

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND TWELFTH LEGISLATURE

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

AND AT THE

**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Co., Inc.  
Augusta, Maine

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND TWELFTH LEGISLATURE  
1985

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## CHAPTER 746

H.P. 1681 - L.D. 2368

AN ACT to Amend the Laws Relating to and  
Administered by the Department of  
Environmental Protection.

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

Sec. 1. 2 MRSA §6, sub-§4, as repealed and replaced by PL 1981, c. 705, Pt. L, §§1 to 3, is amended to read:

4. Range 88. The salaries of the following state officials and employees shall be within salary range 88:

State Purchasing Agent;

Director, Arts and Humanities Bureau;

Director, State Museum Bureau;

Director of the Bureau of Parks and Recreation;

State Director of Alcoholic Beverages;

Executive Director, Retirement System;

Director of Public Lands; and

State Librarian;

Director, Bureau of Air Quality Control;

Director, Bureau of Land Quality Control;

Director, Bureau of Water Quality Control; and

Director, Bureau of Oil and Hazardous Materials Control.

Sec. 2. 4 MRSA §152, sub-§6, as amended by PL 1985, c. 162, §1, is further amended to read:

6. Land use laws. Original jurisdiction, concurrent with that of the Superior Court, to grant equitable relief in proceedings involving alleged violations of a local land use ordinance or regulation or a state land use statute or regulation, which shall include, but shall not be limited to, the fol-

lowing: The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A; minimum lot size law, Title 12, sections 4807 to 4807-G; shoreland zoning ordinances adopted pursuant to Title 12, sections 4811 to 4817; the Alteration of Rivers, Streams and Brooks law, Title ~~12~~ 38, sections ~~7776 to 7780~~ 425 to 431; the plumbing and subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to Title 22, section 42; laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648; local ordinances pursuant to Title 22, section 2642; local ordinances adopted pursuant to Title 30, section 1917; local building codes adopted pursuant to Title 30, sections 1917 and 2151; Title 30, chapter 215, subchapter I, automobile junkyards and subchapter X, regulation and inspection of plumbing; Title 30, section 4359, malfunctioning domestic sewage disposal units; Title 30, section 4956, the subdivision law, and local subdivision ordinances adopted pursuant to Title 30, section 1917 and subdivision regulations adopted pursuant to Title 30, section 4956; local zoning ordinances adopted pursuant to Title 30, section 1917 and in accordance with Title 30, section 4962; the Great Ponds Act, Title 38, sections 386 to 396; laws pertaining to the discharge of wastes, Title 38, sections 413, 414, 417, 418 and 420; the Alteration of Coastal Wetlands Act, Title 38, sections 471 to 476 and 478; the Site Location of Development Act, Title 38, sections 481 to 485 and 488 to 490; and the Oil Discharge Prevention and Pollution Control laws, Title 38, sections ~~543, 545, 545-A and 560~~ 563, 564, 565, 566, 567 and 568.

**Sec. 3.** 5 MRSA §938, sub-§1, as amended by PL 1983, c. 862, §13, is further amended to read:

1. Major policy-influencing positions. The following positions are major policy-influencing positions within the Department of Environmental Protection. Notwithstanding any other provision of law, these positions and their successor positions shall be subject to this chapter:

- A. Deputy Commissioner;
- C. Assistant to the commissioner;
- D. Director, Bureau of Air Quality Control;
- E. Director, Bureau of Land Quality Control;
- F. Director, Bureau of Water Quality Control;  
and

G. Director, Bureau of Oil and Hazardous Materials Control.

Sec. 4. 38 MRSA §342, sub-§2, as enacted by PL 1971, c. 618, §8, is amended to read:

2. Employment of personnel. He may employ, subject to the Personnel Law, such personnel and prescribe the duties of such employees, ~~including-bureau directors,~~ except persons occupying the positions defined in Title 5, section 938, subsection 1, as he deems necessary, to fulfill the duties of the department and of the Board of Environmental Protection.

Sec. 5. 38 MRSA §342, sub-§5, as repealed and replaced by PL 1983, c. 743, §2, is repealed.

