

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1397

H.P. 989

House of Representatives, April 20, 1995

**An Act to Amend Certain Laws Affecting the Department of
Environmental Protection.**

(EMERGENCY)

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.
Received by the Clerk of the House on April 18, 1995. Referred to the Committee on
Natural Resources and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative GOULD of Greenville.
Cosponsored by Senator LORD of York.

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

4
6 **Whereas,** the United States Environmental Protection Agency
has promulgated new ambient air quality increments for
particulate matter less than or equal to 10 micrometers in
8 diameter under the Prevention of Significant Deterioration
regulations; and

10
12 **Whereas,** the United States Environmental Protection Agency
requires the State to revise its Prevention of Significant
Deterioration regulations by March 1995 to reflect the changes in
14 federal law; and

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

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

24 **Sec. 1. 38 MRSA §413, sub-§2-G,** as enacted by PL 1993, c. 333,
§1, is repealed and the following enacted in its place:

26 **2-G. Exemptions; oil and hazardous substances spill**
28 **response.** A license is not required under this section for the
following discharges:

30 A. A discharge to groundwaters of the State that occurs in
32 the process of recovering, containing, cleaning up or
34 removing an oil or hazardous substance spill or leak if
discharge complies with the instructions of the commissioner
36 and applicable water quality laws and standards are
maintained; or

38 B. A discharge to surface waters of the State that occurs
40 in the process of recovering, containing, cleaning up or
42 removing an oil or hazardous substance spill or leak if the
discharge complies with the instructions of an on-scene
44 coordinator pursuant to 40 Code of Federal Regulations, Part
300, the National Oil and Hazardous Substance Contingency
Plan and applicable water quality laws and standards are
46 maintained.

48 **Sec. 2. 38 MRSA §438-A, sub-§4,** as amended by PL 1991, c. 346,
§5, is further amended to read:

2 **4. Failure to adopt ordinances.** If the commissioner
3 determines, after notice to a municipality, that the municipality
4 has failed to adopt ordinances as required under this article or
5 that an ordinance ~~which~~ that the municipality has adopted does
6 not satisfy the requirements and purposes under this article, and
7 that the commissioner is unable to make the ordinance consistent
8 with the minimum guidelines by the imposition of conditions, as
9 set forth in subsection 3, then the commissioner shall request
10 and the board may adopt, acting in accordance with Title 5,
11 chapter 375, subchapter II, suitable ordinances, or suitable
12 provisions of ordinances, on behalf of the municipality.
13 Notwithstanding subsections 2 and 3, if the board determines that
14 special water quality considerations on a great pond warrant more
15 restrictive standards than those contained in the minimum
16 guidelines, the board may adopt the additional standards for all
17 municipalities outside the jurisdiction of the Maine Land Use
18 Regulation Commission, which abut those waters. Following
19 adoption by the board, these ordinances or provisions are
20 effective and binding within the municipality and must be
21 administered and enforced by that municipality. The board may
22 adopt modifications to ordinances adopted pursuant to this
23 subsection. Preparation and notice of proposed modifications,
24 prior to consideration by the board, may be initiated by the
commissioner.

26 **Sec. 3. 38 MRSA §482, sub-§5, ¶E,** as repealed and replaced by
27 PL 1993, c. 680, Pt. A, §35, is amended to read:

28 E. Unless intended to circumvent this article, the
29 following transactions may not be considered lots offered
30 for sale or lease to the general public:

31 (1) Sale or lease of lots to an abutting owner or to a
32 spouse, child, parent, grandparent or sibling of the
33 developer if those lots are not further divided or
34 transferred to a person not so related to the developer
35 within a 5-year period, except as provided in this
36 subsection;

37 (2) Personal, nonprofit transactions, such as the
38 transfer of lots by gift ~~ex-~~devise, if those lots are
39 not further divided or transferred within a 5-year
40 period or the transfer of lots by devise or
41 inheritance; or

42 (3) Grant of a bona fide security interest in the
43 whole lot or subsequent transfer of the whole lot by
44 the original holder of the bona fide security interest
45 or that person's successor in interest;

50

2 **Sec. 4. 38 MRSA §488, sub-§15** is enacted to read:

4 **15. Waste facilities.** Waste facilities regulated by the
6 department under section 1310-N, 1319-R or 1319-X are exempt from
8 review under this Article. This exemption applies to new
10 facilities, modifications of facilities, transfers of facilities
12 and relicensing of facilities.

