

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2119

S.P. 809

December 31, 2007

An Act To Amend Certain Laws Related to 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.

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
Representative: PINGREE of North Haven.

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

2 **Sec. 1. 5 MRSA §12004-D, sub-§1**, as enacted by PL 1987, c. 786, §5, is
3 amended to read:

4 **1.**

| | | | |
|---|---------------------------|---------------------------------|--------------|
| 5 | Maine Land Use Regulation | Legislative Per Diem | 12 MRSA §683 |
| 6 | Commission | <u>\$100 per day plus</u> | |
| 7 | | <u>expenses</u> | |

8 **Sec. 2. 5 MRSA §12004-D, sub-§2**, as amended by PL 1989, c. 503, Pt. A, §8
9 and c. 890, Pt. A, §§3 and 40, is further amended to read:

10 **2.**

| | | | |
|----|------------------------|---------------------------------|----------------|
| 11 | Board of Environmental | Legislative Per Diem | 38 MRSA §341-A |
| 12 | Protection | <u>\$100 per day plus</u> | |
| 13 | | <u>expenses</u> | |

14 **Sec. 3. 38 MRSA §352, sub-§3**, as amended by PL 2001, c. 212, §2, is further
15 amended to read:

16 **3. Special fee.** The commissioner shall set the actual fees and shall publish a
17 schedule of all fees by November 1st of each year. If the commissioner determines that a
18 particular application, by virtue of its size, uniqueness, complexity or other relevant
19 factors, is likely to require significantly more costs than those listed on Table I, the
20 commissioner may designate that application as subject to special fees. ~~A special fee~~
21 ~~may not exceed \$75,000.~~ Such a designation must be made at, or prior to, the time the
22 application is accepted as complete and may not be based solely on the likelihood of
23 extensive public controversy. All department staff who have worked on the review of the
24 application shall submit quarterly reports to the commissioner detailing the time spent on
25 the application and all expenses attributable to the application, including the cost of any
26 appeals. The processing fee for that application must be the actual cost to the department.
27 The applicant must be billed quarterly and all fees paid prior to receipt of the permit.

28 **Sec. 4. 38 MRSA §480-I, sub-§3**, as enacted by PL 1997, c. 230, §1, is repealed.

29 **Sec. 5. 38 MRSA §562-A, sub-§17, ¶E**, as enacted by PL 1993, c. 363, §7 and
30 affected by §21, is amended to read:

31 E. With regard to sections 568, 568-A, 569-A and 570, persons described in
32 paragraphs A to D with regard to aboveground oil storage facilities.

33 **Sec. 6. 38 MRSA §563, sub-§4**, as repealed and replaced by PL 1989, c. 865, §5,
34 is amended to read:

1 **4. Registration fees.** The owner or operator of an underground oil storage facility
2 shall pay ~~an annual~~ a fee to the department of ~~\$35~~ \$100 for each tank registered under
3 this section located at the facility, except that single family homeowners are not required
4 to pay a fee for a tank at their personal residence. ~~Annual payments~~ The fee must be paid
5 on or before January 1st of each calendar year at the time the tank is first registered and
6 every 3 years thereafter upon receipt of a bill from the department. The department may
7 prorate the fee for new installations to put all tank owners and operators on the same
8 billing cycle.

9 **Sec. 7. 38 MRSA §566-A, sub-§1-A,** as enacted by PL 1991, c. 763, §6, is
10 amended to read:

11 **1-A. Abandoned tanks brought back into service.** Underground oil storage tanks
12 and facilities that have been out of service for a period of more than 12 months may not
13 be brought back into service without the written approval of the commissioner. The
14 commissioner may approve the return to service if the owner ~~can demonstrate~~
15 demonstrates to the commissioner's satisfaction that:

16 A. The facility is in compliance with this subchapter and rules adopted pursuant to
17 this subchapter;

18 B. The underground oil storage tank and piping have successfully passed ~~precision~~
19 testing as directed by the commissioner; and

20 C. The underground oil storage tank and piping are constructed of fiberglass,
21 cathodically protected steel or other equally noncorrosive material approved by the
22 commissioner;

23 D. The tank to be brought back into service has secondary containment;

24 E. The facility has suction piping; and

25 F. The return of the facility to service does not pose an unacceptable risk to
26 groundwater resources. In determining if the facility poses an unacceptable risk to
27 groundwater resources, the commissioner may consider the age and maintenance
28 history of the storage tanks and piping, the number and consequences of past oil
29 discharges from the tanks and piping, the proximity of the facility to drinking water
30 supplies and the proximity of the facility to sensitive geologic areas.

