

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)



122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1588

H.P. 1124

House of Representatives, April 26, 2005

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.
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 COWGER of Kennebec.

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

2
4 **Sec. 1. 12 MRSA c. 421, sub-c. 2,** as amended, is repealed.

6 **Sec. 2. 32 MRSA §10015, last ¶,** as enacted by PL 1989, c. 845,
§14 and amended by PL 1999, c. 547, Pt. B, §78 and affected by
8 §80, is further amended to read:

10 The jurisdiction to suspend or revoke certificates conferred
by this section is concurrent with that of the District Superior
12 Court. Civil penalties accrue to the Ground Water Oil Clean-up
Fund. Any nonconsensual action under subsection 2-A taken under
14 authority of this section may be imposed only after a hearing
conforming to the requirements of Title 5, chapter 375,
16 subchapter IV 4, and is subject to judicial review exclusively in
the District Superior Court in accordance with Title 5, chapter
18 375, subchapter VII 7, ~~substituting the term "District Court" for~~
~~"Superior Court,"~~ notwithstanding any other provision of law.

20 **Sec. 3. 36 MRSA §5219-X,** as enacted by PL 2003, c. 698, §1,
is amended to read:

22 **§5219-X. Biofuel commercial production and commercial use**

24 **1. Definition.** As used in this section, unless the context
26 otherwise indicates, the term "biofuel" means any commercially
produced liquid or ~~gaseous-product-or-energy-source~~ gas used to
28 propel motor vehicles or otherwise substitute for liquid or
gaseous fuels that is derived from agricultural crops or residues
30 or from forest products or byproducts, as distinct from petroleum
or other fossil carbon sources. "Biofuel" includes, but is not
32 limited to, ethanol, methanol derived from biomass, levulinic
acid, biodiesel, pyrolysis oils from wood, hydrogen or methane
34 from biomass, or combinations of any of the above that may be
used to propel motor vehicles either alone or in blends with
36 conventional gasoline or diesel fuels or that may be used in
place of petroleum products in whole or in part to fire heating
38 devices or any stationary power device. The biofuel must be
offered for sale and income must be derived from the commercial
40 production of biofuel.

42 **2. Credit allowed.** A taxpayer engaged in the production of
biofuels in the State who has received certification under
44 subsection 4 is allowed a credit against the tax imposed by this
Part on income derived during the taxable year from the
46 production of biofuel in the amount of 5¢ per gallon of liquid
biofuel or gaseous biofuel with a BTU equivalent to that of one
48 gallon of gasoline that replaces the use of petroleum or liquid
fuels derived from other fossil carbon sources. In blends with
50 petroleum or other nonbiofuels, the credit is allowed only on the

2 portion of that blend that the biofuel constitutes. Biofuel for
4 which the credit is allowed must meet state and federal
regulatory requirements applicable to the nature and intended use
of the fuel produced.

6 **3. Limitations.** A person entitled to a credit under this
8 section for any taxable year may carry over and apply the portion
10 of any unused credits to the tax liability on income derived from
12 the production of biofuel for any one or more of the next
succeeding 5 taxable years. The credit allowed, including
carryovers, may not reduce the tax otherwise due under this Part
to less than zero.

14 **4. Certification.** A taxpayer engaged in the production of
16 biofuels who is claiming a credit under subsection 2 shall
18 provide information to the Commissioner of Environmental
Protection regarding the biofuel being produced, including the
20 quantity of biofuel products, the type of forest or agricultural
product being utilized, the nature and composition of the biofuel
22 being produced, the proportion and composition of any nonbiofuel
with which the biofuel is blended, the heating value of the
biofuel as compared to the BTU value of one gallon of gasoline
and the type of application for which it is intended to be used.
24 Upon review of the information, the Commissioner of Environmental
Protection shall provide the taxpayer with a letter of
26 certification stating that the biofuel produced during the
taxable year is eligible for a tax credit under this section and
28 stating the number of gallons of biofuel produced during the
taxable year.

30 **5. Application.** This section applies to tax years
32 beginning on or after January 1, 2004.

34 **Sec. 4. 38 MRS §343-B, first ¶,** as enacted by PL 1991, c. 804,
Pt. B, §1 and affected by §7, is amended to read:

36
38 At the request of a potential applicant or when required by
rule, the department shall hold a preapplication meeting to
40 identify the issues, types of information and documentation
necessary for the department to properly assess a specific
42 project. For any application that has had a preapplication
meeting, the department shall also hold a presubmission meeting
to review the application prior to the application being filed by
44 the applicant unless the department determines that the
presubmission meeting is unnecessary based upon the complexity of
the application, status of development of the application or
other factors.

