

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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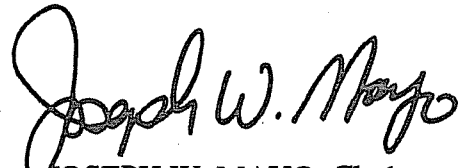
H.P. 386

House of Representatives, February 16, 1993

**An Act to Clarify the Process of Resolving Nuisance Complaints
Involving Agriculture.**

Submitted by the Department of Agriculture, Food and Rural Resources pursuant to Joint Rule 24.

Reference to the Committee on Agriculture suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative SPEAR of Nobleboro.

Cosponsored by Representatives: ALIBERTI of Lewiston, CROSS of Dover-Foxcroft, HUSSEY of Milo, TARDY of Palmyra, Senators: MARDEN of Kennebec, PARADIS of Aroostook.

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

2
4 **Sec. 1.** 17 MRSA §2701-A, as repealed and replaced by PL 1987,
c. 479, is repealed.

6 **Sec. 2.** 17 MRSA §2701-B, first ¶, as amended by PL 1991, c.
8 548, Pt. A, §6, is further amended to read:

10 The Commissioner of Agriculture, Food and Rural Resources
12 shall investigate complaints of improper manure handling,
14 including, but not limited to, complaints of improper storage or
16 spreading of manure. ~~The commissioner may investigate or take
18 either action under this section only after notice and hearing and
20 utilizing the requirements of Title 5, chapter 375, subchapter
22 IV.~~ If the commissioner is able to identify the source or
24 sources of the manure and has reason to believe that the manure
26 is a nuisance and the nuisance is caused by the use of other than
28 generally accepted manure handling practices, the commissioner
30 shall:

32 **Sec. 3.** 17 MRSA §2701-B, sub-§§2 and 3, as enacted by PL 1989,
34 c. 836, §2, are amended to read:

36 **2. Conformance.** Require the person responsible to abide by
38 the necessary changes determined in subsection 1 and determine if
40 the changes have been made; and

42 **3. Report.** Give the written findings of the initial
44 investigation and any determination of compliance to the
46 complainant and the person responsible; and.

48 **Sec. 4.** 17 MRSA §2701-B, next to the last ¶, as enacted by PL
50 1989, c. 836, §2, is amended to read:

 The commissioner shall adopt rules ~~in accordance with the
Maine Administrative Procedure Act, Title 5, chapter 375,~~ for the
interpretation and implementation of this section, ~~including a
definition of~~ and may determine "generally accepted manure
handling practices." practices in accordance with the Maine
Administrative Procedure Act.

Sec. 5. 17 MRSA §2805, sub-§§5 and 6, as enacted by PL 1991, c.
395, §3, are amended to read:

5. Complaint resolution. The commissioner shall
investigate all complaints involving a farm or farm operation,
including, but not limited to, complaints involving the use of
waste products, ground and surface water pollution and insect
infestations. In cases of insect infestations not arising from
agricultural activities, when the State Entomologist believes

2 that the infestation is a public nuisance and is able to identify
3 the source or sources of the infestation, the commissioner shall
4 refer the matter to the Department of the Attorney General. If
5 the commissioner finds upon investigation that the person
6 responsible for the farm or farm operation is using best
7 management practices, the commissioner shall notify that person
8 and the complainant of this finding in writing. If the
9 commissioner identifies the source or sources of the problem, has
10 reason to believe that the source is a nuisance and finds that
11 the nuisance is caused by the use of other than best management
12 practices, the commissioner shall:

13 A. Determine the changes needed in the farm or farm
14 operation to comply with best management practices;

15 B. Advise the person responsible for the farm or farm
16 operation of the changes, as determined in paragraph A, that
17 are necessary to conform with best management practices and
18 determine subsequently if those changes are implemented; and

19 C. Give the findings of the initial investigation and
20 subsequent investigations and any determination of
21 compliance to the complainant and person responsible.

22 **6. Failure to adopt best management practices.** If the
23 person responsible for the farm or farm operation does not adopt
24 best management practices, the commissioner shall send a written
25 report to an appropriate agency if a federal or state law has
26 been violated and ~~may refer the matter~~ to the Attorney General.
27 The Attorney General may institute an action to abate a nuisance
28 and the court may order the abatement with costs as provided
29 under section 2702.

30

31 STATEMENT OF FACT

32 This bill harmonizes the 3 laws that deal with the
33 investigation of complaints regarding agricultural practices.
34 The law regarding insect infestations is repealed. Its unique
35 provisions are incorporated into the section dealing with all
36 agricultural practices. The standard found in the insect
37 infestation law, "generally accepted agricultural practices," is
38 dropped in favor of the more current standard of "best management
39 practices." Finally, the law regarding the investigation of
40 complaints of improper manure handling is amended to make certain
41 procedural clarifications including the deletion of the
42 requirement that formal hearings precede any action taken under
43 the law.

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