

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

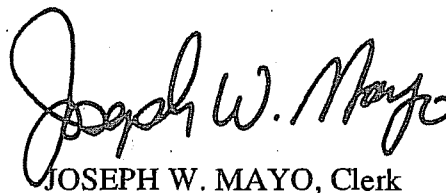
No. 879

H.P. 648

House of Representatives, March 12, 1993

An Act to Promote More Effective Input to Environmental Regulation.

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


JOSEPH W. MAYO, Clerk

Presented by Representative GOULD of Greenville.

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

2 **Sec. 1. 5 MRSA §12004-D, sub-§5** is enacted to read:

4 **5. Regional Councils Expenses 38 MRSA §341-H**
6 **Only**

8 **Sec. 2. 38 MRSA §341-A, sub-§§2 and 4**, as enacted by PL 1989,
10 c. 890, Pt. A, §13 and affected by §40, are amended to read:

12 **2. Composition.** The department shall ~~consist~~ consists of
14 the Board of Environmental Protection, in the laws administered
16 by the department called the "board," and of a the Commissioner
18 of Environmental Protection, in the laws administered by the
20 department called the "commissioner," and 5 to 7 regional
22 councils, in the laws administered by the department called
24 "councils" or "regional councils."

26 **4. Licenses and permits.** For purposes of this Title,
28 licenses or permits issued by the department may be issued by
30 either the commissioner or the board councils subject to the
32 provisions of section 341-D, subsection 2.

34 **Sec. 3. 38 MRSA §341-B**, as enacted by PL 1989, c. 890, Pt. A,
36 §13 and affected by §40, is amended to read:

38 **§341-B. Purpose of the board**

40 The purpose of the Board of Environmental Protection is to
42 provide informed, independent and timely decisions on the
44 interpretation, and administration ~~and enforcement~~ of the laws
46 relating to environmental protection and to provide for credible,
48 fair and responsible public participation in department
50 decisions. The board shall fulfill its purpose through
52 rulemaking, ~~decisions on selected permit applications,~~ and review
54 of the commissioner's and councils' licensing ~~and enforcement~~
actions and recommending changes in the law to the Legislature.

56 **Sec. 4. 38 MRSA §341-D**, as amended by PL 1991, c. 804, Pt. A,
58 §1, is further amended to read:

60 **§341-D. Board and councils responsibilities and duties**

62 The board ~~is~~ and councils are charged with the following
64 duties and responsibilities.

66 **1. Rulemaking.** Subject to the Maine Administrative
68 Procedure Act, the board shall adopt, amend or repeal reasonable
70 rules and emergency rules necessary for the interpretation,
72 implementation and enforcement of any provision of law that the
74 department is charged with administering. The board shall also
adopt, amend and repeal rules as necessary for the conduct of its
business.

2 If a comment is received during the hearing process on any rule
4 proposed by the board regarding a specific provision in the rule
6 that imposes a regulatory burden more stringent than the burden
that would be imposed by the adoption of a federal minimum
statement of the adopted rule.

8 **2. Permit and license applications.** The board councils
10 shall decide each application for approval of permits and
licenses that in ~~its~~ the commissioner's judgment:

12 A. Involves a policy, rule or law that the board has not
14 previously interpreted;

16 B. Involves important policy questions that the board
department has not resolved;

18 C. Involves important policy questions or interpretations
20 of a rule or law that require reexamination;

22 D. Have generated substantial public interest.

24 The board councils shall assume jurisdiction over applications
26 referred to it under section 344, subsection 2-A, when ~~it~~ the
commissioner finds that the criteria of this subsection have been
met.

28 ~~The board~~ A regional council may vote to assume jurisdiction of
30 an application if it finds that one or more of the criteria in
32 this subsection have been met and the location of the proposed
project is within its geographic area.

34 Any interested party may request ~~the board~~ a regional council to
assume jurisdiction of an application within its geographic area.