31 **Sec. 8. 38 MRSA §568, sub-§1,** as amended by PL 1991, c. 817, §22, is further
32 amended to read:

33 **1. Removal.** Any person discharging or suffering a discharge of oil to ~~ground-water~~
34 groundwater in the manner prohibited by section 543 and any other responsible party
35 shall immediately undertake to remove that discharge to the commissioner's satisfaction.
36 Notwithstanding this requirement, the commissioner may order the removal of that
37 discharge pursuant to subsection 3; or may undertake the removal of that discharge and
38 retain agents and contractors for that purpose, who shall operate under the direction of the
39 commissioner. Any unexplained discharge of oil to ~~ground-water~~ groundwater within
40 state jurisdiction must be removed by or under the direction of the commissioner. Any
41 expenses involved in the removal of discharges, whether by the person causing the

1 discharge, the person reporting the discharge, the commissioner or the commissioner's
2 agents or contractors, may be paid in the first instance from the Ground Water Oil Clean-
3 up Fund, including any expenses incurred by the State under subsection 3, and any
4 reimbursements due that fund must be collected in accordance with section 569-A or 569-
5 B.

6 **Sec. 9. 38 MRSA §1310-E1, sub-§4**, as amended by PL 2001, c. 626, §18, is
7 further amended to read:

8 **4. Subsequent landfill closure activity.** Any municipality that closes a landfill
9 pursuant to subsection 1, 2 or 3 and that inspects, monitors and maintains the closure
10 measures as required pursuant to those subsections as necessary to ensure the closure
11 measures remain effective under subsection 6 is entitled to an assurance from the
12 department that the municipality has met its closure obligations and that no further
13 closure action other than inspection, monitoring and maintenance is required of the
14 municipality by the department with regard to that landfill unless one or more of the
15 following circumstances arises:

- 16 A. The commissioner finds that the landfill, although closed, is nonetheless a high-
17 risk landfill and orders further closure or remediation activities;
- 18 B. Additional closure or remediation activities are needed and the department's cost
19 share of the additionally required activity is immediately available; or
- 20 C. Additional closure or remediation activities are required as a result of an existing
21 or pending formal department enforcement action with respect to the violation of the
22 license conditions under which a landfill was operated.

23 Nothing with regard to this assurance is may be construed to limit the department's
24 authority to act using its own resources as that activity may be otherwise authorized by
25 law.

26 **Sec. 10. 38 MRSA §1310-E1, sub-§6** is enacted to read:

27 **6. Post-closure maintenance.** A municipality that closes a landfill pursuant to
28 subsection 1, 2 or 3 shall inspect, monitor and maintain the closure measures required
29 under those subsections as necessary to ensure that the closure remains effective.

30 **Sec. 11. 38 MRSA §1310-F, sub-§1-A**, as enacted by PL 1993, c. 732, Pt. C,
31 §14, is amended to read:

32 **1-A. Remediation cost-share fraction.** Subject Except as provided under
33 subsection 2 and subject to the availability of funds, the commissioner shall issue grants
34 or payments to eligible municipalities for 90% of the planning and implementation costs
35 of remediation.

36 **Sec. 12. 38 MRSA §1316-C, first ¶**, as enacted by PL 1991, c. 517, Pt. A, §2, is
37 amended to read:

38 Each responsible party is jointly and severally liable for all costs incurred by the
39 State, including court costs and attorney's fees, for the abatement, cleanup or mitigation

1 of the threat or hazard posed by an uncontrolled tire stockpile and for damages for injury
2 to, destruction of ~~or~~, loss of or loss of use of natural resources of the State resulting from
3 the uncontrolled tire stockpile, including the reasonable costs of assessing natural
4 resources damages. The commissioner shall demand prompt reimbursement of all costs
5 incurred under sections 1316-A and 1316-B. If payment is not received by the State
6 within 30 days of demand, the Attorney General may file suit in the Superior Court and
7 may seek reimbursement of other costs and any other relief provided by law.
8 Notwithstanding the time limits stated in this section, neither a demand nor other
9 recovery efforts against one responsible party may relieve any other responsible party of
10 liability.