48
50 **Sec. 5. 38 MRS §347-A, sub-§3,** as enacted by PL 1989, c. 311,
§4, is amended to read:

2 **3. Emergency orders.** Whenever it appears to the
4 commissioner, after investigation, that there is a violation of
6 the laws or regulations which the department administers or of
8 the terms or conditions of any of the department's orders, ~~which~~
10 that is creating or is likely to create a substantial and
12 immediate danger to public health or safety or to the
14 environment, the commissioner may order the person or persons
16 causing or contributing to the hazard to immediately take such
18 actions as are necessary to reduce or alleviate the danger.
20 Service of a copy of the commissioner's findings and order issued
22 ~~under this emergency procedure shall~~ must be made by the ~~sheriff~~
~~or deputy sheriff within the county where the person to whom the~~
~~order is directed operates or resides~~ hand delivery by an
authorized representative of the department or by certified mail,
return receipt requested, in accordance with the Maine Rules of
Civil Procedure. In the event that the persons are so numerous
that the specified method of service is a practical impossibility
or the commissioner is unable to identify the person or persons
causing or contributing to the hazard, the commissioner shall
make the order known through prominent publication or
announcement in news media serving the affected area.

24 The person to whom the order is directed shall comply with the
26 order immediately. The order may not be appealed to the Superior
28 Court in the manner provided in section 346, but within 48 hours
after receipt of the order the person may apply to the board for
30 a hearing on the order ~~which shall be held by the board within 48~~
~~hours after receipt of application.~~ Within 7 days after the
hearing, the board shall make findings of fact and continue,
revoke or modify the order. Within 7 working days after receipt
of the application, the board shall hold a hearing, make findings
of fact and vote on a decision that continues, revokes or
modifies the order. The nature of the hearing is an appeal. At
34 the hearing, all witnesses must be sworn and the commissioner
shall first establish the basis for the order and for naming the
person to whom the order was directed. The burden of going
forward then shifts to the person appealing to demonstrate, based
upon a preponderance of the evidence, that the order should be
modified or rescinded. The decision of the board may be appealed
40 to the Superior Court in the manner provided by section 346.

42 **Sec. 6. 38 MRSA §361-A, sub-§1-J,** as amended by PL 2001, c.
44 232, §5, is further amended to read:

46 **1-J. Code of Federal Regulations.** "Code of Federal
48 Regulations" means the codification of regulations published in
50 the Federal Register by the Federal Government, and includes
those regulations effective on or before January 1, 2001 2005.

2 **Sec. 7. 38 MRSA §361-A, sub-§1-K**, as amended by PL 2001, c.
232, §6, is further amended to read:

4 **1-K. Federal Water Pollution Control Act.** "Federal Water
6 Pollution Control Act" means federal Public Law 92-500 or 33
United States Code, Sections 1251 et seq., including all
amendments effective on or before January 1, ~~2001~~ 2005.

8 **Sec. 8. 38 MRSA §420-D, sub-§2**, as amended by PL 2003, c. 318,
10 §1, is further amended to read:

12 **2. Review.** If the applicant is able to meet the standards
14 for storm water using solely vegetative means, the department
shall review the application within ~~30~~ 45 calendar days. If
16 structural means are used to meet those standards, the department
shall review the application within 90 calendar days. The review
18 period begins upon receipt of a complete application and may be
extended pursuant to section 344-B or if a joint order is
20 required pursuant to subsection 5. The department may request
additional information necessary to determine whether the
22 standards of this section are met. The application is deemed
approved if the department does not notify the applicant within
the applicable review period.

24 The department may allow a municipality or a quasi-municipal
26 organization, such as a watershed management district, to
substitute a management system for storm water approved by the
28 department for the permit requirement applicable to projects in a
designated area of the municipality. The municipality or
30 quasi-municipality may elect to have this substitution take
effect at the time the system is approved by the department, or
32 at the time the system is completed as provided in an
implementation schedule approved by the department.

34 **Sec. 9. 38 MRSA §467, sub-§3, ¶B**, as amended by PL 2003, c.
36 663, §2, is further amended to read:

38 B. East Machias River, tributaries - Class A unless
otherwise specified.

40 (1) All tributaries entering below the Route 191
42 bridge in Jacksonville - Class B.

44 (2) Beaverdam Brook - Class AA.

46 (3) Seavey Brook in Crawford - Class AA.

48 (4) Harmon Brook in Crawford - Class AA.

- 2 (5) Northern Stream in Township 19 Eastern Division -
Class AA.
- 4 (6) Creamer Brook in Township 19 Eastern Division -
Class AA.
- 6
- 8 (7) Clifford Brook in Marion Township - Class AA.

