

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1547

H.P. 1133

House of Representatives, April 10, 2003

### **An Act To Amend Certain Laws Administered by the Department of Environmental 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 KOFFMAN of Bar Harbor.  
Cosponsored by Senator MARTIN of Aroostook.

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

2  
4       **Sec. 1. 12 MRSA §9325, sub-§1, ¶E**, as amended by PL 2001, c. 626, §6, is further amended to read:

6           E. Out-of-door burning of wood wastes as defined in section  
8           9324, subsection 7-A and painted and unpainted wood from  
10           construction and demolition debris in the open or in an  
12           incinerator with a primary chamber volume no greater than  
14           133 cubic feet or 1,000 gallons that is not licensed by the  
16           Department of Environmental Protection;

18       **Sec. 2. 38 MRSA §341-G, first ¶**, as amended by PL 1997, c. 364,  
20       §18, is further amended to read:

22           There is established the Board of Environmental Protection  
24           Fund to be used by the board as a nonlapsing fund to carry out  
26           its duties under this Title. Notwithstanding any other provision  
28           of law, the funds identified in subsection 1 shall transfer  
30           annually to the Board of Environmental Protection Fund in an  
32           amount not to exceed ~~\$250,000~~ \$325,000. Money in the Board of  
34           Environmental Protection Fund may only be expended in accordance  
36           with allocations approved by the Legislature.

38       **Sec. 3. 38 MRSA §342, sub-§7**, as amended by PL 1999, c. 127,  
40       Pt. A, §53, is further amended to read:

42           **7. Representation in court.** The commissioner may authorize  
44           licensed Maine attorneys with active bar status who are employees  
46           of the department and certified employees of the department to  
48           serve civil process and represent the department in District  
Court in the prosecution of violations of those laws enforced by  
the department and set forth in Title 4, section 152, subsection  
6-A. Licensed Maine attorneys do not need to file the  
certification referred to in the Maine Rules of Civil Procedure,  
Rule 80K(h). Certification of ~~these nonattorney~~ employees must  
be provided as under Title 30-A, section 4453.

40       **Sec. 4. 38 MRSA §342, sub-§14**, as enacted by PL 1991, c. 804,  
42       Pt. A, §2, is repealed.

44       **Sec. 5. 38 MRSA §347-A, sub-§1, ¶A**, as repealed and replaced  
46       by PL 1993, c. 204, §1, is amended to read:

48           A. Whenever it appears to the commissioner, after  
investigation, that there is or has been a violation of this  
Title, of rules adopted under this Title or of the terms or  
conditions of a license, permit or order issued by the board  
or the commissioner, the commissioner may initiate an

enforcement action by taking one or more of the following steps:

(1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the board and the Attorney General;

(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~~ commencing a civil action pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3.

**Sec. 6. 38 MRSA §349, sub-§9**, as repealed and replaced by PL 1997, c. 794, Pt. A, §9, is amended to read:

**9. Unavoidable malfunctions.** The following considerations apply to violations resulting from unavoidable malfunctions.

A. The commissioner may exempt from civil penalty an air emission in excess of license limitations if the emission occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner in writing within 48 hours and submit a written report, together with any exemption requests, to the department on a quarterly basis. ~~The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.~~

B. An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the

2 licensee and the licensee has taken all reasonable steps to  
3 minimize or prevent any discharge and takes corrective  
4 action as soon as possible. There is not an affirmative  
5 defense if the malfunction is caused, entirely or in part,  
6 by operational error, improperly designed treatment  
7 facilities, inadequate treatment facilities, lack of  
8 preventive maintenance or careless or improper operation.  
9 The burden of proof is on the licensee seeking the  
10 affirmative defense under this subsection. In the event of  
11 an unavoidable malfunction, the licensee must notify the  
12 commissioner orally within 24 hours, and in writing within 5  
13 days. ~~The commissioner shall annually report to the joint  
14 standing committee of the Legislature having jurisdiction  
15 over natural resource matters with regard to the exercise of  
16 this authority.~~

17 **Sec. 7. 38 MRSA §464, sub-§3, ¶B,** as enacted by PL 1985, c.  
18 698, §15, is amended to read:

19 B. The board shall, from time to time, but at least once  
20 every 3 4 years, hold public hearings for the purpose of  
21 reviewing the water quality classification system and  
22 related standards and, as appropriate, recommending changes  
23 in the standards to the Legislature.  
24

25 **Sec. 8. 38 MRSA §480-Z, sub-§3,** as enacted by PL 1997, c. 101,  
26 §1 and affected by §2, is amended to read:

27 **3. Compensation fee program.** The department shall ~~shall~~ may  
28 develop a compensation fee program in consultation with the State  
29 Planning Office, the United States Army Corps of Engineers and  
30 state and federal resource agencies, including the United States  
31 Fish and Wildlife Service and the United States Environmental  
32 Protection Agency.  
33

34 A. The program ~~must~~ may include, ~~at a minimum,~~ the  
35 following:

36 (1) Identification of wetland management priorities on  
37 a watershed basis;

38 (2) Identification of the types of wetland losses  
39 eligible for compensation under this subsection;

40 (3) Standards for compensation fee projects;

41 (4) Calculation of compensation fees based on the  
42 functions and values of the affected wetlands and the  
43 cost of compensation, taking into account the potential  
44  
45  
46  
47  
48

2 higher cost of compensation when a project is  
implemented at a later date; and

4 (5) Methods to evaluate the long-term effectiveness of  
6 compensation fee projects implemented under this  
subsection in meeting the wetland management priorities  
8 identified pursuant to subparagraph (1).

10 B. Any compensation fee ~~must~~ may be paid into a wetlands  
12 compensation fund established by the department as provided  
14 in subparagraph (1) or to an organization authorized by the  
department as provided in ~~subparagraphs (1) and~~ subparagraph  
(2). A compensation project funded in whole or in part from  
compensation fees must be approved by the department.

16 (1) The department may establish a wetlands  
18 compensation fund for the purpose of receiving  
20 compensation fees, grants and other related income.  
The wetlands compensation fund must be a fund dedicated  
22 to payment of costs and related expenses of wetland  
restoration, enhancement, preservation and creation  
24 projects. The department may make payments from the  
fund consistent with the purpose of the fund. Income  
26 received under this subsection must be deposited with  
the State Treasurer to the credit of the wetlands  
28 compensation fund and may be invested as provided by  
law. Interest on these investments must be credited to  
the wetlands compensation fund.

30 (2) The department may enter into an enforceable,  
32 written agreement with a public, quasi-public or  
municipal organization or a private, nonprofit  
34 organization dedicated--to for the protection of  
wetlands and other natural areas ~~for the purposes of~~  
36 receiving. Such an organization must demonstrate the  
ability to receive compensation fees, ~~administering the~~  
38 administer a wetlands compensation fund and ~~ensuring~~  
ensure that compensation projects are implemented  
40 consistent with the local, regional or state wetland  
management priorities ~~identified by the department~~ for  
42 the watershed in which the project is located. If  
compensation fees are provided to an authorized  
44 organization, the organization shall maintain records  
of expenditures and provide an annual summary report ~~to~~  
46 as requested by the department. If the authorized  
agency is a state agency other than the department, the  
48 agency shall establish a fund meeting the requirements  
specified in subparagraph (1). If the organization  
50 does not perform in accordance with this subsection or  
with the requirements of the written agreement, the

2 department may revoke the organization's authority to  
3 conduct activities in accordance with this subsection.  
4 ~~If--an--organization's--authorization--is--revoled,--any  
5 funds--remaining--in--the--wetlands--compensation--fund--must  
6 be--provided--to--the--department.~~

7 Rules adopted pursuant to this subsection are routine technical  
8 rules under Title 5, chapter 375, subchapter II-A 2-A.

10 **Sec. 9. 38 MRSA §480-Z, sub-§§5 and 6**, as amended by PL 2001,  
11 c. 232, §17, are repealed.

12 **Sec. 10. 38 MRSA §568-A, sub-§7**, as enacted by PL 1997, c.  
13 374, §5, is amended to read:

14 **7. Repeal date.** This section is repealed December 31, 2005  
15 2010.

16 **Sec. 11. 38 MRSA §568-B, sub-§3** is enacted to read:

17 **3. Repeal date.** This section is repealed December 31, 2010.

18 **Sec. 12. 38 MRSA §569-A, sub-§5, ¶A**, as amended by PL 1999, c.  
19 505, Pt. A, §12, is further amended to read:

20 A. ~~Until December 31, 2005,~~ a fee is assessed of 38¢ per  
21 barrel of gasoline; 19¢ per barrel of refined petroleum  
22 products and their by-products other than gasoline, liquid  
23 asphalt and #6 fuel oil, including #2 fuel oil, kerosene,  
24 jet fuel and diesel fuel; and 4¢ per barrel of #6 fuel oil.  
25 The fee is assessed on the first transfer of those products  
26 by oil terminal facility licensees, as defined in section  
27 542, subsection 7, and on a person required to register with  
28 the commissioner under section 545-B who first transports  
29 oil into the State. The fee is not assessed on petroleum  
30 products that are exported from this State. These fees must  
31 be paid monthly on the basis of records certified to the  
32 commissioner. This subsection does not apply to waste oil  
33 transported into the State in any motor vehicle that has a  
34 valid license issued by the department for the  
35 transportation of waste oil pursuant to section 1319-O and  
36 is subject to fees established under section 1319-I.