36 **3. Modification, revocation or suspension.** After written
38 notice and opportunity for a hearing pursuant to the Maine
40 Administrative Procedure Act, Title 5, chapter 375, subchapter
42 IV, the board may modify in whole or in part any license, or may
issue an order prescribing necessary corrective action, or may
act in accordance with the Maine Administrative Procedure Act to
revoke or suspend a license, whenever the board finds that:

44 A. The licensee has violated any condition of the license;

46 B. The licensee has obtained a license by misrepresenting
48 or failing to disclose fully all relevant facts;

50 C. The licensed discharge or activity poses a threat to
human health or the environment;

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

4 E. There has been a change in any condition or circumstance
6 that requires revocation, suspension or a temporary or
permanent modification of the terms of the license; or

8 F. The licensee has violated any law administered by the
department.

10 For the purposes of this subsection, the term "license" includes
12 any license, permit, order, approval or certification issued by
the department and the term "licensee" means the holder of the
14 license.

16 4. Appeal or review. The board shall review, may hold a
hearing at its discretion on and may affirm, amend or reverse any
18 of the following:

20 A. Final license or permit decisions made by the
22 commissioner or the councils when a person aggrieved by a
decision of the commissioner or a council appeals that
24 decision to the board within 30 days of the filing of the
decision with the board staff. The board staff shall give
26 written notice to persons that have asked to be notified of
the decision. The board may allow the record to be
28 supplemented when it finds that the evidence offered is
relevant and material and that:

30 (1) An interested party seeking to supplement the
32 record has shown due diligence in bringing the evidence
to the licensing process at the earliest possible time;
or

34 (2) The evidence is newly discovered and could not, by
36 the exercise of diligence, have been discovered in time
to be presented earlier in the licensing process.

38 The board is not bound by the commissioner's or a council's
40 findings of fact or conclusions of law but may adopt, modify
or reverse findings of fact or conclusions of law
42 established by the commissioner or council. Any changes
made by the board under this paragraph must be based upon
44 the board's review of the record, any supplemental evidence
admitted by the board and any hearing held by the board;

46 B. License or permit decisions made by the commissioner or
48 councils that the board votes to review within 30 days of
the next regularly scheduled board meeting following written
50 notification to the board of the commissioner's or council's
decision. The procedures for review are the same as
52 provided under paragraph A; and

2 C. License or permit decisions appealed to the board under
another law. Unless the law provides otherwise, the
4 standard of review is the same as provided under paragraph A.

6 **5. Requests for reconsideration.** Within 30 days of a
decision by the board, any person aggrieved by the decision may
8 petition the board in writing for:

10 A. Correction of any part of the decision that the
petitioner believes to be in error and not intended by the
12 board;

14 B. An opportunity to present new or additional evidence to
secure reconsideration of any part of the decision; or

16 C. A challenge to any fact of which official notice was
18 taken.

20 The petition must set forth in detail the findings, conclusions
or conditions to which the petitioner objects, the basis of the
22 objections, the nature of any new or additional evidence to be
offered and the nature of the relief requested. Within 30 days
24 of receiving a complete reconsideration petition, the board shall
decide whether to reconsider its decision. The board may hold a
26 hearing within 30 days of its decision to reconsider the decision.

28 In considering the petition, the board may grant the petition in
full or in part, or dismiss the petition. The board shall
30 provide reasonable notice to interested persons.

32 The board may allow the record to be supplemented when it finds
that the evidence offered is relevant and material and that an
34 interested party seeking to supplement the record has shown due
diligence in bringing the evidence to the licensing process at
36 the earliest possible time or the evidence is newly discovered
and could not, by the exercise of diligence, have been discovered
38 in time to be presented earlier in the licensing process.

40 The running of the time for appeal under section 346, subsection
1, is terminated by a timely petition for reconsideration filed
42 under this subsection. The full time for appeal commences and is
computed from the date of the final board action dismissing the
44 petition or another final board action as a result of the
petition.

