

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

---

Legislative Document

No. 1672

H.P. 1222

House of Representatives, January 9, 1996

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

(EMERGENCY)

---

Submitted by the Department of Environmental Protection pursuant to Joint Rule 24.  
Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in black ink 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,** certain lakes may experience severe algae bloom  
conditions that can not be controlled through known restoration  
methods rendering them unfit for drinking water and recreational  
8 purposes; and

10           **Whereas,** temporary treatments to alleviate these bloom  
conditions may need to be made before the 90-day term following  
12 adjournment; and

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

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

22           **Sec. 1. 38 MRSA §341-D, sub-§3, ¶¶E and F,** as enacted by PL  
1989, c. 890, Pt. A, §13 and affected by §40, are amended to read:

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

28           F. The licensee has violated any law administered by the  
30 department; or

32           **Sec. 2. 38 MRSA §341-D, sub-§3, ¶G** is enacted to read:

34           G. The license fails to include any standard or limitation  
36 required pursuant to the federal Clean Air Act Amendments of  
1990.

38           **Sec. 3. 38 MRSA §352, sub-§5-A,** as amended by PL 1995, c. 493,  
§1, is further amended by amending the first paragraph to read:

40           **5-A. Accounting system.** In order to determine the extent  
42 to which the functions set out in this section are necessary for  
the licensing process or are being performed in an efficient and  
44 expeditious manner, the commissioner shall require that all  
employees of the department involved in any aspect of these  
46 functions keep accurate and regular daily time records. These  
records must describe the matters worked on, services performed  
48 and the amount of time devoted to those matters and services, as  
well as amounts of money expended in performing those functions.

Records must be kept for a sufficient duration of time as  
2 determined by the commissioner to establish to the commissioner's  
satisfaction that the fees are appropriate. This subsection is  
4 repealed 90 days after adjournment of the Second Regular Session  
of the 117<sup>th</sup> 118<sup>th</sup> Legislature.

6  
8 **Sec. 4. 38 MRSA §361-A, sub-§6**, as enacted by PL 1971, c. 470,  
§1, is repealed and the following enacted in its place:

10 **6-A. Transfer of ownership.** "Transfer of ownership" means  
12 a sale, lease or, in the case of a corporation when the surviving  
corporation is other than the original licensee and the  
14 transaction involves a sale of over 50% of the stock to one legal  
entity, a merger or consolidation.

16 **Sec. 5. 38 MRSA §414-A, sub-§1-C** is enacted to read:

18 **1-C. License for the use of algicides in Class GPA waters.**  
The commissioner may issue a license to a municipality for the  
20 discharge of cooper compounds or other materials registered by  
the Department of Agriculture, Food and Rural Resources to  
22 control excessive algae growth in Class GPA waters when it is  
determined that:

24 A. A lake restoration plan to reduce algae growth has been  
26 designed and implemented in cooperation with the department;

28 B. That plan has been found by the department to have  
failed to achieve the desired level of restoration in a  
30 reasonable period of time;

32 C. Because of technical or financial limitations, there is  
34 no further plan for restoration;

36 D. The affected water has a recent history of severe algae  
blooms of less than one meter Secchi disk transparency; and

38 E. A watershed plan to further reduce phosphorus loading to  
the affected water is being implemented by responsible  
40 parties including the department and all affected  
42 municipalities.

44 This license allows for no more than one application of cooper  
compounds or other registered algicides per year for a period not  
46 to exceed 5 years. Algicides must be applied in an amount and in  
a manner that minimizes risk to nontarget organisms. The  
48 individual conducting the treatment must be certified by the  
Board of Pesticides Control for the use of aquatic pesticides.  
50 Application of an algicide may only occur after the Secchi disk  
transparency of the water is less the 2 meters. Relicensing is

2 contingent upon an assessment of the water quality and the  
3 effectiveness of the phosphorus reduction plan for the watershed.