11 **Sec. 13. 38 MRSA §1316-G, sub-§1, ¶H**, as enacted by PL 1995, c. 578, §1, is
12 amended to read:

13 H. Educate the public and encourage use of tires based on consideration of
14 environmental and public health impacts as well as market conditions; and

15 **Sec. 14. 38 MRSA §1316-G, sub-§1, ¶I**, as enacted by PL 1995, c. 578, §1, is
16 amended to read:

17 I. Contract for services to reduce tire stockpiles and abate significant risk to the
18 environment and public health at tire stockpile sites; ~~and~~.

19 **Sec. 15. 38 MRSA §1316-G, sub-§1, ¶J**, as enacted by PL 1995, c. 578, §1, is
20 repealed.

21 **Sec. 16. 38 MRSA §1319-G, sub-§1**, as amended by PL 1991, c. 817, §34, is
22 further amended to read:

23 **1. Recovery.** The commissioner shall seek recovery to the use of the Maine
24 Hazardous Waste Fund of all sums expended from the fund, including overdrafts, for
25 disbursements made from the fund under section 1319-E, subsection 1, paragraphs A, B
26 and C, including interest computed at ~~40%~~ 15% a year from the date of expenditure,
27 unless the commissioner finds the amount too small or the likelihood of recovery too
28 uncertain. Requests by the department for reimbursement to the Maine Hazardous Waste
29 Fund, if not paid within 30 days of demand, may be turned over to the Attorney General
30 for collection or may be submitted to a collection agency or agent or an attorney retained
31 by the department with the approval of the Attorney General pursuant to Title 5, section
32 191.

33 The commissioner may file a claim with or otherwise seek money from federal agencies
34 to recover to the use of the fund all disbursements from the fund.

35 **Sec. 17. 38 MRSA §1367, first ¶**, as amended by PL 1991, c. 312, §3, is further
36 amended to read:

37 Each responsible party is jointly and severally liable for all costs incurred by the State
38 for the abatement, cleanup or mitigation of the threats or hazards posed or potentially
39 posed by an uncontrolled site, including, without limitation, all costs of acquiring
40 property, and for damages for injury to, destruction of ~~or~~, loss of or loss of use of natural

1 resources of the State resulting from hazardous substances at the site or from the acts or
2 omissions of a responsible party with respect to those hazardous substances and for the
3 reasonable costs of assessing natural resources damages. The commissioner shall demand
4 reimbursement of costs and payment of damages to be recovered under this section and
5 payment must be made promptly by the responsible party or parties upon whom the
6 demand is made. Requests for reimbursement to the Uncontrolled Sites Fund, if not paid
7 within 30 days of demand, may be turned over to the Attorney General for collection or
8 may be submitted to a collection agency or agent or an attorney retained by the
9 department with the approval of the Attorney General pursuant to Title 5, section 191.
10 The Attorney General or an attorney retained by the department may file suit in the
11 Superior Court and, in addition to relief provided by other law, may seek punitive
12 damages. Notwithstanding the time limits stated in this paragraph, neither a demand nor
13 other recovery efforts against one responsible party may relieve any other responsible
14 party of liability.

15 **Sec. 18. 38 MRSA §1609, sub-§4**, as enacted by PL 2007, c. 296, §1, is amended
16 to read:

17 **4. “Deca” mixture of polybrominated diphenyl ethers in home furniture.**
18 Effective January 1, 2008, a person may not manufacture, sell or offer for sale or
19 distribute for sale or use in the State any of the following products that ~~have plastic fibers~~
20 ~~containing~~ contain the “deca” mixture of polybrominated diphenyl ethers:

- 21 A. A mattress or mattress pad; ~~or~~ and
22 B. Upholstered furniture intended for indoor use in a home or other residential
23 occupancy.