10 **Sec. 10. 38 MRSA §480-B, sub-§2**, as amended by PL 1989, c.
430, §3, is further amended to read:

12 **2. Coastal wetlands.** "Coastal wetlands" means all tidal
and subtidal lands, ~~including all areas below any identifiable~~
14 ~~debris line left by tidal action~~; all areas with vegetation
present that is tolerant of salt water and occurs primarily in a
16 salt water or estuarine habitat; and any swamp, marsh, bog,
beach, flat or other contiguous lowland ~~which that~~ is subject to
18 tidal action during the ~~maximum-spring~~ highest tide level for
each year in which an activity is proposed as identified in tide
20 tables published by the National Ocean Service. Coastal wetlands
may include portions of coastal sand dunes.

22 **Sec. 11. 38 MRSA §480-E-1**, as amended by PL 2001, c. 232,
24 §15, is repealed and the following enacted in its place:

26 **§480-E-1. Delegation of permit-granting authority to Maine**
28 **Land Use Regulation Commission**

30 The Maine Land Use Regulation Commission shall issue all
permits under this article for activities that are located wholly
within its jurisdiction and are not subject to review and
32 approval by the department under any other article of this Title
except as follows.

34 **1. Activity located in organized and unorganized area.** If
36 an activity is located in part within an organized area and in
part within an area subject to the jurisdiction of the Maine Land
38 Use Regulation Commission, that portion of the activity within
the organized area is subject to review under this article by the
40 department and that portion of the activity within the
jurisdiction of the Maine Land Use Regulation Commission requires
42 a permit from the commission pursuant to this article except as
provided in subsection 2. The part of the activity within the
44 organized area is subject to review under this article if that
portion is a regulated activity pursuant to this article.

46 **2. Allowed use.** If an activity is located as described in
48 subsection 1 and the Maine Land Use Regulation Commission
determines that the project is an allowed use within the
50 subdistrict or subdistricts for which it is proposed, so that a

2 rezoning is not required pursuant to Title 12, section 685-B, the
3 entire activity is subject to review by the department under this
4 article.

5 Review of subsequent modifications to a development approved
6 by the department is required, except that the Maine Land Use
7 Regulation Commission shall issue modifications to permits issued
8 by the department pursuant to this article prior to September 18,
9 1999. The Maine Land Use Regulation Commission shall process
10 these permits and modifications in accordance with the provisions
11 of Title 12, sections 681 to 689 and rules and standards adopted
12 under those sections.

13 The Maine Land Use Regulation Commission, in consultation
14 with the department, shall annually review land use standards
15 adopted by the commission to ensure that the standards afford a
16 level of protection consistent with the goals of this article,
17 the goals of Title 12, chapter 206-A and the commission's
18 comprehensive land use plan.

19 **Sec. 12. 38 MRSA §480-Q, sub-§§24 and 25,** as enacted by PL
20 2001, c. 618, §5, are amended to read:

21 **24. Existing lawns and gardens.** Maintenance, but not
22 enlargement, of, lawns and gardens in existence on September 1,
23 2002 that are adjacent to a river, stream or brook not regulated
24 by a municipality under chapter 3, subchapter ~~1~~ 1, article 2-B;
25 and

26 **25. Existing agricultural fields and pastures.**
27 Maintenance, but not enlargement, of, agricultural fields and
28 pastures in existence on September 1, 2002 that are adjacent to a
29 river, stream or brook not regulated by a municipality under
30 chapter 3, subchapter ~~1~~ 1, article 2-B; and

31 **Sec. 13. 38 MRSA §480-Q, sub-§26** is enacted to read:

32 **26. Overboard wastewater system.** Installation, maintenance
33 or removal of a licensed overboard discharge treatment system,
34 including the outfall pipe, if:

35 A. Erosion control measures are taken to prevent
36 sedimentation of the water;

37 B. Effects of construction activity on the protected
38 natural resource are minimized; and

39 C. The activity is approved by the department as provided
40 in the department's rules concerning overboard discharges
41 adopted pursuant to section 414-A.

2 **Sec. 14. 38 MRSA §480-U, sub-§2, ¶A**, as amended by PL 1999, c.
401, Pt. BB, §18, is further amended by amending subparagraph (3)
4 to read:

6 (3) Contains endangered or threatened plant species
8 ~~listed under Title 5, section 3315~~ as defined in Title
12, section 544;

10 **Sec. 15. 38 MRSA §482, sub-§2, ¶B**, as repealed and replaced by
PL 1997, c. 502, §5, is amended to read:

12 B. Is a metallic mineral mining or advanced exploration
14 activity as defined in this section or an oil or gas
exploration or production activity, including drilling or
16 excavation under water;

18 **Sec. 16. 38 MRSA §488, sub-§9**, as amended by PL 1997, c. 502,
§9, is repealed and the following enacted in its place:

20 9. Development within unorganized areas. A development
22 located entirely within an area subject to the jurisdiction of
the Maine Land Use Regulation Commission, other than a metallic
24 mineral mining or advanced exploration activity or an oil
terminal facility, is exempt from the requirements of this
26 article except as follows.