46 The filing of a petition for reconsideration is not an
administrative or judicial prerequisite for the filing of an
48 appeal under section 346, subsection 1.

50 ~~6. -- Enforcement. -- The board shall:~~

52 ~~A. -- Advise the commissioner on enforcement priorities and~~
54 ~~activities;~~

2 ~~B.---Advise the commissioner on the adequacy of penalties and~~
~~enforcement activities;~~

4 ~~C.---Approve administrative consent agreements pursuant to~~
~~section 347-A, subsection 1; and~~

6 ~~D.---Hear appeals of emergency orders pursuant to section~~
8 ~~347-A, subsection 3.~~

10 **7. Reports to the Legislature.** The board shall report to
12 the joint standing committee of the Legislature having
14 jurisdiction over energy and natural resource matters by January
16 15th of the first regular session of each Legislature on the
effectiveness of the environmental laws of the State and any
recommendations for amending those laws or the laws governing the
board.

18 **8. Other duties.** The board shall carry out other duties as
20 required by law.

22 **Sec. 5. 38 MRSA §§341-H, 341-I and 341-J are enacted to read:**

24 **§341-H. Regional councils**

26 There are established 5 to 7 regional councils to promote
more effective public input into environmental decision making.

28 1. Number of councils; regions. The board, by rule, shall
30 determine the number of councils within the State and shall
delineate their geographic boundaries.

32 2. Composition. Each regional council is composed of 7
34 members appointed by the Governor, subject to review by the joint
standing committee of the Legislature having jurisdiction over
36 energy and natural resources matters and to confirmation by the
Legislature.

38 3. Qualifications. Members of a regional council must
40 reside within the geographic boundaries of that council. At
least 3 of the members of each regional council must have
42 experience as a municipal official.

44 4. Terms. Members are appointed for staggered 4-year
46 terms, except that, of the initial appointments to each council,
one member must be appointed for a one-year term, 2 members for a
2-year term, 2 members for a 3-year term and 2 members for a
48 4-year term. A vacancy must be filled for the unexpired portion
of the term. A member may not serve more than 2 consecutive
4-year terms.

50 5. Chair. The members of a regional council shall elect a
52 chair from among their membership.

2 6. Compensation. The members of a regional council are
3 entitled to compensation for their expenses according to the
4 provisions of Title 5, section 12004-D, subsection 5.

6 7. Conflict of interest. Members are governed by the
7 conflict of interest provisions of Title 5, section 18.

8 8. Federal Water Pollution Control Act requirements. When
9 the State receives authority to grant permits under the Federal
10 Water Pollution Control Act, 33 United States Code 1982, Section
11 1251 et seq., as amended, a person may not serve as a council
12 member who receives, or during the 2 years prior to appointment
13 has received, a significant portion of income directly or
14 indirectly from license or permit holders or applicants for a
15 license or permit under the Federal Water Pollution Control Act.

16 **§341-I. Regional council responsibilities and duties**

18 The regional councils are charged with the following duties
19 and responsibilities.

21 1. Licenses and permits. A regional council shall decide
22 each application for approval of permits and licenses for
23 activities within its geographic area that is referred to the
24 council pursuant to section 341-D, subsection 2.

26 2. Enforcement. The councils shall:

28 A. Advise the commissioner on enforcement priorities and
29 activities;

31 B. Advise the commissioner on the adequacy of penalties and
32 enforcement activities within their geographic areas;

34 C. Approve administrative consent agreements within their
35 geographic areas pursuant to section 347-A, subsection 1; and

37 D. Hear appeals of emergency orders within their geographic
38 areas pursuant to section 347-A, subsection 3.

40 3. Public input. The councils shall biannually report to
41 the commissioner, the board and the joint standing committee of
42 the Legislature having jurisdiction over natural resources.
43 matters their findings gathered from local input and decision
44 making, including any recommendations for statutory or regulatory
45 rule changes.