24 **Sec. 19. 38 MRSA §1665-A, sub-§9**, as amended by PL 2007, c. 292, §45, is
25 further amended to read:

26 **9. Reporting.** Before January 1, 2003 and annually thereafter, motor vehicle
27 manufacturers doing business in the State shall report to the joint standing committee of
28 the Legislature having jurisdiction over natural resources matters on any fee or other
29 charge collected on the sale of new motor vehicles for the purpose of paying the cost of
30 carrying out the manufacturer responsibilities under subsection 5. The report must
31 specify the amount of the fee or charge collected and how the amount of the fee or charge
32 was determined. ~~Before July 1, 2004 and annually thereafter, motor vehicle~~
33 ~~manufacturers shall report in writing to the department on the results of the source~~
34 ~~separation required under this section. The report must include, at a minimum, the~~
35 ~~number of mercury switches removed and recycled from motor vehicles during the~~
36 ~~previous calendar year; the estimated total amount of mercury contained in the~~
37 ~~components; and any recommendations to improve the future collection and recycling of~~
38 ~~motor vehicle components. Before January 1, 2004 and annually thereafter, the~~
39 ~~department shall report to the joint standing committee of the Legislature having~~
40 ~~jurisdiction over natural resources matters on the effectiveness of the source separation~~
41 ~~required under this section, whether the partial reimbursement payment under subsection~~
42 ~~5, paragraph B should be adjusted to increase the number of switches brought to~~
43 ~~consolidation facilities, whether other motor vehicle components should be added to the~~

1 ~~source separation efforts and whether the program should be terminated and, if so, when.~~
2 When the commissioner determines that the number of mercury switches available for
3 collection is too small to warrant continuation of the program, the department shall
4 recommend to the joint standing committee of the Legislature having jurisdiction over
5 natural resources matters that the mercury switch removal, collection and recycling
6 requirements of this section be repealed. The committee may report out a bill repealing
7 this section.

8 SUMMARY

9 This bill:

10 1. Increases the per diem for members of the Maine Land Use Regulation
11 Commission and the Board of Environmental Protection to \$100 per day when in
12 attendance at meetings and hearings;

13 2. Amends the law that provides for special fees by eliminating the cap and including
14 the costs of any appeals;

15 3. Repeals a requirement that the Commissioner of Environmental Protection and the
16 Commissioner of Inland Fisheries and Wildlife jointly report by January 1, 1998 and on
17 or before January 1st of every odd-numbered year thereafter to the joint standing
18 committees of the Legislature having jurisdiction over natural resource matters and inland
19 fisheries and wildlife matters on the progress of the mapping of significant wildlife
20 habitats;

21 4. Amends the oil storage laws to clarify that the term "responsible party" as used in
22 those laws includes the owner or operator of an oil storage tank and any person who
23 causes a discharge from the tank;

24 5. Amends the law requiring payment of registration fees on oil storage tanks to
25 reduce the frequency of payment;

26 6. Clarifies the circumstances under which abandoned underground oil storage tanks
27 may be returned to service;

28 7. Amends the law governing closure of municipal landfills to make it clear that
29 municipalities must inspect, monitor and maintain their closed landfills as necessary to
30 ensure that the landfill caps and other closure measures remain effective;

31 8. Amends the law requiring the Department of Environmental Protection to pay
32 90% of municipal landfill remediation costs to incorporate a cross-reference to other
33 provisions of law that reduce the department share to 50% and zero in certain
34 circumstances;

35 9. Eliminates the requirement that the Department of Environmental Protection
36 report to the Legislature regarding the progress, adequacy of funding and any legislation
37 needed to achieve reduction of tire stockpiles and beneficial reuse of tires since this report
38 is no longer required;

1 10. Changes the interest rate on reimbursements to the Maine Hazardous Waste Fund
2 to 15% to be consistent with all the other interest provisions administered by the
3 Department of Environmental Protection;

4 11. Amends the laws governing tire stockpile abatement and uncontrolled hazardous
5 substance sites to make the language regarding recovery of natural resources damages
6 consistent with corresponding language under the oil spill cleanup laws;

7 12. Amends the law banning the sale of mattresses, mattress pads and residential
8 upholstered furniture that contain the flame retardant decabromodiphenyl ether to make it
9 clear that these products may not be sold in Maine after January 1, 2008 regardless of
10 how the chemical is applied to or incorporated into the product; and

11 13. Repeals the requirement to report annually on the removal, collection and
12 recycling of mercury switches in motor vehicles and directs the Department of
13 Environmental Protection to recommend repeal of the switch removal and recycling
14 requirements when the commissioner determines that the number of mercury switches
15 available for collection is too small to warrant continuation of the program.