

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1477

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H.P. 1108

House of Representatives, March 8, 2001

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**An Act to Amend Certain Laws Regarding Land and Water Quality  
Protection.**

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Reference to the Committee on Natural Resources suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative COWGER of Hallowell.  
Cosponsored by Representative TOBIN of Windham.

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

2           **Sec. 1. 38 MRSA §346, sub-§3**, as enacted by PL 1977, c. 300,  
4 §9, is repealed.

6           **Sec. 2. 38 MRSA §361-A, sub-§1-J**, as enacted by PL 1997, c.  
8 794, Pt. A, §10, is amended to read:

10           **1-J. Code of Federal Regulations.** "Code of Federal  
12 Regulations" means the codification of regulations published in  
the Federal Register by the Federal Government, and includes  
those regulations effective on or before January 1, 1997 2001.

14           **Sec. 3. 38 MRSA §361-A, sub-§1-K**, as enacted by PL 1997, c.  
16 794, Pt. A, §10, is amended to read:

18           **1-K. Federal Water Pollution Control Act.** "Federal Water  
Pollution Control Act" means federal Public Law 92-500 or 33  
United States Code, Sections 1251 et seq., including all  
20 amendments effective on or before January 1, 1997 2001.

22           **Sec. 4. 38 MRSA §361-A, sub-§4**, as enacted by PL 1971, c. 470,  
24 §1, is amended to read:

26           **4. Person.** "Person" means an individual, firm, corporation,  
municipality, quasi-municipal corporation, state agency, federal  
agency, association, partnership or other legal entity or an  
28 agent or employee of any of these.

30           **Sec. 5. 38 MRSA §410-G**, as amended by PL 1989, c. 890, Pt.  
32 A, §40 and Pt. B, §23, is further amended to read:

34           **§410-G. Report required**

36           The commissioner in cooperation with the Department of  
Marine Resources shall report to the joint standing committee of  
the Legislature having jurisdiction over energy and natural  
38 resources and the joint standing committee of the Legislature  
having jurisdiction over marine resources during the first  
40 regular session of each Legislature. ~~The initial report must  
include recommendations regarding the design of the monitoring  
42 program and the level of funding necessary to fully implement the  
program.~~ The report is due on or before March 15th. The report  
44 must address the problems or potential problems of marine and  
estuarine resources caused by industrial contaminants. The  
46 commissioner also shall prescribe remedial steps to address  
problems identified in the report. If the department does not  
48 receive funding for the Marine Environmental Monitoring Program  
described in section 410-F during all or part of the calendar

2 year prior to the first regular session of a Legislature, then  
3 the reporting requirements of this section are waived.

4 **Sec. 6. 38 MRSA §410-N, sub-§3, ¶A**, as enacted by PL 1999, c.  
5 722, §1, is amended to read:

6  
7 A. The department or a person designated by the department  
8 may attempt eradication of an invasive aquatic plant from a  
9 water body if determined feasible by the department. If the  
10 commissioner determines that eradication activities must be  
11 undertaken immediately, a license is not required under  
12 ~~section 413~~ or section 480-C for the use of a physical,  
13 chemical or biological control material by the department or  
14 a person designated by the department if the use of the  
15 control material is specifically related to the immediate  
16 eradication of invasive aquatic plant populations in the  
17 water body. Prior to undertaking an eradication activity  
18 and to the extent practical, the department shall notify  
19 landowners whose property is adjacent to the area where the  
20 activity will be undertaken.