47 4. Public information. The councils shall disseminate
48 information provided by the commissioner on environmental
49 policies and laws.

2
3 **§341-J. Regional council meetings**

4 Council meetings held under sections 341-D and 341-I are
5 governed by the following provisions.

6 1. Quorum. Four members of a council constitute a quorum
7 for permit and license decisions.

8
9 2. Proceedings recorded. All proceedings before a council
10 must be electronically recorded.

11 **Sec. 6. 38 MRSA §342, sub-§4, first ¶,** as amended by PL 1991, c.
12 804, Pt. C, §2, is further amended to read:

13
14 **4. Organization of department.** The commissioner, after
15 consultation with the Board of Environmental Protection, shall
16 organize the department into the bureaus, divisions, regional
17 offices and other administrative units necessary to fulfill the
18 duties of the department. The commissioner shall organize
19 regional office staff to support the regional councils and to
20 increase regionalization of decision making. After consultation
21 with the board, the commissioner shall prescribe the functions of
22 the bureaus and other administrative units to insure that the
23 powers and duties of the department are administered efficiently
24 so that all license applications and other business of the
25 department may be expeditiously completed in the public interest.

26
27 **Sec. 7. 38 MRSA §342, sub-§8, ¶¶F and H,** as repealed and
28 replaced by PL 1991, c. 66, Pt. A, §2, are amended to read:

29
30 **F.** An indication of whether the commissioner or ~~the board~~ a
31 regional council will decide the application;

32
33 **H.** A brief description of the final action taken by the
34 department, either by the commissioner or ~~the board~~ a
35 regional council, on the application.

36
37 **Sec. 8. 38 MRSA §342, sub-§11,** as enacted by PL 1989, c. 890,
38 Pt. A, §18 and affected by §40, is amended to read:

39
40 **11. Administrative duties for the board and councils.** The
41 commissioner shall meet the administrative requirements of the
42 board and councils, including bookkeeping, expense reimbursement
43 and payroll matters.

44
45 **Sec. 9. 38 MRSA §342, sub-§12, ¶C,** as enacted by PL 1989, c.
46 890, Pt. A, §18, and affected by §40, is amended to read:

47
48 **C.** That the public understands the permitting process and
49 all the procedures of the department including those of the
50 councils and board. Any written material must be in clear,
51 concise language.

2 **Sec. 10. 38 MRSA §344, sub-§1, last ¶**, as amended by PL 1991, c.
804, Pt. B, §2 and affected by §7, is further amended to read:

4 All correspondence notifying an applicant of denial of an
6 application by the board a council or the commissioner must be by
certified mail, return receipt requested.

8 **Sec. 11. 38 MRSA §344, sub-§2-A**, as amended by PL 1991, c.
804, Pt. B, §3 and affected by §7, is further amended to read:

10 **2-A. Processing time limits, decisions and appeals.** After
12 the commissioner accepts an application for processing, the
14 commissioner may approve, approve with conditions, disapprove or
refer the application as follows.

16 A. The commissioner shall decide as expeditiously as
18 possible if an application meets one or more of the criteria
set forth in section 341-D, subsection 2 and shall request
20 that the board regional council whose geographic area
encompasses the location of the proposed project assume
22 jurisdiction of that application. If at any subsequent time
during the review of an application the commissioner decides
24 that the application falls under section 341-D, subsection
2, the commissioner shall request that the board appropriate
regional council assume jurisdiction of the application.

26 B. The commissioner shall decide whether an application
28 meets the permit by rule provisions under subsection 7
within 20 working days after notifying the applicant of
30 acceptance of the application.

32 C. For those applications that do not fall under the permit
by rule provisions of subsection 7, the commissioner shall
34 decide upon the application pursuant to the provisions of
section 344-B.

36 Any person aggrieved by a final license or permit decision of the
38 commissioner or a council may appeal that decision to the board.
The filing of an appeal with the board is not a prerequisite for
40 the filing of a judicial appeal.