14 **Sec. 5. 38 MRSA §489-A, first ¶,** as amended by PL 1993, c. 383,
16 §27 and affected by §42, is further amended to read:

18 The commissioner may register municipalities for authority
20 to substitute permits issued pursuant to Title 30-A, chapter 141
22 or 187, ~~subchapter-IV,~~ for permits required by section 485-A
24 under the following conditions.

26 **Sec. 6. 38 MRSA §489-C,** as renumbered by RR 1993, c. 1,
28 §122, is amended to read:

30 **§489-C. Rescission**

32 The commissioner shall rescind a permit upon request and
34 application of the permittee if no outstanding permit violation
36 exists, the development is not continued or completed and the
38 following requirements are met:

40 **1. Development other than a subdivision.** The permittee
42 has not constructed or caused to be constructed, or operated or
44 caused to be operated, a development other than a subdivision as
46 defined at the time of permit issuance; ~~or~~

48 **2. Subdivision.** If the development is a subdivision, the
50 permittee has not sold or leased or caused to be sold or leased
more than 4 lots; ~~or~~

3. Reclamation following borrow, clay or topsoil mining.
If the permittee has constructed or caused to be constructed, or
operated or caused to be operated a development consisting of an
excavation of more than 5 acres of land for borrow, topsoil,
clay or silt, whether alone or in combination, and the
department determines that:

A. The affected area has been successfully reclaimed;

B. There are not continuing requirements; and

C. There will be no additional mining for borrow, clay or
topsoil by the permittee or any transferee at any time as
provided by deed covenants enforceable by the department.

A rescission is considered a minor revision.

2
3 **Sec. 7. 38 MRSA §564, sub-§2-A**, as amended by PL 1993, c.
4 732, Pt. A, §§2 and 3, is further amended by amending the last
5 blocked paragraph to read:

6
7 The requirements in paragraphs A and B do not apply to the
8 following tanks provided the associated piping has secondary
9 containment or a suction pump product delivery system or another
10 leak detection system approved by the commissioner and provided
11 that the tank and associated piping have been installed and are
12 operated in accordance with the requirements of this subchapter,
13 including rules adopted under this subchapter: tanks providing
14 product to a generator; double-walled tanks with continuous
15 interstitial space monitoring; and existing tanks constructed of
16 fiberglass, cathodically protected steel or another
17 commissioner-approved noncorrosive material that are monitored
18 ~~continuously~~ for a leak by a method able to detect a product
19 loss or gain of 0.1 gallons or less per hour.

20 **Sec. 8. 38 MRSA §582, sub-§9-D** is enacted to read:

21
22 9-D. PM10. "PM10" means particulate matter with an
23 aerodynamic diameter less than or equal to a nominal 10
24 micrometers as measured by a reference method based on 40 Code
25 of Federal Regulations, Part 50, Appendix J and designated in
26 accordance with 40 Code of Federal Regulations, Part 53.