4  
5 **Sec. 6. 38 MRSA §486-A, sub-§3**, as affected by PL 1989, c.  
6 890, Pt. A, §40 and amended by Pt. B, §94, is further amended to  
7 read:

8  
9 **3. Findings of fact; order.** After the department adjourns  
10 any hearing held under this section, the department shall make  
11 findings of fact and issue an order granting or denying  
12 permission to the person proposing the development to construct  
13 or operate the development, as proposed, or granting that  
14 permission upon such terms and conditions as the department  
15 considers advisable to protect and preserve the environment and  
16 the public's health, safety and general welfare, ~~except in the~~  
17 ~~ease of any low level radioactive waste storage or disposal~~  
18 ~~facility, in which case the board shall act in accordance with~~  
19 ~~section 1478.~~

20  
21 **Sec. 7. 38 MRSA §584-A, sub-§5**, as enacted by PL 1971, c. 570,  
22 is repealed.

23 **Sec. 8. 38 MRSA §1310-F, sub-§6** is enacted to read:

24  
25 **6. Contract enforcement.** At the request of a recipient of  
26 state funds under this section, the commissioner may provide  
27 technical assistance and, through the Attorney General, legal  
28 assistance in the administration or enforcement of any contract  
29 entered into by or for the benefit of the recipient in connection  
30 with a landfill closure and remediation project assisted by these  
31 funds. When state funds have been disbursed pursuant to this  
32 section, the State, acting through the Attorney General, has a  
33 direct right of action against the recipient of the funds, or a  
34 contractor, subcontractor, architect, engineer or manufacturer of  
35 equipment purchased with the funds, to recover the funds which  
36 may be properly awarded as actual damages in an action alleging  
37 negligence or breach of contract.

38  
39 **Sec. 9. 38 MRSA §1310-N, sub-§6-D**, as enacted by PL 1993, c.  
40 680, Pt. A, §37, is amended to read:

41  
42 **6-D. Solid waste facilities licensed under rules valid on**  
43 **or after May 24, 1989.** A solid waste facility license issued  
44 under applicable solid waste management rules valid on or after  
45 May 24, 1989 remains in effect unless modified, revoked or  
46 suspended under section 341-D, subsection 3. These licensees  
47 must:  
48

- 2           A. Comply with applicable operating rules adopted by the board;
- 4           B. Comply with annual facility reporting rules adopted by the board; and
- 6           C. Beginning 5 years after the date of issuance of the license, pay an annual facility reporting fee established by the commissioner. The annual fee established in this paragraph must be an amount equal to 20% of the relicensing fee that would have applied to that facility.

12           Notwithstanding the terms of this subsection, sludge or residual  
14           utilization licenses may be voluntarily surrendered by the  
16           license holder upon department approval.

18           **Sec. 10. 38 MRSA §1318-B, sub-§1**, as repealed and replaced by PL 1991, c. 208, §2, is amended to read:

20           **1. Reporting.** Except as provided in this subsection, the responsible party or person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Commissioner of Environmental Protection and the public safety agency of the municipality in which the discharge takes place. Upon submission to the commissioner of a written spill prevention control and clean-up plan that meets the criteria of section 1318-C, subsection 1, a discharge containing a hazardous matter that is covered by the plan must be reported only if the discharge equals or exceeds the applicable reportable quantity for that particular hazardous matter as specified in Code of Federal Regulations, Title 40, Parts 302.4, 302.5 and 302.6 (b(1)), revised as of July 1, 1990 1994, or when the discharge extends or spreads beyond the area on the site covered by the spill prevention control and clean-up plan.

36           **Sec. 11. 38 MRSA §1318-B, sub-§4** is enacted to read:

38           **4. Limited liability for responders.** A person who  
40           voluntarily, without expectation of monetary or other  
42           compensation, assists or advises the commissioner in mitigating  
44           or attempting to mitigate the effects of an actual or threatened  
46           discharge of hazardous matter is not liable for removal costs,  
48           damages, injuries, civil liabilities or penalties that result  
              from actions taken or omitted in the course of rendering  
              assistance or advice in accordance with the directions of the  
              commissioner. This liability limitation does not apply:

2           A. If the person is grossly negligent or engages in willful  
          misconduct; or

4           B. To a person who caused the discharge or threatened  
          discharge or otherwise is determined to be a responsible  
6           party.