42 **Sec. 12. 38 MRSA §344, sub-§4-A, ¶B**, as enacted by PL 1989, c.
890, Pt. A, §25 and affected by §40, is amended to read:

44 B. For those applications to be decided by the board
46 councils, the commissioner shall provide a summary of the
application to the board regional council whose geographic
48 area encompasses the location of the proposed project, all
interested governmental agencies and other interested
50 parties in a manner prescribed by the board by rule. The
rule must provide at least 10 working days for the receipt

2 of comments on the application prior to the preparation of a
4 draft permit or license. If requested by the applicant or
6 any interested party, the commissioner shall prepare a draft
8 permit or license and shall give reasonable notice of the
10 date the board council will act on the application to the
12 applicant and to any other person who has notified the
14 commissioner of an interest in the application. The draft
16 permit or license must be made available to the applicant
18 and to all interested persons at the Augusta and appropriate
20 regional offices of the department at least 15 working days
22 before the board council acts on the application.
24

26 **Sec. 13. 38 MRSA §344, sub-§8**, as enacted by PL 1989, c. 890,
28 Pt. A, §27 and affected by §40, is amended to read:

30 **8. Effective date of license.** Except as provided in this
32 subsection, a license granted by the commissioner is effective
34 when the commissioner signs the license. The commissioner may
36 attach a condition to the license requiring up to a 30-day delay
38 in any physical alteration of the project area and any
40 construction activity authorized by the license. A license
42 granted by ~~the board~~ a regional council is effective when the
44 chair of the board council or the chair's designee signs the
46 license.
48

50 **Sec. 14. 38 MRSA §344-B, sub-§3, ¶A**, as enacted by PL 1991, c.
52 804, Pt. B, §4 and affected by §7, is amended to read:

54 **A.** The processing time for an application stops if:

(1) The commissioner determines that a public hearing
is required. Under this subparagraph, the processing
period may be stopped only for as long as necessary to
accommodate the public hearing process and must
commence at the end of the comment period following the
public hearing;

(2) ~~The board~~ A regional council assumes jurisdiction
over an application. If ~~the board~~ a regional council
assumes jurisdiction over an application, the board
council shall set a new timetable for the application
and shall stop the processing period or extend the
deadline subject to the conditions of this subsection.
The commissioner shall recommend a timetable to the
council and the members may vote to amend or accept
that recommendation. The forfeiture provisions of
subsection 5 do not apply to timetables set by the
board councils; or

(3) The commissioner determines that the applicant has
significantly modified the application. Under this
subparagraph, the processing period is stopped until
the applicant and the commissioner agree to a new
timetable.

2 **Sec. 15. 38 MRSA §345-A, sub-§1-A**, as enacted by PL 1989, c.
890, Pt. A, §29 and affected by §40, is amended to read:

4 **1-A. Department hearings.** The board and, commissioner and
6 regional councils may hold public hearings as necessary to carry
out responsibilities under this Title.

8 **Sec. 16. 38 MRSA §345-A, sub-§4**, as enacted by PL 1985, c.
10 746, §10, is amended to read:

12 **4. Subpoena power.** The board and, commissioner and
14 regional councils may each issue subpoenas to compel the
16 production of books, records and other data related to the
18 matters in issue at any hearing. If any person served with a
20 subpoena demonstrates to the satisfaction of the issuer of the
22 subpoena that the production of the information would, if made
24 public, divulge methods or processes which that are entitled to
26 protection as trade secrets, the information shall must be
disclosed only at a nonpublic portion of the hearing and ~~shall be~~
is confidential and not available for public inspection. If any
person fails or refuses to obey such a subpoena, the issuer of
the subpoena may apply to any Justice of the Superior Court for
an order compelling that person to comply with the subpoena. The
Superior Court may issue an order and may punish failure to obey
the order as civil contempt.