27
28 **Sec. 9. 38 MRSA §584-B, sub-§1**, as enacted by PL 1979, c.
29 381, §7, is amended to read:

30
31 **1. PM10.** In regards to ~~particulate-matter~~ PM10:

32
33 A. An increase in the annual ~~geometric~~ arithmetic mean at
34 any location not to exceed 5 4 micrograms per cubic meter;
35 and

36
37 B. An increase in concentration for any 24-hour period at
38 any location not to exceed ~~10~~ 8 micrograms per cubic meter;
39 and

40
41 **Sec. 10. 38 MRSA §584-C, sub-§1**, as corrected by RR 1993, c.
42 1, §127, is amended to read:

43
44 **1. PM10.** In regards to ~~particulate-matter~~ PM10:

45
46 A. An increase in the annual ~~geometric~~ arithmetic mean at
47 any location not to exceed ~~19~~ 17 micrograms per cubic
48 meter; and

2 B. An increase in concentration for any 24-hour period at
any location not to exceed 37 30 micrograms per cubic meter;

4 **Sec. 11. 38 MRSA §584-D, sub-§1**, as corrected by RR 1993, c.
1, §129, is amended to read:

6 1. **PM10.** In regards to ~~particulate-matter~~ PM10:

8 A. An increase in the annual ~~geometric~~ arithmetic mean at
10 any location not to exceed 37 34 micrograms per cubic
meter; and

12 B. An increase in concentration for any 24-hour period at
14 any location not to exceed 75 60 micrograms per cubic meter;

16 **Sec. 12. 38 MRSA §2304, sub-§1, ¶B**, as amended by PL 1993, c.
18 355, §63, is further amended to read:

B. The following facilities are exempt from the planning
20 and reporting requirements for toxics use:

22 (1) Drinking water supply treatment facilities;

24 (2) Municipal wastewater treatment facilities; and

26 (3) Wholesale distributors of chemicals; and

28 (4) Hazardous substance transporters.

30 **Sec. 13. 38 MRSA §2304, sub-§2, ¶B**, as amended by PL 1993, c.
32 355, §64, is further amended to read:

34 B. The following exemptions apply to toxics releasers.

36 (1) The following facilities are exempt from the
planning, reporting, fee and reduction requirements
for toxics release:

38 (a) Drinking water supply treatment facilities;

40 (b) Municipal wastewater treatment facilities;

42 (c) Retail and wholesale motor fuel and heating
44 oil distributors; and

46 (d) Agricultural activities.

48 (2) To qualify for an exemption from the toxic
release reduction requirements under this paragraph, a
50 toxics releaser must demonstrate to the commissioner

2 that all practicable reductions have been implemented
or scheduled for implementation. The commissioner may
4 establish alternate toxics release reduction goals for
the facility when appropriate.

6 (a) A toxics releaser must receive an exemption
from the requirement of meeting state reduction
8 goals from the commissioner if the toxics
releaser proves that:

10 (i) Practicable toxics release reduction
12 methods do not exist;

14 (ii) All practicable reductions or actions
have been previously implemented or are
16 being implemented and will be completed on a
schedule acceptable to the commissioner;

18 (iii) Practicable steps necessary to reduce
20 toxics release would have an unreasonable
adverse impact on product quality or
22 quantity;

24 (iv) Practicable means of measuring a
toxics release do not exist; or

26 (v) Legal or contractual obligations
28 prohibit steps necessary to reduce toxics
release.

30 (b) The commissioner shall review exemptions
32 under this paragraph at 3-year intervals.
Renewals must be granted for toxics releasers
34 that demonstrate that they still meet the
requirements set forth in division (a),
36 subdivisions (i) to (iv). If an exemption has
been granted based on legal or contractual
38 obligations, the exemption is only for the term
of that obligation. An exemption or renewal for
40 a new or renewed legal or contractual obligation
may not be granted by the commissioner. A toxics
42 releaser that has received an exemption based on
legal or contractual obligations may apply for a
44 renewal based on division (a), subdivision (i),
46 (ii), (iii) or (iv).

48 **Sec. 14. 38 MRSA §2304, sub-§3, ¶B,** as enacted by PL 1991, c.
520, §13, is amended to read:

2 B. The following exemptions apply to ~~to~~ hazardous waste
generators:

4 (1) The following are exempt from the planning,
6 reporting, fee and reduction requirements for
hazardous waste:

8 (a) Commercial hazardous waste treatment or
storage facilities;

10 (b) Pilot plants or pilot production units;

12 (c) Hazardous waste transporters;

14 (d) Hazardous waste generated as a result of
16 remedial or corrective actions or facility
18 closures required by law or undertaken to protect
employee health and safety, public health and
safety or the environment;

20 (e) Households; and

22 (f) Agricultural activities;

24 (g) Wholesale motor fuel and heating oil
26 distributors.

