

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2461

H.P. 1778

House of Representatives, March 30, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative MARSH of West Gardiner.

Cosponsored by Senator GAUVREAU of Androscoggin, Representative TREAT of Gardiner
and Representative ST. ONGE of Greene.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Increase Criminal Penalties on Deliberate Polluters.

(AFTER DEADLINE)



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

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Sec. 1. 38 MRSA §349, sub-§1-A is enacted to read:

1-A. Criminal penalties; Class C crime. A violation of this subsection is a Class C crime.

A. A person violates this subsection if that person, in violation of this Title, a department rule or a significant term or condition of an applicable order, license, permit or approval of the department and for a commercial purpose, intentionally or knowingly:

(1) Disposes of incinerator facility ash, biomedical waste, waste oil, asbestos, asbestos-containing waste, wastewater treatment plant sludge, paper mill sludge, other sludge waste, contaminated soils, contaminated dredge spoils, spent filter media or residue, or debris or residuals from nonhazardous chemical spills;

(2) Discharges a pollutant into the waters of the State from a direct discharge, excepting:

(a) Agricultural activities conducted in accordance with best management practices as set forth in Title 17, section 2805, subsection 2;

(b) Activities associated with the use, construction, maintenance or repair of a public or private road or way; or

(c) Stormwater, noncontact cooling waters or flume or process discharges that are not contaminated by a waste stream; or

(3) Emits an air contaminant into the ambient air from a building, structure, facility or installation, except for usually anticipated excess emissions of a licensed contaminant emitted during cold start-ups and plant shutdowns.

B. As used in this subsection, the following terms have the following meanings.

(1) "For a commercial purpose" means the discharge or emission as part of a business, industrial or commercial enterprise, for a fee or for other type of remuneration.

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(2) "Significant" means affecting the discharge of water pollutants or emission of air contaminants into the environment.

(3) "Intentionally" and "knowingly" have the same meaning as established in Title 17-A, section 35.

C. The department may not present or threaten to present criminal charges under this subsection to obtain an advantage in a civil or administrative enforcement action.

D. The Attorney General has exclusive authority to bring a prosecution under this subsection. With respect to each case in which the Attorney General has initiated a criminal prosecution under this subsection, the Attorney General shall, within 30 days of that initiation, and within 30 days of final resolution, file a written report with the Executive Director of the Legislative Council for transmission to the joint standing committees of the Legislature having jurisdiction over energy and natural resources matters and over judiciary matters containing a brief synopsis of the facts of the case and reference to the specific pollutants or contaminants involved.

E. It is an affirmative defense to a prosecution under this subsection that:

(1) The pollutant or contaminant that was discharged or emitted is licensed or does not require a license during operations;

(2) The discharge or emission resulted substantially from a malfunction beyond the control of the defendant. There is no affirmative defense under this paragraph if the malfunction was caused substantially by poor maintenance, reckless operation or any other reasonably preventable condition or preventable equipment breakdown;

(3) The defendant has taken reasonable steps under the circumstances to minimize or prevent the discharge or emission;

(4) The defendant terminated the discharge or emission as soon as reasonably possible; and

(5) The defendant reported the discharge or emission to the department.

2 It is prima facie evidence of compliance with subparagraphs
3 (3) and (4) that the defendant complied with oral or written
4 instructions by the department.

6 F. It is an affirmative defense to a prosecution under this
7 subsection that:

8 (1) The discharge or emission was of a specific
9 pollutant or contaminant that a license had not
10 specifically prohibited or limited during normal
11 operations;

12 (2) The defendant is otherwise lawfully licensed to
13 discharge or emit pollutants or contaminants;

14 (3) The defendant reported the discharge or emission
15 to the department; and

16 (4) The department has taken no action to prohibit,
17 limit or regulate that discharge or emission.

18 G. The provisions of Title 17-A, section 12 on de minimis
19 violations apply.

20 H. Notwithstanding Title 17-A, sections 4-A and 1301, the
21 fine for a violation of this subsection may not exceed
22 \$25,000.

23 Sec. 2. 38 MRSA §349, sub-§3, as affected by PL 1989, c. 890,
24 Pt. A, §40 and amended by Pt. B, §7, is repealed and the
25 following enacted in its place:

26 3. Falsification of environmental records. A person is
27 guilty of criminal falsification of environmental records if that
28 person intentionally or knowingly:

29 A. Makes a false material statement, representation or
30 certification in a document filed with the department or
31 required to be maintained by a person or entity other than
32 the department pursuant to this Title, department rules or
33 the terms and conditions of any applicable order, license,
34 permit or approval of the department;

35 B. With intent to deceive the department, fails to monitor,
36 sample or report any discharges or emissions of pollutants
37 as required by an applicable order, license, permit or
38 approval of the department; or

2 C. With intent to deceive the department, fails to make any
4 information submittal required by the commissioner under
section 568, subsection 3 or section 1364, subsection 3.

6 Falsification of environmental records is a Class C crime except
8 that, notwithstanding Title 17-A, sections 4-A and 1301, the fine
may not exceed \$10,000.

10 "Material," as used in paragraph A, means capable of affecting
12 the course or outcome of a licensing or other proceeding or
capable of affecting the department's ability to monitor
14 compliance under an order, license, permit or approval.

16 **Sec. 3. 38 MRSA §349, sub-§3-A is enacted to read:**

18 **3-A. Tampering with a monitoring device.** A person is
20 guilty of tampering with a monitoring device if that person
intentionally or knowingly tampers with or renders inaccurate a
22 monitoring device or a device for sampling, preservation,
handling or analytical measurement required by this Title,
24 department rules or the terms and conditions of an order,
26 license, permit or approval of the department. Tampering with a
monitoring device is a Class C crime, except that,
notwithstanding Title 17-A, sections 4-A and 1301, the fine may
not exceed \$10,000.

28 **FISCAL NOTE**

30 Raising the class of crime for violations of certain
32 environmental laws will impact the correctional system.

34 Sentences imposed for a Class C crime, unless 9 months or
36 less, must be served in a state correctional institution. The
cost per sentence is \$40,640 based upon an average length of stay
of one year and 9 months.

38 Sentences imposed for Class E offenses must be served in a
40 county jail facility. The cost per sentence for a Class E crime
is \$4,020 based upon an average length of stay of 67 days. The
42 additional costs to the counties for housing each person
44 sentenced under the Class E violations will require full funding
by the State as a state mandate pursuant to the Maine Revised
46 Statutes, Title 30-A, section 5684. The General Fund
appropriations required to reimburse these costs can not be
estimated at this time.

48 The additional workload and administrative costs associated
with the minimal number of new cases filed in the court system

2 can be absorbed within the budgeted resources of the Judicial
Department.

4 The additional costs associated with filing written reports
6 with the Legislature can be absorbed by the Department of the
Attorney General utilizing existing budgeted resources.

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STATEMENT OF FACT

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12 This bill is intended to clarify the existing criminal
provisions of the environmental laws and to facilitate the
14 enforcement of those provisions by the State.

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16 The bill raises the class of crime for specific violations
of the environmental laws from a Class E crime to a Class C crime.

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The bill further revises the language on falsification of
environmental records.

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22 The bill further reclassifies the crimes of interfering with
monitoring and testing devices and failure to provide information
to be Class C crimes.

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