8           **Sec. 12. 38 MRSA §1319-I, sub-§4-B**, as affected by PL 1989, c.  
10          890, Pt. A, §40 and amended by Pt. B, §260, is further amended to  
          read:

12           **4-B. Fee on hazardous materials transported by railroad.**  
14          Any person who transports more than 25 tons of certain hazardous  
          materials as specified in this subsection at any one time by rail  
16          shall register annually with the commissioner. Fees for the  
          transportation of hazardous materials by rail are imposed on the  
18          registrant who first transports the materials in the State by  
          rail. Fees for the transportation of hazardous materials are  
          determined by one of the following methods:

20                   A. Fifteen cents per ton of hazardous materials transported  
22                   by the registrant during the period of registration paid  
                    quarterly by the registrant on the basis of records  
24                   certified to the commissioner; or

26                   B. Twenty-five thousand dollars paid at the time of  
                    registration.

28           The registrant shall select the method of payment at the time of  
30           registration. Fees are paid to the department and upon receipt  
          credited to the Maine Hazardous Waste Fund. Any ~~A~~ registrant  
32           selecting quarterly payments ~~shall be~~ is automatically subject to  
          the \$25,000 annual registration fee if the fee for any one  
34           quarter has not been paid to the Maine Hazardous Waste Fund  
          within 60 days after the fee becomes due. Hazardous materials  
36           subject to the requirements of this subsection mean those  
          substances ~~identified pursuant to the federal Hazardous Materials~~  
38           ~~Transportation Act, Public Law 93-633~~ listed in 49 Code of  
          Federal Regulations, Part 172.101, Subpart B, 1994, except that,  
40           for purposes of this subsection, "hazardous materials" do not  
          include oil as defined in Title 38, section 542, subsection 6.  
42           The registrant shall make available to the commissioner and the  
          commissioner's authorized representatives all documents relating  
44           to the hazardous materials transported by the registrant during  
          the period of registration.

46           **Sec. 13. 38 MRSA §1319-O, sub-§2, ¶A**, as affected by PL 1989,  
48          c. 890, Pt. A, §40 and amended by Pt. B, §261, is further amended  
          to read:

50

2 A. The board may adopt rules relating to the  
3 transportation, collection and storage of waste oil ~~by waste~~  
4 ~~oil-dealers~~ to protect public health, safety and welfare and  
5 the environment. The rules may include, without limitation,  
6 rules requiring licenses for waste oil dealers and the  
7 location of waste oil storage sites that are operated by  
8 waste oil dealers, evidence of financial capability and  
9 manifest systems for waste oil. A person licensed by the  
10 department to transport or handle hazardous waste is not  
11 required to obtain a waste oil dealer's license, but the  
12 hazardous waste license must include any terms or conditions  
13 determined necessary by the department relating to the  
14 transportation or handling of waste oil.

15 **Sec. 14. 38 MRSA §1478**, as amended by PL 1993, c. 383, §§39  
16 and 40, is repealed.

17 **Sec. 15. 38 MRSA §1478-A**, as enacted by PL 1993, c. 383, §41,  
18 is repealed.

19 **Sec. 16. 38 MRSA §1479**, as amended by PL 1985, c. 705, §4, is  
20 further amended to read:  
21

22 **§1479. Legislative approval of facilities required**  
23

24 ~~No~~ A low-level radioactive waste disposal or storage  
25 facility may not be established in the State, unless the  
26 Legislature has, by Private and Special Act, approved the  
27 establishment of that facility ~~pursuant to the provisions of this~~  
28 ~~subchapter.~~ The Legislature shall act expeditiously ~~on any~~  
29 ~~recommendation of the board under section 1478~~ after a decision  
30 by the United States Nuclear Regulatory Commission to approve a  
31 facility, but ~~shall~~ may not act until after the conclusion of any  
32 judicial review of the ~~recommendation~~ decision and any resulting  
33 administrative proceedings.  
34

35 ~~Approval under this subchapter constitutes approval under~~  
36 ~~the site location of development laws, but does not replace any~~  
37 ~~other license required by law.~~  
38

39 Approval under this subchapter section is in addition to the  
40 voter approval required by subchapter-IV section 1493.  
41

42 **Sec. 17. 38 MRSA §1480**, as enacted by PL 1983, c. 500, §5, is  
43 repealed.  
44

45 **Sec. 18. 38 MRSA §1480-A**, as enacted by PL 1983, c. 500, §5,  
46 is amended to read:  
47

48 **§1480-A. Joint hearings; intervention**  
49  
50



2           The ~~board~~ Department of Human Services or the State Planning  
3 Office may ~~hold joint hearings with the United States Nuclear~~  
4 ~~Regulatory Commission~~ and intervene in any federal licensing  
5 proceeding to carry out the purpose of this chapter.