28 A. If a development is located in part within an organized
area and in part within an area subject to the jurisdiction
30 of the Maine Land Use Regulation Commission, that portion of
the development within the organized area is subject to
32 review under this article and that portion of the
development within the jurisdiction of the commission is
34 exempt from the requirements of this article except as
provided in paragraph B. The part of the development within
36 the organized area is subject to review under this article
if that portion is a regulated development pursuant to this
38 article.

40 B. If an activity is located as described in paragraph A and
the Maine Land Use Regulation Commission determines that the
42 project is an allowed use within the subdistrict or
subdistricts for which it is proposed, so that a rezoning is
44 not required pursuant to Title 12, section 685-B, the entire
activity is subject to review by the department under this
46 article.

48 Review by the department of subsequent modifications to a
development approved by the department is required. For a
50 development or part of a development within the jurisdiction of

2 the Maine Land Use Regulation Commission, the director of the
3 commission may request and obtain technical assistance and
4 recommendations from the department. The commissioner shall
5 respond to the requests in a timely manner. The recommendations
6 of the department must be considered by the Maine Land Use
7 Regulation Commission in acting upon a development application.

8 **Sec. 17. 38 MRSA §551, sub-§2**, as amended by PL 2003, c. 551,
9 §§9 and 10, is further amended by amending the first paragraph to
10 read:

11 **2. Third-party damages.** Any person claiming to have
12 suffered property damage or actual economic damages, including,
13 but not limited to, loss of income and medical expenses arising
14 from physical bodily injury, directly or indirectly as a result
15 of a discharge of oil prohibited by section 543 including all
16 discharges of oil from interstate pipelines, in this subsection
17 called the claimant, may apply within 12 months after the
18 occurrence of a discharge to coastal waters and for other surface
19 discharges within 2 years after the occurrence or discovery of
20 the injury or damage, whichever date is later, to the
21 commissioner stating the amount of damage alleged to have been
22 suffered as a result of that discharge. The commissioner shall
23 prescribe appropriate forms and details for the applications.
24 The commissioner may contract with insurance professionals to
25 process claims. The commissioner may, upon petition and for good
26 cause shown, waive the time limitation for filing damage claims.
27 All 3rd-party damage claims for which no determination of award
28 has been made ~~or that have not been referred to a board of~~
29 ~~arbitration~~ must be processed in accordance with the substantive
30 and procedural provisions of this section.
31

32 **Sec. 18. 38 MRSA §568-A, sub-§2, ¶C**, as amended by PL 1999, c.
33 652, §11, is further amended by amending subparagraph (1) to read:

34 (1) For aboveground tanks subject to the jurisdiction
35 of the State Fire Marshal pursuant to 16-219 CMR,
36 chapter ~~317~~ 34, the deductibles are:

37 (a) Five thousand dollars for failure to obtain a
38 construction permit from the Office of the State
39 Fire Marshal, when required under Title 25,
40 chapter 318 and 16-219 CMR, chapter ~~317~~ 34;

41 (b) Five thousand dollars for failure to design
42 and install piping in accordance with section
43 570-K and rules adopted by the department;
44

- 2 (c) Five thousand dollars for failure to comply
with an existing consent decree, court order or
4 outstanding deficiency statement regarding
violations at the aboveground facility;
- 6 (d) Five thousand dollars for failure to
8 implement a certified spill prevention control and
countermeasure plan, if required;
- 10 (e) Five thousand dollars for failure to install
12 any required spill control measures, such as dikes;
- 14 (f) Five thousand dollars for failure to install
any required overfill equipment;
- 16 (g) Five thousand dollars if the tank is not
18 approved for aboveground use; and
- 20 (h) Ten thousand dollars for failure to report
any leaks at the facility ~~as required by law.~~

22 **Sec. 19. 38 MRSA §568, sub-§3, ¶¶A and B,** as repealed and
replaced by PL 1991, c. 66, Pt. A, §28, are amended to read:

- 24
- 26 A. Any orders issued under this section must contain
findings of fact describing the manner and extent of oil
28 contamination, the site of the discharge and the threat to
the public health or environment. Service of a copy of the
30 commissioner's findings and order must be made by hand
delivery by an authorized representative of the department
32 or by certified mail, return receipt requested, in
accordance with the Maine Rules of Civil Procedure.
- 34 B. A responsible party to whom such an order is directed
may apply to the board for a hearing on the order if the
36 application is made within 10 working days after receipt of
the order by a responsible party. ~~The board shall appoint~~
38 ~~an independent hearing examiner to hold a hearing as soon as~~
~~possible after receipt of the application. Within 15 working~~
40 ~~days after receipt of the application, the board shall hold~~
~~a hearing, make findings of fact and vote on a decision that~~
42 ~~continues, revokes or modifies the order.~~ The nature of the
hearing ~~must be~~ is an appeal. At the hearing, all witnesses
44 must be sworn and the commissioner shall first establish the
basis for the order and for naming the person to whom the
46 order was directed. The burden of going forward then shifts
to the person appealing to demonstrate, based upon a
48 preponderance of the evidence, that the order should be
modified or rescinded. ~~Within 7 days after the hearing, the~~
50 ~~hearing examiner shall make findings of fact. The board~~

2 shall ~~vote to accept, reject or modify the findings of the~~
3 hearing ~~examiner at the next regularly scheduled board~~
4 meeting ~~and shall continue, revoke or modify the~~
5 commissioner's order. The decision of the board may be
6 appealed to the Superior Court in accordance with the Maine
7 Administrative Procedure Act, Title 5, chapter 375,
8 subchapter VII 7.

9
10 **Sec. 20. 38 MRSA §569-A, sub-§2**, as amended by PL 2003, c.
11 551, §§15 and 16, is further amended by amending the first
12 blocked paragraph to read:

13 All 3rd-party damage claims for which no determination of award
14 has been made ~~or that have not been referred to a board of~~
15 ~~arbitration~~ must be processed in accordance with the substantive
16 and procedural provisions of this section.

17 **Sec. 21. 38 MRSA §1296, 2nd and 3rd ¶¶**, as enacted by PL 1997,
18 c. 375, §14, are amended to read:

19 An order issued under this section must contain findings of
20 fact describing, insofar as possible, the site of the activity
21 and the danger to the public health or safety. Service of a copy
22 of the commissioner's findings and an order must be made pursuant
23 to by hand delivery by an authorized representative of the
24 department or by certified mail, return receipt requested, in
25 accordance with the Maine Rules of Civil Procedure.

26
27 The person to whom the order is directed shall comply
28 immediately and may apply to the board for a hearing on the order
29 if the application is made within 5 10 working days after receipt
30 of the order by a responsible party. The board shall hold the
31 hearing, make findings of fact and vote on a decision that
32 continues, revokes or modifies the order within 5 15 working days
33 after receipt of the application. The nature of the hearing
34 before the board is an appeal. At the hearing, all witnesses
35 must be sworn and the commissioner shall first establish the
36 basis for the order and for naming the person to whom the order
37 is directed. The burden of going forward then shifts to the
38 person appealing to demonstrate, based upon a preponderance of
39 the evidence, that the order should be modified or rescinded.
40 ~~Within 7 days after the hearing, the board shall make findings of~~
41 ~~fact and shall continue, revoke or modify the order.~~ The decision
42 of the board may be appealed to the Superior Court in accordance
43 with Title 5, chapter 375, subchapter VII 7.

44
45 **Sec. 22. 38 MRSA §1304, sub-§12, ¶C**, as enacted by PL 1985, c.
46 746, §29, is amended to read:

2 C. Service of a copy of the commissioner's findings and an
3 order shall must be made by hand delivery by an authorized
4 representative of the department or by certified ~~mailing~~
mail, return receipt requested, in accordance with the Maine
5 Rules of Civil Procedure.

6 **Sec. 23. 38 MRSA §1304, sub-§12, ¶D**, as amended by PL 1987, c.
7 192, §26, is further amended to read:

8
9
10 D. The person to whom the order is directed shall comply
11 immediately or within a specified time period. That person
12 may apply to the board within 10 working days after receipt
13 of the order for a hearing on the order. Within 15 working
14 days after receipt of the application, the board shall hold
15 a hearing, make findings of fact and ~~continue, revoke or~~
16 modify vote on a decision that continues, revokes or
17 modifies the order. The nature of the hearing before the
18 board is an appeal. At the hearing, all witnesses shall
19 must be sworn and the commissioner shall first establish the
20 basis for the order and for naming the person to whom the
21 order is directed. The burden of going forward then shifts
22 to the person appealing to demonstrate, based upon a
23 preponderance of the evidence, that the order should be
24 modified or rescinded. The decision of the board may be
25 appealed to the Superior Court in accordance with the-Maine
26 Administrative--Procedure--Act, Title 5, chapter 375,
27 subchapter VII 7.