Sec. 6. 38 MRSA §342, sub-§5-A is enacted to read:

5-A. Designation of deputy commissioner and bureau directors. The commissioner may employ, to serve at his pleasure, the following:

A. A deputy commissioner;

B. An assistant to the commissioner; and

C. Bureau directors as defined in Title 5, section 938, subsection 1.

Sec. 7. 38 MRSA §344, sub-§1, ¶¶A and B, as enacted by PL 1983, c. 453, §1, are amended to read:

A. For those applications delegated to the commissioner under subsection 2 which do not fall under the permit by rule provisions of subsection 7, the commissioner shall, if requested by the applicant or any interested party, issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application before he takes final action on the application. The draft permit or license shall be made available to the applicant and to all interested persons at the Augusta office of the department at least 5 working days before the commissioner takes final action on the application.

B. For those applications not delegated to the commissioner under subsection 2, the commissioner shall provide a summary of the application to the

board and all interested governmental agencies and other interested parties in a manner prescribed by the board in the regulations. At least 10 working days shall be provided for the receipt of comments on the application prior to the preparation of a draft permit or license. The commissioner shall, if requested by the applicant or any interested party, prepare a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application of the date the board will act on the application. The draft permit or license shall be made available to the applicant and to all interested persons at the Augusta office of the department at least 15 working days before the board acts on the application.

Sec. 8. 38 MRSA §344, sub-§2, ¶B, as repealed and replaced by PL 1983, c. 453, §1, is amended to read:

B. Applications under section 413 for a waste discharge license ~~with a maximum daily discharge of less than 100,000 gallons per day~~ and for a cooling water waste discharge license, ~~regardless of the amount;~~

Sec. 9. 38 MRSA §344, sub-§2, ¶E, as enacted by PL 1983, c. 453, §1, is amended to read:

E. Applications under section 483 for site location development permits for subdivisions ~~of less than 75 acres, with fewer than 25 lots to contain fewer than 25 housing units;~~

Sec. 10. 38 MRSA §345-A, sub-§4 is enacted to read:

4. Subpoena power. The board and commissioner may each issue subpoenas to compel the production of books, records and other data related to the matters in issue at any hearing. If any person served with a subpoena demonstrates to the satisfaction of the issuer of the subpoena that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the issuer of the subpoena may apply to any Justice

of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.

Sec. 11. 38 MRSA §347, sub-§5, as enacted by PL 1977, c. 300, §9, is repealed.

Sec. 12. 38 MRSA §349, sub-§3, as amended by PL 1977, c. 510, §90, is further amended to read:

3. Falsification and tampering. Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any rule, regulation, license, permit, approval or decision of the board, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the board or who fails to comply with any information submittal required by the commissioner pursuant to section 1364, subsection 3 shall, upon conviction, be subject to a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or both.

Sec. 13. 38 MRSA §352, sub-§2, ¶D is enacted to read:

D. Certification fees shall be assessed for direct costs incurred in issuing a certification.

Sec. 14. 38 MRSA §352, sub-§4, as amended by PL 1983, c. 743, §5, is repealed and the following enacted in its place:

4. Accounting system. In order to determine the extent to which the functions set out in this section are necessary for the licensing process, or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions shall keep accurate and regular daily time records describing the matters worked on, services performed and amount of time devoted to those matters and services, as well as amounts of money expended in performing these functions for a sufficient duration as determined by the commissioner to establish to his satisfaction that the fees are appropriate.



