Control Act, Section 7-
18 and

19 G. Waste oil as defined in section 1303.

20 Sec. 33. 38 MRSA §1364, sub-§2, as enacted by PL
21 1983, c. 569, §1, is amended to read:

22 2. Rules. The board may adopt rules related to
23 the handling of hazardous substances and the designa-
24 tion and mitigation of uncontrolled hazardous sub-
25 stance sites. The board may provide by rule that any
26 person who knows or has reason to believe that any
27 hazardous substance is present in ground water be-
28 neath a site which is owned or operated by that per-
29 son provide notice of that condition to the depart-
30 ment if the concentration of the hazardous substance
31 in ground water exceeds state or federal recommended
32 contaminant levels for drinking water.

33 Sec. 34. 38 MRSA §1364, sub-§§3 and 4, as en-
34 acted by PL 1983, c. 569, §1, are amended to read:

35 3. Investigation and evaluation. The department
36 may investigate and sample sites where hazardous sub-
37 stances are stored or handled to identify uncon-
38 trolled hazardous substance sites. During the course

1 of the investigation, the commissioner may require
2 submission of information or documents which relate
3 or may relate to the site under investigation from
4 any person who the department has reason to believe
5 may be a responsible party. The information may in-
6 clude, among other things, the nature and amounts of
7 hazardous substances or other wastes which arrived or
8 may have arrived at the site, manner of transporta-
9 tion, treatment or disposal of the hazardous sub-
10 stances or other wastes and any other information re-
11 lating to the site or to threats posed by the poten-
12 tial site.

13 4. Designation. In accordance with section
14 1365, the commissioner may declare a site to be an
15 uncontrolled hazardous substance site. The designa-
16 tion may be appealed only upon the issuance of an or-
17 der pursuant to section 1365, subsection 5.

18 Sec. 35. 38 MRSA §1365, sub-§4, as enacted by PL
19 1983, c. 569, §1, is amended to read:

20 4. Compliance, appeal. The person to whom the
21 order is directed shall comply immediately. A person
22 to whom it is directed may apply to the board for a
23 hearing on the order if the application is made with-
24 in 5 days after receipt of the order by a responsible
25 party. The hearing shall be held by the board within
26 3 5 days after receipt of application. The nature of
27 the hearing before the board shall be an appeal. At
28 the hearing all witnesses shall be sworn and the de-
29 partment shall first establish the basis for the or-
30 der and for naming the person to whom the order was
31 directed. The burden of going forward shall then
32 shift to the person appealing to demonstrate, based
33 upon a preponderance of the evidence, that the order
34 should be modified or rescinded. Within 7 days after
35 the hearing, the board shall make findings of fact
36 and shall continue, revoke or modify the order. The
37 decision of the board may be appealed to the Superior
38 Court in accordance with the Maine Administrative
39 Procedure Act, Title 5, chapter 375, subchapter VII.

40 Sec. 36. Transition. Consistent with the Maine
41 Revised Statutes, Title 5, chapter 69, for any posi-
42 tion affected by this Act and subject to the Person-
43 nel Law on the effective date of this Act, the incum-

1 bent in the position shall retain his appointment
2 subject to the Personnel Law until 3 years after the
3 effective date of this Act. The incumbent shall be
4 compensated according to the terms of his salary
5 range prior to the effective date of this Act during
6 the 3-year period unless that incumbent elects to
7 waive the provisions of this section. If that incum-
8 bent waives the provisions of this section, he shall
9 be compensated according to the provisions of the
10 Maine Revised Statutes, Title 2, section 6, subsec-
11 tion 4.

12

STATEMENT OF FACT

13 Sections 1, 3, 4, 5 and 6. These sections de-
14 classify 5 positions in the Department of Environmen-
15 tal Protection and establish these provisions as "ma-
16 jor policy-influencing" positions. A transition pro-
17 vision for the incumbents in these positions is pro-
18 vided in section 36 of the new draft.

19 Section 2. This section corrects an oversight in
20 legislation passed during the First Regular Session
21 of the 112th Legislature, by providing the correct
22 statutory reference for the Alteration of Rivers,
23 Streams and Brooks law, in the Maine Revised Stat-
24 utes, Title 4, section 152, subsection 6, as enacted
25 by Public Law 1983, chapter 796, section 1. This
26 section also corrects the statutory reference of the
27 oil discharge prevention and pollution control laws.
28 Public Law 1985, chapter 496, repealed section 545-A
29 of the oil discharge prevention and pollution control
30 laws and created new applicable sections within Title
31 38.

32 Section 7. Currently, the commissioner must is-
33 sue a draft permit on all applications. These must
34 be available for at least 5 working days for applica-
35 tions delegated to the commissioner and 15 working
36 days for those to be acted upon by the board prior to
37 final action, whether or not any party has requested
38 a copy. This section eliminates the requirement of
39 issuing a draft permit in those instances where no
40 one has requested a copy, thereby shortening the re-
41 view process.