21 **Sec. 7. 38 MRSA §411, first ¶**, as repealed and replaced by PL  
22 1999, c. 790, Pt. A, §50, is amended to read:

23  
24 The commissioner may pay an amount not to exceed 80% of the  
25 expense of a municipal or quasi-municipal pollution abatement  
26 construction program or a pollution abatement construction  
27 program in an unorganized township or plantation authorized by  
28 the county commissioners. The commissioner may make payments to  
29 the Maine Municipal Bond Bank to supply the State's share of the  
30 revolving loan fund established by Title 30-A, section 6006-A.  
31 The commissioner may pay up to 90% of the expense of a municipal  
32 or quasi-municipal pollution abatement construction program or a  
33 pollution abatement construction program in an unorganized  
34 township or plantation authorized by the county commissioners in  
35 which the construction cost of the project does not exceed  
36 \$100,000 as long as ~~total expenditures for the small projects do~~  
37 ~~not exceed \$1,000,000 in any fiscal year~~ and not more than one  
38 grant is made to any applicant each year, except that the  
39 commissioner may pay a percentage of the cost of individual  
40 projects serving single-family dwellings, seasonal dwellings or  
41 commercial establishments according to the following schedule:

42  
43  
44

| 45 ANNUAL INCOME     | 46 SINGLE-<br>47 FAMILY<br>48 DWELLING | 49 SEASONAL<br>50 DWELLING |
|----------------------|----------------------------------------|----------------------------|
| \$0 to \$5,000       | 100%                                   | 50%                        |
| \$5,001 to \$20,000  | 90%                                    | 50%                        |
| \$20,001 to \$30,000 | 50%                                    | 25%                        |

|    |                       |               |     |
|----|-----------------------|---------------|-----|
| 2  | \$30,001 to \$40,000  | 25%           | 25% |
|    | \$40,001 or more      | 0%            | 0%  |
| 4  |                       |               |     |
| 6  | GROSS PROFIT          | COMMERCIAL    |     |
|    |                       | ESTABLISHMENT |     |
| 8  | \$0 to \$50,000       | 50%           |     |
|    | \$50,001 to \$100,000 | 25%           |     |
| 10 | \$100,001 or more     | 0%            |     |

12 **Sec. 8. 38 MRSA §414-A, sub-§6** is enacted to read:

14 **6. Cooling water intake structures.** Any standard  
 16 established by the department pursuant to section 413 or this  
 18 section with respect to cooling water discharges and applicable  
 20 to a point source must require that the location, design,  
construction and capacity of cooling water intake structures  
reflect the best technology available for minimizing adverse  
environmental impacts.

22 **Sec. 9. 38 MRSA §414-B, sub-§1**, as enacted by PL 1973, c. 450,  
 24 §15, is amended to read:

26 **1. Definition.** "Publicly owned treatment works" means any  
 28 facility device or system for the treatment of pollutants owned  
 30 by the State or any political subdivision thereof, any  
municipality, district, quasi-municipal corporation or other  
public entity. "Publicly owned treatment works" includes sewers,  
pipes or other conveyances only if they convey wastewater to a  
publicly owned treatment works providing treatment.

32 **Sec. 10. 38 MRSA §420-D, first ¶**, as enacted by PL 1995, c.  
 34 704, Pt. B, §2 and affected by Pt. C, §2 and 1997, c. 603, §8, is  
 36 amended to read:

38 A person may not construct, or cause to be constructed, a  
 40 project that includes 20,000 square feet or more of impervious  
 42 area or 5 acres or more of disturbed area in the direct watershed  
 44 of a body of water most at risk from new development or one acre  
 46 or more of impervious area or 5 acres or more of disturbed area  
 48 in any other area without prior approval from the department. A  
 person proposing a project shall apply to the department for a  
 permit using an application provided by the department and may  
not begin construction until approval is received. This section  
 applies to a project or any portion of a project that is located  
 within an organized area of this State.

50 **Sec. 11. 38 MRSA §420-D, sub-§5**, as amended by PL 1997, c.  
 502, §2 and affected by c. 603, §8, is further amended to read:

2           **5. Relationship to other laws.** A storm water permit  
3 pursuant to this section is not required for a project requiring  
4 review by the department pursuant to any of the following  
5 provisions but the project may be required to meet standards for  
6 management of storm water adopted pursuant to this section:  
7 article 6, site location of development, ~~unless the project~~  
8 ~~requires review solely as a development that generates 100 or~~  
9 ~~more passenger car equivalents at peak hour;~~ article 7,  
10 performance standards for excavations for borrow, clay, topsoil  
11 or silt; article 8-A, performance standards for quarries; and  
12 sections 631 to 636, permits for hydropower projects. When a  
13 project requires a storm water permit and requires review  
14 pursuant to article 5-A, the department shall issue a joint order  
15 unless the permit required pursuant to article 5-A is a  
16 permit-by-rule or general permit, or separate orders are  
17 requested by the applicant and approved by the department.