TABLE I

MAXIMUM FEES IN DOLLARS

<u>Title 36</u> <u>SECTION</u>	<u>FILING</u> <u>FEE</u>	<u>PROCESSING</u> <u>FEE</u>	<u>CERTI-</u> <u>FICATION</u> <u>FEE</u>
<u>656, sub-§1, WE, Pollution</u> <u>Control Facilities</u>			
<u>A. Water pollution control</u> <u>facilities with capacities</u> <u>at least 4,000 gallons of</u> <u>waste per day</u>	<u>\$20.00</u>	<u>\$ 200.00</u>	<u>\$ 20.00</u>
<u>B. Air pollution control</u> <u>facilities</u>	<u>20.00</u>	<u>200.00</u>	<u>20.00</u>
<u>1760, sub-§29, Water pollution</u> <u>control facilities</u>	<u>20.00</u>	<u>200.00</u>	<u>20.00</u>
<u>1760, sub-§30, Air pollution</u> <u>control facilities</u>	<u>20.00</u>	<u>200.00</u>	<u>20.00</u>
<u>Title 38</u> <u>SECTION</u>	<u>FILING</u> <u>FEE</u>	<u>PROCESSING</u> <u>FEE</u>	<u>LICENSE</u> <u>FEE</u>
<u>362-A, Experiments</u>	<u>\$10.00</u>	<u>\$ 30.00</u>	<u>\$ 160.00</u>
<u>393, Great Ponds</u>	<u>10.00</u>	<u>65.00</u>	<u>50.00</u>
<u>410-E, Freshwater wetlands</u>	<u>10.00</u>	<u>65.00</u>	<u>50.00</u>
<u>413, Waste Discharge license</u>			
<u>A. Residential</u>	<u>5.00</u>	<u>15.00</u>	<u>10.00</u>
<u>B. Commercial</u>	<u>10.00</u>	<u>30.00</u>	<u>160.00</u>
<u>C. Industrial minor</u> <u>(based upon EPA list of</u> <u>major and minor source</u> <u>discharges)</u>			
<u>1. Discharges of cooling</u> <u>water, sanitary waste</u> <u>water or treated storm</u> <u>water only</u>	<u>25.00</u>	<u>450.00</u>	<u>160.00</u>
<u>2. All Others</u>	<u>25.00</u>	<u>450.00</u>	<u>1,985.00</u>
<u>D. Industrial major (based</u> <u>upon EPA list of major and</u> <u>minor source discharges</u>			
<u>1. Discharges of cooling</u> <u>water or sanitary waste</u> <u>water only</u>	<u>35.00</u>	<u>1,130.00</u>	<u>750.00</u>
<u>2. All others</u>	<u>35.00</u>	<u>1,130.00</u>	<u>2,170.00</u>
<u>E. Publicly owned treatment</u> <u>works</u>			
<u>1. Flow of less than 0.5</u> <u>million gallons/day and</u> <u>no significant industrial</u> <u>component</u>	<u>15.00</u>	<u>40.00</u>	<u>10.00</u>
<u>2. Flow of at least 0.5</u> <u>million gallons/day but</u> <u>less than 5 million gal-</u> <u>lons/ day and no signifi-</u> <u>cant industrial component</u>	<u>15.00</u>	<u>60.00</u>	<u>1,785.00</u>

3.	Flow of at least 5 million gallons/day or a significant industrial component	<u>15.00</u>	<u>80.00</u>	<u>1,785.00</u>
F.	Special discharges			
1.	Aquatic pesticides	<u>10.00</u>	<u>30.00</u>	<u>10.00</u>
2.	Dredge spoils	<u>10.00</u>	<u>30.00</u>	<u>10.00</u>
418,	Log storage	<u>10.00</u>	<u>45.00</u>	<u>5.00</u>
421,	Solid waste disposal areas	<u>12.00</u>	<u>1,375.00</u>	<u>100.00</u>
427,	Alteration of rivers, streams and brooks	<u>10.00</u>	<u>65.00</u>	<u>50.00</u>
451,	Mixing zones	<u>35.00</u>	<u>1,130.00</u>	<u>2,170.00</u>
451-A,	Time schedule variances	<u>5.00</u>	<u>10.00</u>	<u>5.00</u>
471,	Coastal wetlands and sand dunes	<u>10.00</u>	<u>115.00</u>	<u>100.00</u>
483,	Site location			
A.	Subdivisions	<u>25.00</u>	<u>25.00/lot</u>	<u>25.00</u>
B.	Structures	<u>25.00</u>	<u>1,000.00</u>	<u>500.00</u>
C.	Mining	<u>25.00</u>	<u>750.00</u>	<u>500.00</u>
D.	Other	<u>25.00</u>	<u>750.00</u>	<u>500.00</u>
543,	Oily waste discharge	<u>10.00</u>	<u>30.00</u>	<u>160.00</u>
560,	Vessels at anchorage	<u>10.00</u>	<u>115.00</u>	<u>100.00</u>
587,	Ambient air quality or emissions standards variances	<u>50.00</u>	<u>5,000.00</u>	<u>50.00</u>
590,	Air emissions licenses			
A.	Greater than or equal to 1,000 tons/year of any criteria air pollutant	<u>50.00</u>	<u>10,000.00</u>	<u>1,200.00</u>
B.	Greater than or equal to 100 tons/year but less than 1,000 tons/year of any criteria air pollutant	<u>50.00</u>	<u>5,000.00</u>	<u>400.00</u>
C.	Greater than or equal to 50 tons/year but less than 100 tons/year of any criteria air pollutant	<u>50.00</u>	<u>1,000.00</u>	<u>100.00</u>
D.	Less than 50 tons/year of any criteria air pollutant	<u>25.00</u>	<u>500.00</u>	<u>50.00</u>
633,	Hydropower projects			
A.	New or expanded generating capacity	<u>25.00</u>	<u>300.00/MW up to \$1,500</u>	<u>200.00/MW up to \$1,000</u>
B.	Maintenance and repair or other structural alterations not involving an increase in generating capacity	<u>10.00</u>	<u>40.00</u>	<u>10.00</u>
1101,	Sanitary districts	<u>50.00</u>	<u>100.00</u>	<u>50.00</u>
1304,	Waste facilities			
A.	Septage facilities, other than landfill or landspreading sites	<u>12.00</u>	<u>250.00</u>	<u>250.00</u>
B.	Sludge facilities, other than landfill or landspreading sites	<u>12.00</u>	<u>500.00</u>	<u>500.00</u>
C.	Landspreading sites	<u>12.00</u>	<u>35.00</u>	<u>35.00</u>
D.	Transfer stations	<u>12.00</u>	<u>500.00</u>	<u>500.00</u>
E.	Landfills	<u>75.00</u>	<u>1,500.00</u>	<u>1,500.00</u>