28 **Sec. 17. 38 MRSA §346, sub-§1**, as affected by PL 1989, c. 890,
Pt. A, §40 and amended by Pt. B, §4, is further amended to read:

30 **1. Appeal to Superior Court.** Except as provided in section
32 347-A, subsection 3, any person aggrieved by any order or
34 decision of the board ~~or~~, the commissioner or a regional council
may appeal to the Superior Court. These appeals to the Superior
Court shall must be taken in accordance with Title 5, chapter
375, subchapter VII.

36 **Sec. 18. 38 MRSA §347-A, sub-§1**, as amended by PL 1989, c.
38 890, Pt. A, §31 and affected by §40, is further amended to read:

40 **1. General procedures.** Whenever it appears to the
42 commissioner, after investigation, that there is or has been a
44 violation of this Title, of rules promulgated under this Title or
46 of the terms or conditions of any board council or commissioner
license, permit or order, the commissioner may do one or more of
the following, including, but not limited to:

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

50 B. Refer the violation to the Attorney General for
52 prosecution;

2 C. Schedule and hold an enforcement hearing on the alleged
violation pursuant to subsection 2; or

4 D. With the prior approval of the Attorney General,
6 initiate a civil action pursuant to section 342, subsection
7.

8 **Sec. 19. 38 MRSA §347-A, sub-§4**, as enacted by PL 1989, c.
10 890, Pt. A, §32 and affected by §40, is amended to read:

12 **4. Administrative agreements.** The public may make written
comment to the board regional council in whose geographic area an
14 alleged violation occurs at the board's council's discretion on
any administrative consent agreements entered into by the
16 commissioner and approved by the board council.

18 **Sec. 20. 38 MRSA §347-C**, as affected by PL 1989, c. 890, Pt.
A, §40 and amended by Pt. B, §5, is further amended to read:

20 **§347-C. Right of inspection and entry**

22 Employees and agents of the Department of Environmental
24 Protection may enter any property at reasonable hours and enter
any building with the consent of the property owner, occupant or
26 agent, or pursuant to an administrative search warrant, in order
to inspect the property or structure, take samples and conduct
28 tests as appropriate to determine compliance with any laws
administered by the department or the terms and conditions of any
30 order, regulation, license, permit, approval or decision of the
commissioner or of the board councils.

32 **Sec. 21. 38 MRSA §348, sub-§§1 and 2**, as affected by PL 1989,
34 c. 890, Pt. A, §40 and amended by Pt. B, §6, are further amended
to read:

36 **1. General.** In the event of a violation of any provision
of the laws administered by the department or of any order,
38 regulation, license, permit, approval or decision of ~~the board a~~
council or ~~the~~ commissioner or decree of the court, as the case
40 may be, the Attorney General may institute injunction proceedings
to enjoin any further violation thereof, a civil or criminal
42 action or any appropriate combination thereof without recourse to
any other provision of law administered by the department.

44 **2. Restoration.** The court may order restoration of any
46 area affected by any action or inaction found to be in violation
of any provision of law administered by the department or of any
48 order, rule, regulation, license, permit, approval or decision of
~~the board a~~ council or commissioner or decree of the court, as
50 the case may be, to its condition prior to the violation or as
near thereto as may be possible. Where the court finds that the
52 violation was willful, the court shall order restoration under
this subsection unless the restoration will:

2 A. Result in a threat or hazard to public health or safety;

4 B. Result in substantial environmental damage; or

6 C. Result in a substantial injustice.

8 **Sec. 22. 38 MRSA §349, sub-§1**, as amended by PL 1989, c. 820,
§9, is further amended to read:

10 **1. Criminal penalties.** Any person who violates any
12 provisions of the laws administered by the department, including,
14 without limitation, a violation of the terms or conditions of any
16 order, rule, license, permit, approval or decision of ~~the~~ board a
18 council or the commissioner, or who disposes of more than 500
20 pounds or more than 100 cubic feet of litter for a commercial
22 purpose, in violation of Title 17, section 2264, is guilty of a
Class E crime and may be punished accordingly, except
notwithstanding Title 17-A, section 1301, subsection 1, paragraph
C, or subsection 3, paragraph E, the fine for such a violation
may not be less than \$100 nor more than \$25,000 for each day of
the violation.