28
29 **Sec. 24. 38 MRSA §1310, 3rd ¶**, as repealed and replaced by PL
30 1979, c. 699, §16, is amended to read:

31
32 Service of a copy of the commissioner's findings and an
33 order shall must be made pursuant--~~to~~ by hand delivery by an
34 authorized representative of the department or by certified mail,
35 return receipt requested, in accordance with the Maine Rules of
36 Civil Procedure.

37
38 **Sec. 25. 38 MRSA §1310, 4th ¶**, as amended by PL 1987, c. 192,
39 §27, is further amended to read:

40
41 The person to whom the order is directed shall comply
42 immediately. An order may not be appealed to the Superior Court,
43 but a person to whom it is directed may apply to the board for a
44 hearing on the order if the application is made within ~~48-hours~~
45 10 working days after receipt of the order by the person to whom
46 the order was directed. Within 5 15 working days after receipt
47 of the application, the board shall hold a hearing, make findings
48 of fact and ~~continue, revoke or modify~~ vote on a decision that
49 continues, revokes or modifies the order. The nature of the
50 hearing before the board is an appeal. At the hearing, all
witnesses must be sworn and the commissioner shall first

2 establish the basis for the order and for naming the person to
3 whom the order is directed. The burden of going forward then
4 shifts to the person appealing to demonstrate, based upon a
5 preponderance of the evidence, that the order should be modified
6 or rescinded. The decision of the board may be appealed to the
7 Superior Court in accordance with Title 5, chapter 375,
8 subchapter VII 7.

9
10 **Sec. 26. 38 MRSA §1316-A, 3rd and 4th ¶¶,** as enacted by PL
11 1995, c. 579, §2, are amended to read:

12 Service of a copy of the commissioner's findings and an
13 administrative order must be made by hand delivery by an
14 authorized representative of the department or by certified mail,
15 return receipt requested in accordance with the Maine Rules of
16 Civil Procedure.

17 The person to whom the administrative order is directed
18 shall comply immediately. That person may apply to the board for
19 a hearing within 5 10 working days after receipt of the
20 administrative order. ~~The hearing must be held by the board at~~
21 ~~the next regularly scheduled meeting following receipt of the~~
22 ~~application, but in no event later than 30 days after receipt of~~
23 ~~the application.~~ Within 15 working days after receipt of the
24 application, the board shall hold a hearing, make findings of
25 fact and vote on a decision that continues, revokes or modifies
26 the order. The nature of the hearing before the board is an
27 appeal. At the hearing, all witnesses shall must be sworn, and
28 the department shall first establish the basis for the
29 administrative order and for naming the person to whom the
30 administrative order was directed. ~~Within 7 days after the~~
31 ~~hearing, the board shall make findings of fact and shall~~
32 ~~continue, revoke or modify the administrative order.~~ The burden
33 of going forward then shifts to the person appealing to
34 demonstrate, based upon a preponderance of the evidence, that the
35 order should be modified or rescinded. The decision of the board
36 may be appealed to the Superior Court in accordance with Title 5,
37 chapter 375, subchapter VII 7.
38

39 **Sec. 27. 38 MRSA §1317-A,** as amended by PL 1991, c. 499, §22,
40 is further amended to read:

41 **§1317-A. Discharge prohibited**

42
43 The discharge of hazardous matter into or upon any waters of
44 the State, or into or upon any land within the State's
45 territorial boundaries or into the ambient air is prohibited
46 unless licensed or authorized under state or federal law. For
47 purposes of this section, the discharge of gaseous hazardous
48 matter into the ambient air includes discharges within buildings
49 or structures from sources that are not encapsulated within
50

2 secondary containment. The discharge must be reported and
removed as provided under section ~~1318~~, ~~subsection 2~~ 1318-B,
3 subsections 1 and 3.

4
6 **Sec. 28. 38 MRSA §1318-B, sub-§1**, as amended by PL 1997, c.
364, §39, is further amended to read:

8 **1. Reporting.** Except as provided in this subsection, the
responsible party or person causing the discharge shall report a
10 discharge immediately to the Department of Public Safety, which
shall immediately notify the Commissioner of Environmental
12 Protection and the public safety agency of the municipality in
which the discharge takes place. Upon submission to the
14 commissioner of a written spill prevention control and clean-up
plan that meets the criteria of section 1318-C, subsection 1, a
16 discharge containing a hazardous matter that is covered by the
plan must be reported only if the discharge equals or exceeds the
18 applicable reportable quantity for that particular hazardous
matter as specified in Code of Federal Regulations, Title 40,
20 Parts 302.4, 302.5 and 302.6 (b)(1), revised as of July 1, ~~1996~~
2002, or when the discharge extends or spreads beyond the area on
22 the site covered by the spill prevention control and clean-up
plan.