28 (2) To qualify for an exemption from the hazardous
waste reduction requirement under this paragraph, a
30 generator must demonstrate to the commissioner that
all practicable reductions have been implemented or
32 scheduled for implementation. The commissioner may
establish alternate hazardous waste reduction goals
34 for the facility when appropriate.

36 (a) A generator must receive an exemption from
the requirement of meeting state reduction goals
38 from the commissioner if the generator proves
that:

40 (i) Practicable hazardous waste reduction
42 methods do not exist;

44 (ii) All practicable reductions or actions
have been previously implemented or are
46 being implemented and will be completed on a
schedule acceptable to the commissioner;

48 (iii) Practicable steps necessary to reduce
50 hazardous waste would have an unreasonable

2 adverse impact on product quality or
quantity; or

4 (iv) Legal or contractual obligations
6 prohibit steps necessary to reduce hazardous
waste generation.

8 (b) The commissioner shall review exemptions
10 under this paragraph at 3-year intervals.
12 Renewals may be granted for hazardous waste
14 generators that demonstrate that they still meet
16 the requirements set forth in division (a),
18 subdivisions (i) to (iii). If an exemption has
20 been granted based on legal or contractual
22 obligations, the exemption is only for the term
of that obligation. An exemption or renewal for
a new or renewed legal or contractual commitment
may not be granted by the commissioner. A
generator that has received an exemption based on
legal or contractual obligations may apply for a
renewal based on division (a), subdivision (i),
(ii) or (iii).

24 **Sec. 15. 38 MRSA §2311, sub-§1**, as amended by PL 1993, c.
309, §1, is further amended to read:

26 **1. Hazardous waste generators.** ~~Except as provided in this~~
28 ~~subsection, all owners or operators of facilities that generate~~
~~hazardous waste other than households and agricultural~~
30 ~~activities shall register annually with the commissioner.~~
32 ~~Registration forms, if required, and the~~ The fee required by
34 this subsection are ~~is~~ due to the commissioner by April 15, 1994
and annually thereafter ~~after that date~~. For facilities that
36 generate 100 kilograms or more of hazardous waste in a calendar
month for more than 3 months of the year, the fee is \$100 per
facility. For all other generators, the fee is \$50 per facility.

38 ~~Registration is not required for owners or operators that~~
40 ~~generate less than 100 kilograms of hazardous waste in a~~
~~calendar month for more than 3 months of the year if, during the~~
42 ~~preceding calendar year, some or all of that generator's~~
~~hazardous waste was transported and manifested pursuant to the~~
44 ~~provisions of this Title. This exception does not apply to the~~
~~requirement to pay the fee.~~

46 **Sec. 16. Retroactivity.** That section of this Act that enacts
48 the Maine Revised Statutes, Title 38, section 413, subsection
2-G applies retroactively to October 13, 1993. That section of
50 this Act that enacts Title 38, section 488, subsection 15
applies retroactively to September 14, 1993.

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

4

6 **STATEMENT OF FACT**

8 This bill does the following.

10 1. The bill allows the Department of Environmental
Protection to expedite certain groundwater clean-up projects,
12 many of which are, in fact, undertaken by the department with
federal and state funding. Groundwater pollution clean-up
14 projects typically involve the control and extraction of
contaminated groundwater and its treatment to satisfactory
16 levels, and the discharge of the resulting effluent to
groundwater or surface waters. This bill allows the discharges
18 from those projects to avoid the time-consuming permitting
process. Clean-up projects, however, are only eligible for this
20 exemption when designed and constructed to the commissioner's
satisfaction and when the existing water quality standards are
22 maintained.

