

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)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 852

H.P. 629

House of Representatives, March 21, 1989

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative JACQUES of Waterville.

Cosponsored by Representative MITCHELL of Freeport and Representative DEXTER of Kingfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

**An Act to Strengthen and Improve Enforcement of Environmental
Laws.**



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

3 **Sec. 1. 4 MRSA §152, sub-§6, as repealed and replaced by PL**
4 **1987, c. 737, Pt. C, §§2 and 106, and amended by PL 1989, c. 6,**
5 **is repealed and the following enacted in its place:**

7 6. Environmental laws. Original jurisdiction, concurrent
8 with that of the Superior Court, except as noted in Title 38,
9 section 348, subsection 1, to grant equitable relief and impose
10 penalties in proceedings involving alleged violations of a local
11 environmental ordinance or regulation or a state environmental
12 law or rule, including, but not limited to, the following:

13 A. The laws pertaining to the Maine Land Use Regulation
14 Commission, Title 12, chapter 206-A;

15 B. The minimum lot size law, Title 12, sections 4807 to
16 4807-G;

17 C. Shoreland zoning ordinances enacted under Title 30-A,
18 section 3001, and in accordance with Title 12, sections 4811
19 to 4817;

20 D. The plumbing and subsurface waste water disposal rules
21 adopted by the Department of Human Services under Title 22,
22 section 42;

23 E. Laws pertaining to public water supplies, Title 22,
24 sections 2642, 2647 and 2648;

25 F. Local ordinances enacted under Title 22, section 2642,
26 and in accordance with Title 30-A, section 3001;

27 G. Local land use ordinances enacted under Title 30-A,
28 section 3001;

29 H. Local building codes adopted pursuant to Title 30-A,
30 section 3001, and in accordance with Title 30-A, chapter
31 185, subchapter I;

32 I. Automobile junkyards, Title 30-A, chapter 183,
33 subchapter I;

34 J. Regulation and inspection of plumbing, Title 30-A,
35 chapter 185, subchapter III;

36 K. Malfunctioning domestic waste water disposal units,
37 Title 30-A, section 3428;

38 L. The subdivision law, Title 30-A, section 4551; local
39 subdivision ordinances enacted under Title 30-A, section
40 4551;

1 3001; and subdivision regulations adopted under Title 30-A,
2 section 4551;

3
4 M. Local zoning ordinances enacted under Title 30-A,
5 section 3001, and in accordance with Title 30-A, section
6 4503;

7
8 N. All laws administered by the Department of Environmental
9 Protection, Title 38, chapters 2 to 16; and

10 O. Local ordinances regarding air pollution control enacted
11 pursuant to Title 38, section 597.

12
13 Sec. 2. 4 MRSA §152, sub-§7, as enacted by PL 1987, c. 419,
14 §1, is repealed.

15
16 Sec. 3. 38 MRSA §347, as amended by PL 1987, c. 810, §§7, 8
17 and 11, is repealed.

18 Sec. 4. 38 MRSA §§347-A to 347-C are enacted to read:

19
20 §347-A. Violations

21
22 1. General procedures. Whenever it appears to the
23 department, after investigation, that there is or has been a
24 violation of this Title, of rules promulgated under this Title or
25 of the terms or conditions of any Department of Environmental
26 Protection or Board of Environmental Protection license, permit
27 or order, the department may do one or more of the following,
28 including, but not limited to:

29 A. Resolve the violation through an administrative
30 agreement approved by the board and the Attorney General;

31 B. Refer the violation to the Attorney General for
32 prosecution;

33 C. Schedule an enforcement hearing on the alleged violation
34 pursuant to subsection 2;

35 D. Issue a stop work order; or

36 E. Initiate a civil action pursuant to Title 38, section
37 342, subsection 7.

38
39 2. Hearings. Hearings conducted pursuant to subsection 1,
40 paragraph C, shall be before the Board of Environmental
41 Protection. The commissioner shall give at least 30 days'
42 written notice to the alleged violator of the date, time and
43 place of that hearing. The notice shall specify the act or
44 omission which is claimed to be in violation of law or regulation.
45

1 Any hearing conducted under the authority of this subsection
3 shall be in accordance with the provisions of the Maine
5 Administrative Procedure Act, Title 5, chapter 375, subchapter
7 IV. At the hearing, the alleged violator may appear in person or
9 by attorney and answer the allegations of violation and file a
statement of the facts, including the methods, practices and
procedures, if any, adopted or used by that person to comply with
this chapter and present such evidence as may be pertinent and
relevant to the alleged violation.

11 After hearing, or in the event of a failure of the alleged
13 violator to appear on the date set for a hearing, the board
15 shall, as soon as practicable, make findings of fact based on the
record and, if it finds that a violation exists, shall issue an
order aimed at ending the violation. The person to whom an order
is directed shall immediately comply with the terms of that order.

17 3. Cease and desist order. A cease and desist order may be
19 issued by the commissioner to avoid or prevent a continuation of
21 a violation of the laws or rules administered by the department.
The order shall set forth:

23 A. To the extent known, the nature, extent and time of the
25 violation, environmental damage or injury, or potential
damage or injury;

27 B. An order to stop all work connected with the actual or
29 potential violation, damage or injury and to comply
immediately with the terms of the law or rule violated;

31 C. The specific course of action needed to correct the
33 violation, damage or injury, to prevent damage or injury and
to correct or mitigate damage or injury which has resulted
from any violation; and

35 D. The right of the party to a hearing before the Board of
37 Environmental Protection in accordance with subsection 4.