24
26 **Sec. 29. 38 MRSA §1365, sub-§1**, as enacted by PL 1983, c. 569,
§1, is repealed and the following enacted in its place:

28 **1. Investigation.** Upon finding, after investigation, that
a location at which hazardous substances are or were handled or
30 otherwise came to be located may create a danger to the public
health, to the safety of any person or to the environment, the
32 commissioner may:

34 A. Designate that location as an uncontrolled hazardous
substance site;

36 B. Order any responsible party dealing with the hazardous
38 substances to cease immediately or to prevent that activity
and to take an action necessary to terminate or mitigate the
40 danger or likelihood of danger; and

42 C. Order any person contributing to the danger or
44 likelihood of danger to cease or prevent that contribution.

46 **Sec. 30. 38 MRSA §1365, sub-§3**, as enacted by PL 1983, c. 569,
§1, is amended to read:

48 **3. Service.** Service of a copy of the commissioner's
findings and an order shall must be made pursuant--to by hand
50 delivery by an authorized representative of the department or by

certified mail, return receipt requested, in accordance with the
Maine Rules of Civil Procedure.

Sec. 31. 38 MRSA §1365, sub-§4, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §268, is further amended to read:

4. Compliance; appeal. The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within 5 10 working days after receipt of the order by a responsible party. ~~The hearing must be held by the board within 5 days after receipt of application.~~ Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. The nature of the hearing before the board is an appeal. At the hearing, all witnesses shall must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. ~~Within 7 days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the order.~~ The decision of the board may be appealed to the Superior Court in accordance with the ~~Maine Administrative Procedure Act~~, Title 5, chapter 375, subchapter VII 7.

Sec. 32. 38 MRSA §1610, sub-§5, ¶E, as reallocated by RR 2003, c. 2, §119, is amended to read:

E. Annually, beginning January 1, ~~2007~~ 2006, the department shall provide manufacturers and consolidation facilities with a listing of each manufacturer's pro rata share of orphan waste computer monitors and televisions. The department shall determine each manufacturer's pro rata share based on the best available information, including but not limited to data provided by manufacturers and consolidators and data from electronic waste collection programs in other jurisdictions within the United States.

Sec. 33. PL 1997, c. 444, §9 is repealed.

Sec. 34. PL 1997, c. 444, §10, as amended by PL 2003, c. 165, §2, is further amended to read:

Sec. 10. Report; dioxin. The Commissioner of Environmental Protection and the Commissioner of Health and Human Services shall report to the Governor and the joint standing committee of the Legislature having jurisdiction over natural resources matters by May 1, 2001, and every ~~January--1st~~ March

2 31st thereafter, on progress made in achieving the requirements
4 specified in the Maine Revised Statutes, Title 38, section 420,
6 subsection 2. On February 16, 2004, the Commissioner of
8 Environmental Protection and the Commissioner of Health and Human
10 Services shall present to the Governor and the joint standing
12 committee of the Legislature having jurisdiction over natural
14 resources matters a comprehensive assessment on the progress in
16 eliminating the discharge of dioxin from bleach kraft pulp mills
18 in this State. The assessment must report on:

- 20 1. Dioxin concentrations in fish above and below mills and
22 the health implications of those concentrations;
- 24 2. Any evidence that dioxin is being discharged from any
26 mill;
- 28 3. Current technology that achieves no discharge of dioxin;
- 30 4. The need for continuing the dioxin monitoring program;
32 and
- 34 5. Other known sources of dioxin polluting rivers in this
36 State.

38 The commissioners shall make recommendations regarding any
40 additional action that may be warranted.

42 **Sec. 35. Resolve 2003, c. 130, §1** is amended to read:

44 **Sec. 1. Adoption. Resolved:** That final adoption of Chapter
46 355: Sand Dune Rules, a provisionally adopted major substantive
48 rule of the Department of Environmental Protection that has been
submitted to the Legislature for review pursuant to the Maine
Revised Statutes, Title 5, chapter 375, subchapter 2-A,
is authorized only if Chapter 355 is amended in that section
relating to new construction in frontal dunes and designated as
section 6, paragraph B, subparagraph ~~(1)~~ (3) to provide that
elevators, in addition to ramps, that are required for compliance
with the requirements of the federal Americans with Disabilities
Act are exempt from the requirement that a new structure or
addition to an existing structure may not be constructed on or
seaward of a frontal dune. The rule must also be amended to
provide that elevators or ramps serving buildings required to
comply with the federal Americans with Disabilities Act must be
designed and constructed so as to minimize intrusion on the
frontal dune, including locating the structures to the rear of
buildings or within areas of a lot already developed, such as a
parking area. The Department of Environmental Protection is not
required to hold hearings or conduct other formal proceedings

2 prior to finally adopting this rule in accordance with this
3 resolve; and be it further

4 **Sec. 36. Application.** That section of this Act that amends
5 the Maine Revised Statutes, Title 36, section 5219-X applies to
6 tax years beginning on or after January 1, 2004.

