

# 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)



# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

---

Legislative Document

No. 1835

H.P. 1274

House of Representatives, March 11, 1999

---

### An Act to Amend the Department of Environmental Protection Laws.

---

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 JOY of Crystal.  
Cosponsored by Representatives: CAMPBELL of Holden, MACK of Standish, MENDROS  
of Lewiston.

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

4 **Sec. 1. 38 MRSA §344, sub-§10** is enacted to read:

6 10. Permit-by-rule notification form. Notwithstanding  
8 subsection 7, the permit-by-rule notification form must include  
10 the following language and the department may not amend the form  
12 by rule.

14 "I authorize staff of the Department of Environmental Protection,  
16 the Department of Inland Fisheries and Wildlife and the  
18 Department of Marine Resources, with my prior specific knowledge  
20 and permission for each visit, to access the project site to  
22 determine compliance with the permit."

24 **Sec. 2. 38 MRSA §347-A, sub-§1, ¶A**, as repealed and replaced by  
26 PL 1993, c. 204, §1, is amended to read:

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

42 (1) Resolving the violation through an administrative  
44 consent agreement pursuant to subsection 4, signed by  
46 the violator and approved by the board and the Attorney  
48 General. The consent agreement may not require the  
50 alleged violator to waive rights to further hearings or  
procedures before the board, nor may it contain a  
requirement to abide by conditions not specifically  
stated in the agreement;

(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.

46 **Sec. 3. 38 MRSA §349, sub-§2**, as amended by PL 1989, c. 282,  
48 §3 and c. 820, §10, is further amended to read:

50 **2. Civil penalties.** Any person who violates any provision  
of the laws administered by the department, including, without

2 limitation, a violation of the terms or conditions of any order,  
3 rule, license, permit, approval or decision of the board or  
4 commissioner that involves ongoing damage to the environment, or  
5 who disposes of more than 500 pounds or more than 100 cubic feet  
6 of litter for a commercial purpose, in violation of Title 17,  
7 section 2264, is subject to a civil penalty, payable to the  
8 State, of not less than \$100 nor more than \$10,000 for each day  
9 of that violation or, if the violation relates to hazardous  
10 waste, of not more than \$25,000 for each day of the violation.

11 **Sec. 4. 38 MRSA §361-A, sub-§4-A**, as enacted by PL 1973, c.  
12 450, §3, is amended to read:

13 **4-A. Pollutant.** "Pollutant" means dredged spoil, solid  
14 waste, junk, incinerator residue, sewage, refuse, effluent,  
15 garbage, sewage sludge, munitions, chemicals, biological or  
16 radiological materials, oil, petroleum products or by-products,  
17 heat, wrecked or discarded equipment, ~~rock, sand, dirt~~ and  
18 industrial, municipal, domestic, commercial or agricultural  
19 wastes of any kind.  
20

21 **Sec. 5. 38 MRSA §480-B, sub-§9**, as amended by PL 1995, c. 460,  
22 §2 and affected by §12, is repealed and the following enacted in  
23 its place:  
24

25 **9. River, stream or brook.** "River, stream or brook" means  
26 a channel between defined banks that is created by the action of  
27 surface water and depicted as a solid or broken blue line on the  
28 most recent edition of the U.S. Geological Survey 7.5-minute  
29 series topographic map or, if that is not available, a 15-minute  
30 series topographic map. "River, stream or brook" does not mean a  
31 grassy swale or a ditch or other drainage way constructed and  
32 maintained solely for the purpose of draining storm water.  
33  
34

## 35 SUMMARY

36  
37 This bill amends the permit-by-rule notification form by  
38 adding language that the department may not enter upon the  
39 applicant's land without prior knowledge or consent for each  
40 visit. The bill stipulates that any administrative consent  
41 agreement may not require a violator to waive any rights to  
42 hearings or proceedings before the board or contain any  
43 requirement to abide by conditions that were not agreed upon.  
44 The bill also amends the definitions of pollutant and river,  
45 stream or brook.  
46