18  
19 A storm water permit pursuant to this section is not required for  
20 a project receiving review by a registered municipality pursuant  
21 to section 489-A if the storm water ordinances under which the  
22 project is reviewed are at least as stringent as the storm water  
23 standards adopted pursuant to section 484 and are in effect at  
24 the time of review as determined by the department.

25           **Sec. 12. 38 MRSA §480-E-1**, as enacted by PL 1999, c. 333,  
26 §20, is amended to read:

27  
28           **§480-E-1. Delegation of permit-granting authority to the Maine**  
29 **Land Use Regulation Commission**

30  
31           The Maine Land Use Regulation Commission shall issue all  
32 permits under this article for activities that are located wholly  
33 within its jurisdiction and are not subject to review and  
34 approval by the department under any other article of this  
35 Title. The Maine Land Use Regulation Commission shall issue  
36 modifications to department permits meeting these criteria for  
37 permits issued prior to September 18, 1999. The Maine Land Use  
38 Regulation Commission shall process these permits and  
39 modifications in accordance with the provisions of Title 12,  
40 sections 681 to 689 and rules and standards adopted under those  
41 sections.

42  
43           The Maine Land Use Regulation Commission, in consultation  
44 with the department, shall periodically review land use standards  
45 adopted by the commission to ensure that the standards afford a  
46 level of protection consistent with the goals of this article,  
47 the goals of Title 12, chapter 206-A and the commission's  
48 comprehensive land use plan.

49  
50

2           **Sec. 13. 38 MRSA §480-V**, as enacted by PL 1993, c. 721, Pt.  
F, §4 and affected by Pt. H, §1, is amended to read:

4           **§480-V. Applicability**

6           Except as provided in this section, this article applies to  
all protected natural resources in the State, including  
8 significant wildlife habitat that is within another protected  
natural resource.

10           **1. Exemptions.** This article does not apply to:

12           A. Significant wildlife habitat not within another  
protected natural resource, unless that significant wildlife  
14 habitat is identified on a map adopted by the board; ~~and.~~

16           ~~B. -- These portions of fragile mountain areas, deer wintering  
18 areas, seabird nesting islands and great ponds, rivers,  
streams and brooks within the jurisdiction of the Maine Land  
20 Use Regulation Commission under Title 12, chapter 206-A.  
The commission, in consultation with the department, shall  
22 periodically review land use standards adopted by the  
commission for these resources to ensure that the standards  
24 afford a level of protection consistent with the goals of  
this article, the goals of Title 12, chapter 206-A and the  
26 commission's comprehensive land use plan.~~

28           **Sec. 14. 38 MRSA §480-Z, sub-§§5 and 6**, as enacted by PL 1997,  
c. 101, §1 and affected by §2, are amended to read:

30           **5. Report; evaluation.** The department shall submit a report  
32 annually by February 1st to the joint standing committee of the  
Legislature having jurisdiction over natural resources matters  
34 regarding the wetlands compensation program. The report must  
include information on the amount and type of wetlands altered,  
36 the associated impact on wetland functions and values and the  
compensation required by the department. The information must be  
38 provided for each of the following categories: compensation  
40 projects implemented by the applicant, compensation authorized by  
the purchase of credits from a mitigation bank, compensation  
42 authorized by payment of compensation fees and wetland  
alterations for which compensation was not required.