6           **Sec. 19. 38 MRSA §1482, sub-§4**, as enacted by PL 1985, c. 705,  
7 §5, is amended to read:

10           **4. Licensing.** Any A low-level radioactive waste disposal  
11 facility developed in the State shall must be licensed by the  
12 United States Nuclear Regulatory Commission ~~or, in the event the~~  
13 ~~State becomes an agreement state, by the State.~~ The facility must  
14 be ~~recommended by the Board of Environmental Protection and~~  
15 approved by the Legislature in accordance with ~~this subchapter~~  
16 section 1479 and approved by the voters in accordance with  
17 ~~subchapter IV~~ section 1493.

18           **Sec. 20. 38 MRSA §1493**, as amended by PL 1987, c. 769, Pt. B,  
19 §9, is further amended to read:

22           **§1493. Low-level radioactive waste disposal referendum**

24           No A low-level radioactive waste disposal or storage  
25 facility may not be constructed or operated within in the State  
26 ~~of Maine~~ unless such the construction and or operation are is  
27 approved by a majority of the voters voting ~~thereon~~ on the  
28 construction or operation in a statewide election. Such The  
29 election shall must be held in the manner prescribed by law for  
30 holding a statewide election and in accordance with the  
31 procedures set forth in Title 35-A, section 4302. The voters  
32 shall must be asked to vote on the acceptance or rejection of  
33 construction or operation by voting on the following question:

34           "Do you approve (insert construction or operation) of a low-level  
35 radioactive waste (insert disposal or storage) facility as  
36 proposed for (insert location)?"

37           This question shall must be submitted to the legal voters of  
38 the State at the next following statewide election after ~~review~~  
39 ~~and issuance of an order recommending permission for construction~~  
40 ~~or operation of the facility by the Board of Environmental~~  
41 ~~Protection pursuant to section 1478, provided that no~~ a decision  
42 by the United States Nuclear Regulatory Commission to approve a  
43 low-level radioactive waste facility. The construction or  
44 operation of any the facility may not commence prior to such the  
45 election.

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

## STATEMENT OF FACT

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

This bill does the following:

1. It enables the Board of Environmental Protection to open existing air emission licenses prior to their expiration dates for cause, as defined in 40 Code of Federal Regulations, Part 70.7 (f). The federal Clean Air Act Amendments of 1990, Title V mandates that the State have the authority to do so. Currently, under the Maine Revised Statutes, Title 38, section 341-D, this authority is not explicitly granted to the State. The only way the State can currently open up existing air emission licenses is to go through Administrative Court;

2. It extends the repeal date of the Maine Environmental Protection Fund fee schedule to 90 days after adjournment of the Second Regular Session of the 118th Legislature;

3. It allows for the limited use of algicides in situations where lake restoration technologies have been tried and no additional restoration programs are available;

4. It rewords current law to provide that, when the parent of a corporation may change but the corporation itself remains intact, no license transfers are required;

5. It repeals the existing hydrocarbon standard for ambient air;

6. It allows the Commissioner of Environmental Protection to enforce contracts entered into by recipients of bond funds for landfill closure and remediation;

7. It allows a license holder to voluntarily surrender a sludge or residual utilization license without the need to extinguish the license through a court action, as required by the Maine Administrative Procedure Act;

8. It revises spill reporting requirements to incorporate revisions to reportable quantities specified in federal regulations;

9. It provides liability protection for persons who voluntarily assist in responding to and cleaning up a discharge of hazardous matter;

10. It clarifies the definition of "hazardous materials" for the purpose of the fees imposed by Title 38, section 1319-I, subsection 4-B. This provision currently defines "hazardous materials" by reference to a federal statute that since has been

2 reallocated in the United States Code. The proposed revision  
defines "hazardous materials" by reference to the federal  
regulations adopted pursuant to the reallocated federal statute;

4

6 11. It broadens the rule-making authority of the Board of  
Environmental Protection so that the board can amend its waste  
oil rules to cover all aspects of waste oil management; and

8

10 12. It repeals the requirement for review of low-level  
radioactive waste facilities by the Department of Environmental  
Protection. The bill retains the requirement that low-level  
12 radioactive waste facilities be approved by the Legislature and  
by referendum.