

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND REGULAR SESSION-2004

Legislative Document

No. 1655

S.P. 606

In Senate, December 11, 2003

An Act To Amend Certain Laws Administered by the Department of Environmental Protection

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 11, 2003. Referred to the Committee on Natural Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Representative KOFFMAN of Bar Harbor and
Senator: SAWYER of Penobscot, Representative: DAIGLE of Arundel.

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

2

Sec. 1. 38 MRSA §343-H, sub-§4, as amended by PL 2001, c. 695, §1, is further amended to read:

6

4. Reporting. The directors shall jointly report on the activities of all state agencies under the initiative to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the joint standing committee of the Legislature having jurisdiction over state government matters. The directors must submit their report ~~for state agencies other than the state supported institutions of higher learning no later than January 1, 2003, and biennially thereafter, and must submit their report for state supported institutions of higher learning~~ no later than January 1, 2004, and biennially thereafter. The report must identify the successes of and the obstacles to implementation of the initiative and may include recommendations for any statutory changes necessary to accomplish the initiative.

20

Sec. 2. 38 MRSA §413, sub-§1-B, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §28, is further amended to read:

24

1-B. License required for subsurface wastewater disposal systems. No person may install, operate or maintain a subsurface wastewater disposal system without first obtaining a license therefor from the department, except that a license is not required for systems designed and installed in conformance with the plumbing code, as promulgated by the Department of Human Services under Title 22, section 42. The department may by rule license categories of subsurface discharges when the discharges will not have a significant adverse effect on the quality or classification of groundwaters of the State.

36

Sec. 3. 38 MRSA §464, sub-§3, ¶B, as amended by PL 2003, c. 245, §7, is further amended to read:

38

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

44

Sec. 4. 38 MRSA §467, sub-§2, as amended by PL 2003, c. 317, §4, is further amended to read:

48

2. Dennys River Basin.

50

A. Dennys River, main stem.

2 (1) From the outlet of Meddybemps Lake to the Route-1
3 Bunker Hill Road bridge - Class AA.

4 (2) From the Route--1 Bunker Hill Road bridge to
5 tidewater - Class B. Further, the Legislature finds
6 that the free-flowing habitat of this river segment
7 provides irreplaceable social and economic benefits and
8 that this use must be maintained.

10 B. Dennys River, tributaries - Class A unless otherwise
11 specified.

14 (1) All tributaries entering below the Route-1 Bunker
15 Hill Road bridge - Class B.

16 (2) Venture Brook in Edmunds Township - Class AA.

18 **Sec. 5. 38 MRSA §480-D, sub-§7**, as enacted by PL 1987, c. 809,
19 §2, is amended to read:

22 7. **Sand or gravel supply.** If the activity is on or
23 adjacent to a sand dune, it will not unreasonably interfere with
24 the natural supply or movement of sand or gravel within or to the
25 sand dune system or unreasonably increase the erosion hazard to
26 the sand dune system.

28 **Sec. 6. 38 MRSA §551, sub-§2, ¶J**, as enacted by PL 1991, c.
29 817, §11, is amended to read:

30 J. A ~~responsible--party~~ claimant is not eligible for
31 compensation under this subsection for costs, expenses or
32 damages related to ~~the specific a discharge for which the if~~
33 the commissioner determines that the claimant is a
34 responsible party is-determined-responsible as defined under
35 section 542, subsection 9-C.

38 **Sec. 7. 38 MRSA §551, sub-§2, ¶M** is enacted to read:

40 M. The commissioner may dismiss a 3rd-party damage claim
41 for untimely filing, for failure by the claimant to provide
42 the information necessary to process the claim within 60
43 days after the claimant receives written notice that the
44 claim is insufficient for processing or for ineligibility as
45 determined by the commissioner under paragraph J. A
46 dismissal may be appealed to Superior Court in accordance
47 with Title 5, chapter 375, subchapter 7.

48 **Sec. 8. 38 MRSA §564, sub-§2-A, ¶H**, as amended by PL 1993, c.
49 732, Pt. A, §2, is further amended to read:

2 H. Reporting to the commissioner any of the following
4 indications of a possible leak or discharge of oil:

6 (1) Unexplained differences in daily inventory
8 reconciliation values that, over a 30-day period,
10 exceed 1.0% of the product throughput;

12 (2) Unexplained losses detected through statistical
14 analysis of inventory records;

16 (3) Detection of product in a monitoring well or by
18 other leak detection methods;

20 (4) Failure of a tank or piping precision test,
22 hydrostatic test or other tank or piping tightness test
approved by the department; and

24 (5) Discovery of oil ~~off-site~~ on or under the premises
26 or abutting properties, including nearby utility
28 conduits, sewer lines, buildings, drinking water
30 supplies and soil.