1 Section 8. The purpose of this change is to del-
2 egate to the Commissioner of Environmental Protection
3 and the department staff, authority to approve, ap-
4 prove with conditions or disapprove applications for
5 a waste discharge license and applications for a
6 cooling water waste discharge license.

7 Section 9. The purpose of this change is to del-
8 egate to the Commissioner of Environmental Protection
9 and the department staff authority to approve, ap-
10 prove with conditions or disapprove applications for
11 subdivisions.

12 Sections 10 and 11. These sections consolidate
13 subpoena power in the Maine Revised Statutes, Title
14 38. Currently, it is found in 2 sections of Title
15 38. It clarifies that the commissioner and the board
16 have subpoena power and deletes one of the 2 repeti-
17 tive sections in Title 38.

18 Section 12. This section specifies judicial reme-
19 dies for persons not complying with the commis-
20 sioner's information request. The remedies are equiva-
21 lent to those for falsifying or misrepresenting any
22 application or report required by the department.

23 Sections 13, 14, 15 and 16. These sections amend
24 certain sections of the law which established the
25 Maine Environmental Protection Fund. The changes
26 bring the law up-to-date with recent authorized pro-
27 grams in the department and also adds a fee for pro-
28 cessing tax certification applications. Section 13
29 also allows the commissioner to determine when ade-
30 quate records have been kept to establish the appro-
31 priate fees for permits.

32 Section 17. This section provides that a Board
33 of Environmental Protection member whose term has ex-
34 pired may not continue to serve on the Board of Envi-
35 ronmental Protection if they have not been
36 renominated within 90 days, unless the Governor noti-
37 fies the Legislature that the member's service is
38 needed to ensure continuity on the consideration of
39 major applications currently pending before the
40 board.

1 Section 18. The purpose of this section is to
2 exempt the placement of water lines to serve a
3 single-family house and utility cables from the per-
4 mit requirements of the Maine Revised Statutes, Title
5 38, section 391, provided that the activity is
6 ripped, seeded and mulched to prevent erosion.

7 Section 19. The Legislature enacted laws that
8 allow the department to collect application fees to
9 recover the direct costs of processing applications.
10 This section corrects an oversight of not including a
11 fee when the Freshwater Wetlands Law was passed dur-
12 ing the First Regular Session of the 112th Legisla-
13 ture. This section establishes fees for freshwater
14 wetlands applications consistent with fees charged
15 for great ponds applications.

16 Section 20. The purpose of this change is to ex-
17 empt panning for gold from the permit requirements of
18 the Maine Revised Statutes, Title 38, section 425.

19 Section 21. This section deletes the 30-day pe-
20 riod between notification of a public hearing to the
21 holding of a hearing for site location applications.
22 For public hearings concerning complex applications,
23 a longer period of time may be necessary. This
24 change is also necessary so that department rules and
25 laws are consistent.

26 Section 22. This provision clarifies that the
27 department may seek interest on expenditures from the
28 Maine Coastal and Inland Surface Oil Clean-up Fund
29 when persons causing the discharge fail to promptly
30 reimburse the fund for clean-up and other authorized
31 expenses incurred by the department. This provision
32 will allow the fund to be made whole in a cost recov-
33 ery action and will provide a disincentive for
34 polluters to delay repayment to the fund for clean-up
35 activities. The interest rate of 15% is equivalent
36 to the interest rate for cost reimbursements under
37 the Maine Hazardous Waste Fund, of the Maine Revised
38 Statutes, Title 38, section 1319-G.

39 Section 23. This section clarifies that the
40 strict liability provisions of the Maine Revised
41 Statutes, Title 38, section 552, apply to the person
42 causing the marine or inland surface water discharge

1 of oil and is not limited to licensees of marine oil
2 terminal facilities. The department has consistently
3 and uniformly applied the strict liability standard,
4 but increasingly the statutory language is challenged
5 by polluters as being unclear or ambiguous. This
6 section makes clear the standard of proof required by
7 the State in a suit to enforce authorized claims of
8 the State.

9 Section 24. This provision clarifies that the
10 department may seek interest on expenditures from the
11 Ground Water Oil Clean-up Fund when persons causing
12 the discharge fail to promptly reimburse the fund for
13 clean-up and other authorized expenses incurred by
14 the department. This provision will allow the fund
15 to be made whole in a cost recovery action and will
16 provide a disincentive for polluters to delay repay-
17 ment to the fund for clean-up activities. The inter-
18 est rate of 15% is equivalent to the interest rate
19 for cost reimbursements under the Maine Hazardous
20 Waste Fund, the Maine Revised Statutes, Title 38,
21 section 1319-G.