24 2. The bill also adds an exemption from the site location
of development law for developments reviewed pursuant to
26 parallel standards enacted under the waste management laws in
1993. The exemption is made retroactive to when those standards
28 were enacted.

30 3. The bill also corrects a statutory citation in the
first paragraph of the municipal review provisions of the site
32 location of development law. Delegated authority originally
only applied to subdivisions. When other types of developments
34 were added, the citation reference for municipal authority to
issue permits was not updated to include provisions other than
36 those addressing subdivisions. The department has recognized
legislative intent and expanded delegated authority but the
38 citation error should still be corrected.

40 4. The bill also adds a new provision to a recently
enacted rescission provision in the site location of development
42 law. It allows for mining of borrow, clay, topsoil or silt to
be rescinded if the affected area is completely reclaimed and no
44 further activity is conducted by the original permittee or
transferees as provided by deed covenants enforceable by the
46 department. The bill also adds a clarification providing that
rescissions are only available when a project is not completed.

48 5. This bill also makes a slight change to the law
50 governing underground oil storage tanks. Specifically, it

2 eliminates the requirement that tanks be monitored continuously
3 for leaks. The change is suggested by the Maine Oil Dealers
4 Association to allow use of automatic in-tank gauging. This
5 leak detection technology is effective but not continuous in
6 that gauging system can not be operated when a product is being
7 withdrawn or added to the tank.

8 6. The bill also amends the State's air quality laws
9 regarding particulate matter. On June 3, 1993, the
10 Environmental Protection Agency promulgated ambient air quality
11 increments for particulate matter less than or equal to 10
12 micrometers in diameter under the Prevention of Significant
13 Deterioration regulations in 40 Code of Federal Regulations,
14 Part 53. The effective date of the particulate matter or PM10
15 increments was on June 3, 1994. As a result of these federal
16 regulations, the State is required to revise its Prevention of
17 Significant Deterioration regulations and submit them as a State
18 Implementation Plan revision to the Environmental Protection
19 Agency in March 1995. These proposed revisions to state law
20 reflect the changes necessary, in part, for the State to comply
21 with federal law. Increments for particulate matter were
22 originally set forth in the federal Clean Air Act Amendments of
23 1977. The original increments were specified in terms of
24 particulate matter greater than 10 micrometers. The proposed
25 revised increments for particulate matter are specified in terms
26 of particulate matter less than or equal to 10 micrometers in
27 diameter. These changes to the Maine Revised Statutes, Title
28 38, sections 584-B, 584-C and 584-D refer to those particulate
29 matter increment standards for class I, II and III air quality
30 regions, respectively.

32 7. The bill reduces the time necessary for the Board of
33 Environmental Protection to consider petitions by citizens and
34 municipal officials for changes to board-adopted shoreland
35 zoning ordinances. This bill enables the Commissioner of
36 Environmental Protection to initiate rulemaking by preparing
37 proposed ordinance or map modifications and publishing notice
38 for public comment prior to the board's acting on the proposed
39 modification.

40 8. The bill makes a slight change to the exemption for
41 personal, nonprofit transactions. The 5-year limitation was
42 added in 1993. It is removed as a requirement in the narrow
43 class of cases involving the gift of specific lots by devise or
44 through intestacy.

46 9. The bill also clarifies existing language in portions
47 of the toxics use and hazardous waste reduction laws. Proposed
48 changes clarify that if a facility has historically been exempt
49 from planning and reductions, it is also exempt from the
50 reporting and fee requirements. Also, language requiring

2 registration of hazardous waste generators is deleted because
such registration forms are not necessary for regulatory
4 purposes. Other changes eliminate confusing or redundant
language. Finally, wholesale motor fuel and heating oil
6 distributors and hazardous materials transporters are added to
the list of industries that are exempted from the reporting and
fee requirements.

8
10 10. The bill also adds a retroactivity clause to Title 38,
section 413, subsection 2-G and Title 38, section 488,
subsection 15.