32 The rules may not require the reporting of a leak or
34 discharge of oil above ground of 10 gallons or less that
36 occurs on the premises, including, but not limited to,
spills, overfills and leaks, when those leaks or discharges
do not reach ~~ground-water~~ groundwaters or surface waters of
the State and are cleaned up within 24 hours of discovery,
if a written log is maintained at the facility or the
owner's place of business in this State. For each discharge
the log must record the date of discovery, its source, the
general location of the discharge at the facility, the date
and method of cleanup and the signature of the facility
owner or operator certifying the accuracy of the log;

38 **Sec. 9. 38 MRSA §564, sub-§2-A**, as amended by PL 1995, c. 493,
§10, is further amended by amending the last paragraph to read:

40 The requirements in paragraphs A and B do not apply to the
42 following tanks provided the associated piping has secondary
44 containment or a suction pump product delivery system or another
46 leak detection system approved by the commissioner and provided
48 that the tank and associated piping have been installed and are
operated in accordance with the requirements of this subchapter,
including rules adopted under this subchapter: tanks providing
product to a generator; double-walled tanks with continuous
interstitial space monitoring; and existing tanks constructed of
fiberglass, cathodically protected steel or another

2 commissioner-approved noncorrosive material that are monitored
for a leak by a method able to detect a product loss or gain of
3 ~~0.1~~ 0.2 gallons or less per hour.

4
5 **Sec. 10. 38 MRSA §564, sub-§3**, as repealed and replaced by PL
6 1991, c. 66, Pt. B, §6, is repealed.

7 **Sec. 11. 38 MRSA §569-A, sub-§2, ¶I**, as enacted by PL 1991, c.
8 817, §26, is amended to read:

9
10 I. A ~~responsible--party~~ claimant is not eligible for
11 compensation under this subsection for costs, expenses or
12 damages related to ~~the-specific~~ a discharge for which the if
13 the commissioner determines that the claimant is a
14 responsible party is--deemed--responsible as defined under
15 section 562-A, subsection 17.

16
17 **Sec. 12. 38 MRSA §569-A, sub-§2, ¶L** is enacted to read:

18
19 L. The commissioner may dismiss a 3rd-party damage claim
20 for untimely filing, for failure by the claimant to provide
21 the information necessary to process the claim within 60
22 days after the claimant receives written notice that the
23 claim is insufficient for processing or for ineligibility as
24 determined by the commissioner under paragraph I. A
25 dismissal may be appealed to Superior Court in accordance
26 with Title 5, chapter 375, subchapter 7.

27
28 **Sec. 13. 38 MRSA §570-K, sub-§5**, as amended by PL 2003, c.
29 245, §19, is further amended to read:

30
31 **5. Spill prevention and control.** An aboveground oil
32 storage facility used in the marketing and distribution of oil to
33 others must be operated in compliance with the federal
34 requirements for the preparation and implementation of spill
35 prevention control and countermeasure plans under 40 Code of
36 Federal Regulations, 112 in effect on April 17, 2003. Failure to
37 comply with those federal requirements in accordance with the
38 deadlines set by the United States Environmental Protection
39 Agency constitutes a violation of this Title. If the department
40 believes that a facility's plan does not satisfy those federal
41 requirements, the department shall request an opinion from the
42 United States Environmental Protection Agency as to the legal
43 adequacy of the plan and any amendment necessary to bring the
44 facility into compliance with those federal requirements. The
45 department shall prepare educational and technical materials for
46 use by facilities affected by this subsection. This subsection is
47 repealed October 1, 2005 2010.

2 Presently, the statute inadvertently identifies the wrong bridge
relative to where tidewater occurs on the Dennys River. This
4 bill changes the statute to designate the correct bridge relative
to the location of tidewaters.

6 5. It amends the "sand supply" standard in the Maine
Revised Statutes, Title 38, section 480-D, subsection 7 by adding
8 "or gravel" in order to make it consistent with the definition of
"coastal sand dune systems" in Title 38, section 480-B,
10 subsection 1.

12 6. It makes a claimant ineligible to receive 3rd-party
damage payments from the Maine Coastal and Inland Surface Oil
14 Clean-up Fund or the Ground Water Oil Clean-up Fund if the
claimant caused the oil discharge that resulted in the damages or
16 the claimant otherwise meets the definition of "responsible
party" under Maine oil discharge law.

18 7. It authorizes the Commissioner of Environmental-
20 Protection to dismiss a claim for damages associated with an oil
discharge if the claim is not timely filed, the claimant does not
22 provide the information needed to process the claim or the
claimant is found to be responsible for the discharge.

24 8. It provides that the discovery of oil in drinking water
26 supplies, soil or other locations on the premises of an
underground storage facility is evidence of a leak. Such
28 evidence of leakage must be reported to the department unless
reporting is otherwise exempted under existing provisions of law.

30 9. It allows operators of underground oil storage
32 facilities to forego inventory analysis if the storage tanks are
monitored for leaks by a method able to detect a product loss of
34 0.2 gallons or less per hour. Current law allows this only if
the monitoring system is capable of detecting a product loss of
36 0.1 gallons or less per hour.

38 10. It repeals obsolete language governing bare steel
underground oil storage tanks. The language is obsolete because
40 all such tanks must have been removed from service by October 1,
1998. The installation of new bare steel tanks is prohibited.

42 11. It extends the sunset date of the department's
44 authority to enforce federal requirements for spill prevention
control and countermeasure plans at aboveground storage
46 facilities.

48 12. It deletes an incongruent reference in the law
governing the sale of elemental mercury for manufacturing
50 purposes.

2 13. It deletes text appearing in Title 38, section 1864
4 that requires prior written consent from public water suppliers
6 before chemical control agents are used on a waterbody that is a
8 public water supply, and moves the text to its own section. The
change is proposed so that the consent would be required
regardless of whether watercraft use had been restricted for the
waterbody due to the presence of invasive plants.