24 This subsection does not apply to actions subject to the criminal
penalties set forth in section 1319-T.

26 **Sec. 23. 38 MRSA §349, sub-§2**, as amended by PL 1989, c. 820,
28 §10, is further amended to read:

30 **2. Civil penalties.** Any person who violates any provision
32 of the laws administered by the department, including, without
34 limitation, a violation of the terms or conditions of any order,
36 rule, license, permit, approval or decision of ~~the~~ board a
38 council or the commissioner, or who disposes of more than 500
pounds or more than 100 cubic feet of litter for a commercial
purpose, in violation of Title 17, section 2264, is subject to a
civil penalty, payable to the State, of not less than \$100 nor
more than \$10,000 for each day of that violation or, if the
violation relates to hazardous waste, of not more than \$25,000
for each day of the violation.

40 **Sec. 24. 38 MRSA §349, sub-§§3 and 5**, as affected by PL 1989,
42 c. 890, Pt. A, §40 and amended by Pt. B, §7, are further amended
44 to read:

46 **3. Falsification and tampering.** Notwithstanding Title
48 17-A, section 4-A, any person who knowingly makes any false
statement, representation or certification in any application,
50 record, report, plan or other document filed or required to be
52 maintained by any provision of law administered by the
department, or by any order, rule, license, permit, approval or
decision of ~~the~~ board a council or the commissioner, or who
tampers with or renders inaccurate any monitoring devices or

2 method required by any provision of law, or any order, rule,
license, permit, approval or decision of ~~the board~~ a council or
4 the commissioner or who fails to comply with any information
submittal required by the commissioner pursuant to section 568,
6 subsection 3, or section 1364, subsection 3, is, upon conviction,
subject to a fine of not more than \$10,000, or by imprisonment
for not more than 6 months, or both.

8
10 **5. Considerations.** In setting a penalty, the court shall
consider, ~~but shall not be limited to~~ without limitation, the
following:

12 A. Prior violations by the same party;

14 B. The degree of environmental damage that cannot be abated
16 or corrected;

18 C. The extent to which the violation continued following an
order of the commissioner or ~~board~~ regional council in whose
20 jurisdiction the violation took place to correct it; and

22 D. The importance of setting a civil penalty substantial
24 enough to deter others from similar violations.

Sec. 25. Transition. This Act takes effect January 1, 1994.
26 All pending permits and licenses are governed by the provisions
of the Maine Revised Statutes, Title 38, section 344, subsection
28 1-A. The Governor shall make appointments required under Title
38, section 341-H within 120 days of enactment. The Legislature
30 shall review and vote on the confirmation of those appointments
before January 1, 1994.

34 STATEMENT OF FACT

36 This bill establishes 5 to 7 regional councils to make
38 decisions on environmental permit and license decisions that are
precedent-setting or controversial and to take over the current
40 role of the Board of Environmental Protection in enforcement
42 matters. The regional councils will each consist of 7 members
from within their respective geographic areas. Three members of
each council must have experience as a municipal official.

44 This bill does not change the role of the Commissioner of
46 Environmental Protection; however, it does relieve the current
Board of Environmental Protection from permitting and licensing
48 decisions as well as its role in general enforcement matters.
The Board of Environmental Protection would still hear appeals
50 from licensing or permitting decisions of the commissioner and
regional councils as well as appeals of the commissioner's
52 emergency enforcement orders.

2 In addition to their role in enforcement and permitting, the
regional councils are charged with collecting local input and
4 disseminating information to the public.

6 The Commissioner of Environmental Protection is charged with
supporting the functions of the regional councils and aligning
the regional offices to enhance their effectiveness.