8
9
10 **SUMMARY**

11 This bill makes the following changes to laws administered
12 by the Department of Environmental Protection.

13 1. It repeals sections providing for issuance of permits by
14 the Board of Environmental Protection for activities affecting
15 coastal wetlands.

16 2. It redirects appeals of decisions by the Board of
17 Underground Oil Storage Tank Installers from District Court to
18 Superior Court.

19 3. It clarifies that a producer of biofuels must offer the
20 biofuels for sale and must receive income derived from the sale
21 of the biofuels in order to qualify for an income tax credit.

22 4. It amends the requirement that the department always
23 hold a presubmission meeting if a preapplication meeting is
24 held. The bill provides that the department may choose not to
25 hold a presubmission meeting if the department determines that
26 the presubmission meeting is unnecessary based upon factors such
27 as the complexity and status of the application.

28 5. It makes the administrative appeals deadline consistent
29 for all Department of Environmental Protection enforcement
30 actions.

31 6. It changes a date in the definition of "Code of Federal
32 Regulations" to include regulations effective on or before
33 January 1, 2005.

34 7. It changes a date in the definition of "Federal Water
35 Pollution Control Act" to include amendments effective on or
36 before January 1, 2005.

37 8. It changes the review period for a storm water
38 application proposing solely vegetative measures from 30 to 45
39 days.

40 9. It clarifies the classification of waters to indicate
41 that the "Clifford Brook" currently listed in the Maine Revised
42 Statutes is a "Stream of the First Class"

2 Statutes, Title 38, section 467, subsection 3, paragraph B,
subparagraph (7) is located in Marion Township.

4 10. It removes a reference to a debris line as it relates
to determining the edge of the coastal wetland. It also
6 clarifies the criterion for determining the elevation of the edge
of the coastal wetland by changing "spring tide" to "highest tide
8 level for each year in which an activity is proposed."

10 11. It clarifies the jurisdiction of the Department of
Environmental Protection and the Maine Land Use Regulation
12 Commission when review is required under the laws governing the
protection of natural resources and an activity is located in
14 areas both within and outside the jurisdiction of the Maine Land
Use Regulation Commission.

16 12. It amends the laws governing the protection of natural
18 resources to add an exemption for the installation, maintenance
or removal of a licensed overboard discharge treatment system,
20 including the outfall pipe, if certain requirements are met.

22 13. It removes a reference to a list of endangered or
threatened species that has been repealed and replaces it with a
24 reference to a section that defines those terms.

26 14. It restores a permit threshold to the laws governing
site location of development specific to the exploration or
28 production of oil or gas, including drilling or excavation under
water.

30 15. It clarifies the jurisdiction of the Department of
32 Environmental Protection and the Maine Land Use Regulation
Commission when review is required under the laws governing site
34 location of development and a development is located in areas
both within and outside the jurisdiction of the Maine Land Use
36 Regulation Commission.

38 16. It deletes obsolete references to the "board of
arbitration" from the laws governing oil spill damage claims.

40 17. It corrects a statutory reference to oil storage tank
42 rules administered by the State Fire Marshal in the laws
governing coverage of oil spill clean-up costs by the Ground
44 Water Oil Clean-up Fund. It also clarifies that those seeking
fund coverage of oil spill clean-up costs must pay a \$10,000
46 deductible if they failed to report the spill for which coverage
is sought.

48 18. It corrects a cross-reference in the laws governing the
50 reporting and removal of hazardous matter discharges.

2 19. It amends the laws governing the reporting of hazardous
matter discharges to incorporate revisions to the reportable
4 quantities under federal law.

6 20. It amends the laws governing uncontrolled hazardous
substance sites so that references to the Commissioner of
8 Environmental Protection are gender neutral.

10 21. It amends the laws governing the recycling of
electronic waste to change the date when the department must
12 begin providing manufacturers of televisions and computer
monitors with a listing of their pro rata share of the waste
14 stream.

16 22. It repeals a reporting and potential hearing
requirement related to progress achieved in meeting the
18 requirements of the Maine Revised Statutes, Title 38, section
414-C regarding color pollution control.

20 23. It changes the annual due date for a report on dioxin
22 from January 1st to March 31st.

24 24. It corrects a citation error.