

# MAINE STATE LEGISLATURE

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OK  
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L.D. 231

(Filing No. H-334 )

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
FIRST REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 179, L.D. 231, Bill, "An Act to Establish Uniform Procedures and Standards for Administrative Consent Agreements"

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Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

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Whereas, the process of exploring and resolving violations of environmental laws is critical to the well-being of the State; and

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Whereas, this legislation clarifies and improves that process; and

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Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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**Sec. 1.** 38 MRSA §347-A, sub-§1, as amended by PL 1989, c. 890, Pt. A, §31 and affected by §40, is repealed and the following enacted in its place:

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1. General procedures. This subsection sets forth procedures for enforcement actions.

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COMMITTEE AMENDMENT "A" to H.P. 179, L.D. 231

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A. Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the board or the commissioner, the commissioner may initiate an enforcement action by taking one or more of the following steps:

- (1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the board and the Attorney General;
- (2) Referring the violation to the Attorney General for civil or criminal prosecution;
- (3) Scheduling and holding an enforcement hearing on the alleged violation pursuant to subsection 2; or
- (4) With the prior approval of the Attorney General, initiating a civil action pursuant to section 342, subsection 7.

B. Before initiating a civil enforcement action pursuant to paragraph A, the commissioner shall issue a notice of violation to the person or persons the commissioner considers likely to be responsible for the alleged violation or violations. The notice of violation must describe the alleged violation or violations, to the extent then known by the commissioner; cite the applicable law, rule and term or condition of the license, permit or order alleged to have been violated; and provide time periods for the alleged violator to take necessary corrective action and to respond to the notice. For violations the commissioner finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances. The commissioner is not required to issue a notice of violation before issuing an emergency order pursuant to subsection 3 or other applicable provision of this Title; nor is the commissioner required to issue a notice of violation before referring an alleged violation to the Attorney General for criminal prosecution or in a matter requiring immediate enforcement action.

**Sec. 2. 38 MRSA §347-A, sub-§4,** as enacted by PL 1989, c. 890, Pt. A, §32 and affected by §40, is repealed and the following enacted in its place:

**4. Administrative consent agreements.** Following issuance of a notice of violation pursuant to subsection 1 and after receipt of the alleged violator's response to that notice or

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COMMITTEE AMENDMENT "A" to H.P. 179, L.D. 231

expiration of the time period specified in the notice for a response, in situations determined by the commissioner appropriate for further enforcement action, the commissioner may send a proposed administrative consent agreement to the alleged violator or violators.

A. Except as otherwise expressly agreed to by the Attorney General, all proposed administrative consent agreements must be reviewed and approved by the Department of the Attorney General before being sent to the alleged violator.

B. All proposed administrative consent agreements sent to the alleged violator must be accompanied by written correspondence from the department, in language reasonably understandable to a citizen, explaining the alleged violator's rights and responsibilities with respect to the proposed administrative consent agreement. The correspondence must include an explanation of the factors considered by the commissioner in determining the proposed civil penalty, a statement indicating that the administrative consent agreement process is a voluntary mechanism for resolving enforcement matters without the need for litigation and an explanation of the department's procedures for handling administrative consent agreements. The correspondence must also specify a reasonable time period for the alleged violator to respond to the proposed administrative consent agreement and offer the opportunity for a meeting with department staff to discuss the proposed agreement.

C. After a proposed administrative consent agreement has been sent to the alleged violator, the commissioner may revise and resubmit the agreement if further circumstances become known to the commissioner, including information provided by the alleged violator, that justify a revision.

D. The public may make written comments to the board at the board's discretion on an administrative consent agreement entered into by the commissioner and approved by the board.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

**FISCAL NOTE**

The Department of Environmental Protection will incur some minor additional costs to provide the required notices of violation. These costs can be absorbed within the department's existing budgeted resources.'

STATEMENT OF FACT

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The amendment replaces the bill text to require the department to give alleged violators a notice of violation before initiating a civil, nonemergency action to enforce the Maine Revised Statutes, Title 38, a rule adopted under that Title or a license, permit or order issued under that Title. The notice would describe the violation; state the law, rule or other provision violated; and provide time periods within which the alleged violator should correct the action and respond to the notice.

If the violation is minor, the department may state in the notice that it will not pursue further enforcement action if the person corrects the violation or in other appropriate circumstances, such as where corrective action is not needed.

After the notice has been given and the alleged violator has responded or the time for response has run out, the department may propose an administrative consent agreement to an alleged violator. The agreement would be reviewed and approved by the Attorney General's office before being mailed to the alleged violator.

The amendment requires the department to send understandable written information with the proposed agreement, explaining: what the agreement is; what rights and responsibilities the alleged violator has with respect to the agreement; the department's procedures for handling agreements; factors the department used in setting the proposed penalty; the time period for response; and the option for the person to meet with department staff to discuss the agreement.

The amendment also provides for revision of a proposed agreement under certain circumstances.

Finally, the amendment adds an emergency preamble, emergency clause and fiscal note to the bill.

Reported by the Committee on Energy and Natural Resources  
Reproduced and distributed under the direction of the Clerk of the House  
5/17/93 (Filing No. H-334)