22 Section 25. This section clarifies the existing
23 boundary of the Portland Peninsula Air Quality Re-
24 gion. The Maine Revised Statutes, Title 38, section
25 583, subsection 1-A, states Interstate 95 as one of
26 the boundary lines rather than Interstate 295. This
27 section clarifies the boundary line.

28 Section 26. This section deletes one of the 2
29 repetitive sections in the Maine Revised Statutes,
30 Title 38.

31 Section 27. Construction of any 4 or more lane
32 highway projects is permitted only after the Board of
33 Environmental Protection determines that the project
34 will not violate ambient air quality standards. Af-
35 ter 10 years of analyzing 4-lane highway projects,
36 the department has found that 4-lane highway projects
37 facilitate traffic movement and improve air quality.
38 This section repeals 4-lane highway review.

39 Section 28. This is simply a rewording of the
40 exemption clause to make it clear that metal plating
41 operations and the preparation of chrome tanning li-
42 quors are exempt, regardless of whether chrome is

1 present in the hexavalent state. This does not
2 change the intent or the administration of the exemp-
3 tion.

4 Section 29. The intention of this section is to
5 incorporate provisions of federal law, Resource Con-
6 servation and Recovery Act Amendments of 1984, which
7 provide for compliance orders allowing the department
8 to implement a comprehensive hazardous waste manage-
9 ment program. Under the Maine Revised Statutes, Ti-
10 tle 38, section 1304, subsection 12, the department
11 may issue compliance orders to assure corrective ac-
12 tion or cleanup from hazardous waste or waste oil
13 discharges subject to a defined appeals procedure.
14 These changes are needed in order for the State to
15 obtain final authorization to run the federal hazard-
16 ous waste program in lieu of the United States Envi-
17 ronmental Protection Agency.

18 Section 30. This section reduces the application
19 fee for a hazardous waste treatment facility which
20 treats small volumes of waste each month and which is
21 eligible for licensing by rule under department rules
22 from \$2,500 to \$75. This change is intended to make
23 the purchase and use of small, on-site treatment sys-
24 tems, such as closed-loop distillation units, more
25 economically attractive. Potential users of such
26 systems, including auto dealerships, paint shops and
27 cleaners, could reduce the amount of hazardous waste
28 shipped for disposal and significantly reduce trans-
29 portation and disposal costs.

30 Section 31. This section reduces the annual fee
31 for a hazardous waste treatment facility which treats
32 small volumes of waste each month and which is eligi-
33 ble for licensing by rule under department rules from
34 \$500 to \$100. This change is intended to make the
35 purchase and use of small, on-site treatment systems,
36 such as closed-loop distillation units, more economi-
37 cally attractive. Potential users of such systems,
38 including auto dealerships, paint shops and cleaners,
39 could reduce the amount of hazardous waste shipped
40 for disposal and significantly reduce transportation
41 and disposal costs.

42 Section 32. This section corrects an inconsisten-
43 cy in the uncontrolled hazardous substance site law

1 with respect to listing of hazardous substances. The
2 intent is to reference the relevant sections of the
3 Superfund law which specifies the hazardous sub-
4 stances. United States Comprehensive Environmental
5 Response Compensation and Liability Act of 1980, Pub-
6 lic Law 96-510, Section 101, the primary listing by
7 the United States Environmental Protection Agency,
8 apparently had been inadvertently omitted when the
9 state law was first drafted. Section 102 of the
10 Superfund law refers to a special listing by the
11 United States Environmental Protection Agency. Cur-
12 rently, no substances are listed in Section 102 of
13 the Superfund law. The bill also identifies waste
14 oil, as defined under existing law, as a hazardouš
15 substance which will allow uncontrolled sites contam-
16 inated by waste oil to be cleaned up.

17 Section 33. This section provides that the de-
18 partment may require notification when ground water
19 beneath a site is found to be contaminated by hazard-
20 ous substances at levels which exceed relevant con-
21 taminant levels for drinking water.

22 Section 34. This section allows the commissioner
23 to gather information from potentially responsible
24 parties regarding the activities which occurred at
25 uncontrolled hazardous substance sites and to aid in
26 evaluating potential threats posed by those uncon-
27 trolled sites. This requirement parallels existing
28 United States Environmental Protection Agency law for
29 hazardous waste, including the Superfund law. It al-
30 so clarifies that the uncontrolled site designation
31 may be appealed when an order to a responsible party
32 is issued.

33 Section 35. This section clarifies the appeal
34 procedures and appeal time with respect to uncon-
35 trolled site orders.

36 Section 36. This section makes provision for the
37 transitional period for the declassification of cer-
38 tain Department of Environmental Protection posi-
39 tions.

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