39 The cease and desist order shall not be effective until service
41 has been made on the person who is the subject of the order
43 personally or by certified mail, return receipt requested. The
person to whom an order is directed shall immediately comply with
the terms of that order. Failure to comply shall subject that
person to the penalties in section 349.

45 4. Appeals. Appeals of decisions of the board pursuant to
47 subsection 1, paragraph C, shall be to the Superior Court in
49 accordance with the Maine Administrative Procedure Act, Title 5,
chapter 375, subchapter VII.

51 Appeals of a cease and desist order issued by the commissioner
pursuant to subsection 3 shall be to the Board of Environmental

1 Protection by petition for appeal filed in writing within 10 days
3 of service of the cease and desist order. Appeals may include a
5 request for stay of the order pending appeal. Within 5 working
7 days after receipt of the petition, the board shall hold a
9 hearing. Hearings shall be conducted in accordance with the
11 Maine Administrative Procedure Act, Title 5, chapter 375,
13 subchapter IV. The board shall rescind or modify the order if it
15 finds:

17 A. No violation of the laws in this Title, or the rules
19 adopted under this Title, occurred;

21 B. The parties named in the order are not responsible for
23 the violation; or

25 C. The order is unreasonable, arbitrary or capricious.

27 The board shall make findings of fact and uphold, revoke or
29 modify the order within 48 hours of the close of the hearing.
31 The person to whom an order is directed shall immediately comply
33 with the terms of the order. Any person who is aggrieved by the
35 decision of the board shall be entitled to seek judicial review
37 in the Superior Court in accordance with the Maine Administrative
39 Procedure Act, Title 5, chapter 375, subchapter VII.

41 §347-B. Modification, revocation or suspension of license

43 Notwithstanding Title 5, section 10051, after written notice
45 and opportunity for a hearing pursuant to the Maine
47 Administrative Procedure Act, Title 5, chapter 375, subchapter
49 IV, the board may modify in whole or in part any license, or
51 issue an order prescribing necessary corrective action, or may
act to revoke or suspend a license, whenever the board finds that:

1. Violation of license. The licensee has violated any
condition of the license;

2. Misrepresentation. The licensee has obtained a license
by misrepresenting or failing to disclose fully all relevant
facts;

3. Threat. The licensed discharge or activity poses a
threat to human health or the environment;

4. Failure to include standard or limitation. The license
fails to include any standard or limitation legally required on
the date of issuance;

5. Change in condition or circumstance. There has been a
change in any condition or circumstance that requires revocation,
suspension or a temporary or permanent modification of the terms

1 of the license in order to bring licensed activities into
2 conformity with the law; or

3
4 6. Violation of law. The licensee has violated any law
5 administered by the board.

6
7 For the purposes of this section, the terms "license" and
8 "licensee" include any license, permit, order, approval or
9 certification issued by the board and the holder of the license
10 respectively.

11 **§347-C. Right of inspection and entry**

12
13 Employees and agents of the Department of Environmental
14 Protection may enter any property at reasonable hours and enter
15 any building with the consent of the property owner, occupant or
16 agent, or pursuant to an administrative search warrant, in order
17 to inspect the property or structure, take samples and conduct
18 tests as appropriate to determine compliance with any laws
19 administered by the department or the terms and conditions of any
20 order, regulation, license, permit, approval or decision of the
21 Board of Environmental Protection.

22
23 **Sec. 5. 38 MRSA §348, sub-§1, as enacted by PL 1977, c. 300,**
24 **§9, is amended to read:**

25
26
27 **1. General.** In the event of a violation of any provision of
28 the laws administered by the Department of Environmental
29 Protection or of any order, regulation, license, permit, approval
30 or decision of the Board of Environmental Protection or decree of
31 the court, as the case may be, the Attorney General may institute
32 injunction proceedings to enjoin any further violation thereof, a
33 civil or criminal action or any appropriate combination thereof
34 without recourse to any other provision of law administered by
35 the Department of Environmental Protection.

36
37 When any person authorized to serve civil process under Title
38 30-A, section 4221 or section 4506; or section 441 or section
39 342, subsection 7, serves process on alleged violators of the
40 environmental laws under Title 4, section 152, subsection 6, the
41 District Court shall have original and exclusive jurisdiction.
42 The action may not be removed to Superior Court. Defendants in
43 these actions shall have the rights of appeal to the Superior
44 Court for a jury trial de novo on a determination by the court
45 that there is a genuine issue of material fact as to which there
46 is a right to trial by jury.

1

STATEMENT OF FACT

3

5 Sections 1 and 2 of this bill are designed to simplify the
description of environmental laws enforceable in District Court
7 and make it clear that all Department of Environmental Protection
laws and rules can be enforced in District Court. Presently, not
9 all department laws are included in the list of matters
enforceable, for example, solid waste laws and natural resource
11 protection laws. By including a broad reference to the
department's chapters generally, the jurisdiction section will
13 not need to be amended each time there is an addition or
amendment to the Maine Revised Statutes, Title 38, chapters 2 to
15 16.

17 Sections 3 and 4 of this bill clarify the procedures the
department may invoke to pursue enforcement of a violation.
19 Title 38, section 347-A gives the Board of Environmental
Protection and the Commissioner of Environmental Protection, the
authority to refer matters to the Attorney General. Previously,
21 matters were referred to the Attorney General through board
action. This section also establishes procedural guidelines such
23 as formal service of process and appellate procedures of the
department's cease and desist orders. Title 38, sections 347-B
25 and 347-C incorporate provisions of former section 347.

27 Section 5 of this bill specifies that environmental matters
brought in District Court by people authorized to bring those
29 actions may not be removed to Superior Court and provides for a
jury trial de novo when there is a genuine issue of material fact
31 of the type that is constitutionally guaranteed a right to jury
trial.