44           By January 1, 2001 and February 1, 2002, the department shall  
submit to the joint standing committee of the Legislature having  
46 jurisdiction over natural resources matters an evaluation of the  
effectiveness and efficiency of the compensation program  
48 developed under this section, including the amount and type of  
wetlands altered, the effect on wetland functions and values, an  
50 assessment of the relative environmental benefit of each

2 compensation option, an assessment of whether coastal wetlands  
3 should be included in the program, an assessment of the  
4 requirement that the compensation project be located in the same  
5 watershed as the affected wetland and a comparison of the  
6 compensation program developed under this section with  
7 compensation prior to the effective date of this section. The  
8 department may include recommendations for extending the program  
and any suggested statutory changes.

10 **6. Repeal.** This section is repealed October 15, 2001 2003.  
11 The repeal of this section does not affect any valid permits,  
12 compensation projects, credits and compensation funds issued,  
13 implemented, purchased or established pursuant to this section.

14 **Sec. 15. 38 MRSA §488, sub-§18, ¶¶B and C,** as enacted by PL  
15 1995, c. 493, §7, are amended to read:

18 B. A roundwood or lumber storage yard and any road  
19 associated solely with the yard, constructed prior to the  
20 effective date of this subsection, is exempt from review  
21 under this article provided the following requirements are  
22 met.

24 (1) Within one year after the effective date of this  
25 subsection, a notice of intent to comply must be  
26 provided to the department.

28 (2) Within 2 years of the effective date of this  
29 subsection, construction and operation of the yards and  
30 roads must be in compliance with the erosion and  
31 sedimentation control standards and storm water  
32 standards contained in board rules and adopted pursuant  
33 to section 484.

34 (3) Any expansion or alteration of such facilities  
35 must meet the requirements of paragraph A.

38 C. Notice of intent filed under this subsection must be  
39 complete, submitted on forms approved by the department and  
40 mailed by certified mail, return receipt requested. The  
41 notice must include a fee of \$250. The fee for transfer or  
42 minor revision of the notice of intent is \$105.

44 **Sec. 16. 38 MRSA §488, sub-§18, ¶D,** as enacted by PL 1995, c.  
45 493, §7, is repealed.

46 **Sec. 17. 38 MRSA §488, sub-§20,** as enacted by PL 1995, c. 704,  
47 Pt. A, §20 and affected by Pt. C, §2, is amended to read:



20. **Modifications in permitted subdivisions.** Review is not required under this article in the following instances:

A. When the owner of a single lot in a subdivision with a permit under this article conveys a right of access to adjacent land that was not part of the permitted subdivision, if the right-of-way is not contrary to the terms of the subdivision permit and the right-of-way is not more than 50 feet long; or

B. When 2 lot owners in a subdivision with a permit under this article convey reciprocal easements for the purpose of constructing a common driveway in place of 2 separate driveways, if the single driveway reduces the total amount of impervious area in the affected subwatershed; ~~or~~ and the single driveway is not contrary to the terms of the subdivision permit.

~~C. When a lot owner in a permitted subdivision seeks to relocate the proposed septic field that had been designated by the permit holder, if the septic field is no closer to the down gradient property boundary and the relocation is approved by the required local and state agencies, such as the plumbing inspector and the Department of Human Services, Division of Health Engineering.~~

**Sec. 18. 38 MRSA §844, sub-§2,** as enacted by PL 1999, c. 782, §1, is amended to read:

**2. Grant criteria.** A dam is eligible for a grant from the fund if it:

A. Controls the flow of water; and

~~B. Is breached and causes a lowering of the water level; and~~

C. Meets any other criterion the department may by rule require.

## SUMMARY

The bill makes many minor changes to statutes administered by the Department of Environmental Protection, Bureau of Land and Water Quality.

1. It repeals a provision that prevents a cause of action by a riparian or littoral owner against a licensed discharger under certain circumstances.

2           2. It changes the date in the definition of "Code of  
Federal Regulations" to include amendments to that code effective  
on or before January 1, 2001.

4  
6           3. It changes the date in the definition of "Federal Water  
Pollution Control Act" to include amendments to that Act  
effective on or before January 1, 2001.

8  
10          4. It amends the definition of "person" to specifically  
include an association, a partnership and the agents and  
employees of the legal entities included in the definition.