37 **Sec. 13. 38 MRSA §569-A, sub-§13**, as amended by PL 1997, c.  
38 374, §7, is further amended to read:

39 **13. Repeal date.** This section is repealed December 31,  
40 2005 2010.

2           **Sec. 14. 38 MRSA §569-B, sub-§8**, as amended by PL 1997, c.  
374, §9, is further amended to read:

4           **8. Effective date.** This section takes effect December 31,  
2005 2010.

6           **Sec. 15. 38 MRSA §570-A, 2nd ¶**, as amended by PL 1997, c. 374,  
8 §10, is further amended to read:

10           This section is repealed December 31, 2005 2010.

12           **Sec. 16. 38 MRSA §570-B, 2nd ¶**, as amended by PL 1997, c. 374,  
14 §11, is further amended to read:

16           This section is repealed December 31, 2005 2010.

18           **Sec. 17. 38 MRSA §570-I, 2nd ¶**, as amended by PL 1997, c. 374,  
§12, is further amended to read:

20           This section takes effect December 31, 2005 2010.

22           **Sec. 18. 38 MRSA §570-J, 2nd ¶**, as amended by PL 1997, c. 374,  
24 §13, is further amended to read:

26           This section is effective December 31, 2005 2010.

28           **Sec. 19. 38 MRSA §570-K, sub-§5**, as enacted by PL 2001, c.  
605, §3, is amended to read:

30           **5. Spill prevention and control.** An aboveground oil  
32 storage facility used in the marketing and distribution of oil to  
others must be operated in compliance with the federal  
34 requirements for the preparation and implementation of spill  
prevention control and countermeasure plans under 40 Code of  
Federal Regulations, 112 ~~(2001)~~ in effect on August 16, 2002.  
36 Failure to comply with those federal requirements in accordance  
with the deadlines set by the United States Environmental  
38 Protection Agency constitutes a violation of this Title. If the  
department believes that a facility's plan does not satisfy those  
40 federal requirements, the department shall request an opinion  
from the United States Environmental Protection Agency as to the  
42 legal adequacy of the plan and any amendment necessary to bring  
the facility into compliance with those federal requirements.  
44 The department shall prepare educational and technical materials  
for use by facilities affected by this subsection. This  
46 subsection is repealed October 1, 2005.

48           **Sec. 20. PL 1991, c. 817, §28**, as amended by PL 1997, c. 374,  
50 §15, is further amended to read:





2 Maine Rules of Civil Procedure, Rule 80K allows the department  
and municipalities to prosecute environmental violations in  
4 District Court. There is ambiguity between the Maine Revised  
Statutes, Title 38, section 347-A and the Maine Rules of Civil  
6 Procedure, Rule 3 as to the point in time when an action in  
District Court should be considered to have been initiated.

8 It repeals the requirement of annual reporting to the  
Legislature by the Commissioner of Environmental Protection on  
10 unavoidable malfunctions.

12 It amends the statutes to change a hearing and reporting  
requirement concerning classification standards from once every 3  
14 years to once every 4 years.

16 It amends the statutes to make the creation of a wetland  
compensation fee program optional rather than mandatory,  
18 specifically adds municipalities to the types of organizations  
that may create a wetland compensation fee program, deletes the  
20 mandatory annual reporting requirement for any such program and  
deletes the requirement that funds from such a program are turned  
22 over to the department if the department's authorization of that  
program is revoked.

24 It repeals the requirement of annual reporting to the  
26 Legislature on the wetlands compensation fee program.

28 It repeals the provision that repeals the wetland  
compensation fee program effective October 15, 2003.

30 It makes the changes necessary to extend the sunset date for  
32 coverage of oil spill cleanup costs by the Ground Water Oil  
Clean-up Fund. The fund covers cleanup costs for spills from  
34 aboveground or underground oil tanks through December 31, 2005,  
at which point fund coverage, also called the fund insurance  
36 program, is repealed under current law. This bill extends the  
fund insurance program by 5 years to December 31, 2010.

38 It incorporates by reference the latest version of the  
40 federal regulations governing spill prevention and control at  
aboveground oil storage facilities. The purpose of this change  
42 is to ensure state and federal requirements are consistent with  
each other.

44