12  
14          5. It removes a requirement related to an initial report  
submitted several years ago and waives the reporting requirement  
when the program is not funded.

16  
18          6. It removes an exemption from wastewater discharge  
licensing requirements for use of control material on invasive  
aquatic plants by the department or a person designated by the  
department.

20  
22          7. It removes the cap of \$1,000,000 for total expenditures  
in any fiscal year for purposes of grants under the small  
community grant program.

24  
26          8. It provides that any standard established by the  
department pursuant to the Maine Revised Statutes, Title 38,  
section 413 or 414-A with respect to cooling water discharges and  
applicable to point sources requires that the location, design,  
construction and capacity of cooling water intake structures  
reflect the best available technology for minimizing adverse  
environmental impacts.

30  
32  
34          9. It amends the definition of "publicly owned treatment  
works" to make it more consistent with the federal definition by  
adding a reference to sewer pipes leading to the treatment  
facility itself.

36  
38  
40          10. It clarifies that a person needing a permit under the  
storm water management law must receive approval prior to  
beginning construction.

42  
44          11. It deletes language in the section of the storm water  
management law referring to traffic permits, which the department  
no longer requires. It also adds language providing that a storm  
water permit is not required in a municipality with delegated  
authority under the site location of development law if the  
ordinances under which the project is reviewed are at least as  
stringent as the department's storm water standards, as  
determined by the department.

2           12. It clarifies that the Maine Land Use Regulation  
4 Commission, or LURC, may amend permits for projects in LURC  
6 jurisdiction that were previously issued by the department  
pursuant to the natural resources protection laws.

8           13. It corrects an apparent conflict between the Maine  
10 Revised Statutes, Title 38, section 480-E-1 and section 480-V.  
12 Currently, Title 38, section 480-E-1 provides that LURC issues  
14 all permits under the natural resources protection law, Title 38,  
16 chapter 3, subchapter I, article 5-A, for projects within its  
18 jurisdiction, using Title 12, sections 681 to 689 and rules and  
standards adopted under those sections. However, Title 38,  
section 480-V states that that article does not apply to certain  
protected natural resources within LURC jurisdiction. Under the  
bill, Title 38, chapter 3, subchapter I, article 5-A would apply  
statewide and LURC would continue to issue permits in LURC  
jurisdiction pursuant to Title 38, section 480-E-1.

20           14. It requires a 2nd report to the joint standing  
22 committee of the Legislature having jurisdiction over natural  
resources matters concerning the wetlands compensation program.

24           15. It changes the repeal date for the statutory section  
26 providing for a wetlands compensation program from October 15,  
2001 to October 15, 2003.

28           16. It makes 3 changes to the site location of development  
30 law's exemption for roundwood and lumber storage yards. First,  
32 it clarifies that the phrase "erosion and sedimentation control  
34 standards and storm water standards contained in board rules"  
36 refers to rules adopted pursuant to the site location of  
development law. Second, it provides a fee for the processing of  
an application for a minor revision or transfer of the submitted  
notice of intent. Third, it deletes a reference to certain  
guidance documents.

38           17. It makes 2 changes to the site location of development  
40 law's exemptions for certain modifications in permitted  
42 subdivisions. The Maine Revised Statutes, Title 38, section 488,  
44 subsection 20 currently contains 3 separate exemptions. No  
46 change is proposed to the exemption Title 38, section 488,  
48 subsection 20 in paragraph A. The proposed amendment to Title  
50 38, section 488, subsection 20, paragraph B adds a requirement,  
consistent with an existing requirement in Title 38, section 488,  
subsection 20, paragraph A, that the proposed activity not be  
contrary to the terms of the original permit. The bill repeals  
Title 38, section 488, subsection 20, paragraph C, which contains  
an exemption addressing relocation of septic systems.

18. It removes a grant criterion applicable to the Dam  
2 Repair and Reconstruction Fund that requires a dam be breached,  
causing lowering of the water level, in order to receive grant  
4 funds for repair or reconstruction.