<u>F. Resources recovery and volume reduction facilities</u>	<u>75.00</u>	<u>1,500.00</u>	<u>1,500.00</u>
<u>G. Other, including land-applied waste utilization programs</u>	<u>12.00</u>	<u>500.00</u>	<u>250.00</u>

Sec. 15. 38 MRSA §353, sub-§3-A is enacted to read:

3-A. Certification fee. A certification fee shall be paid prior to the issuance of any certification. If the certification fee is paid prior to the certification and the certification is not issued, the department shall refund the certification fee.

Sec. 16. 38 MRSA §353, sub-§8 is enacted to read:

8. Processing fee for certification. The processing fee for certification shall be assessed on the actual direct costs incurred by the department, but not greater than the processing fee found on Table I, section 352. The processing fee found on Table I shall be due according to subsection 2. Upon completion of processing, where direct costs are less than the processing fee found in section 352 on Table I, a refund shall be made to the applicant.

Sec. 17. 38 MRSA §361, first ¶, as amended by PL 1983, c. 812, §290, is further amended to read:

The Board of Environmental Protection, as established by Title 5, section 12004, subsection 5, and in this subchapter called the "board," shall consist of 10 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over energy and natural resources and to confirmation by the Legislature. Members of the board shall be chosen to represent the broadest possible interest and experience which can be brought to bear in the implementation of this Title and all other laws which the board is charged with the duty of administering. The members shall be appointed for a term of 4 years and-until-their--successors--are-appointed-and-duty-qualified. The Governor shall appoint one member to serve as chairman. Any member who has not been renominated by the Governor within 90 days of the expiration of his term shall not continue to serve on the board unless the Governor notifies the Legislature, in writing and within 90 days of the expiration of that member's term, of his finding that extension of that member's term is required to ensure fair consideration of spe-

cific major applications pending before the board. That member's term shall terminate upon final board decisions on the specific applications identified in the Governor's communication.

Sec. 18. 38 MRSA §394, as amended by PL 1983, c. 743, §10, is further amended to read:

§394. Exemptions

Maintenance and minor repair above the high water line causing no additional intrusion of an existing structure into the great pond ~~is~~, the placement of water lines to serve a single-family house, installation of cables for utilities, such as telephone and power cables, provided that the excavated trench to access the great pond is backfilled and riprapped to prevent erosion and that the excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion, are exempt from this subchapter.

Sec. 19. 38 MRSA §410-E is enacted to read:

§410-E. Fees

The department shall charge applicants for actual direct costs incurred in reviewing permit applications. The maximum allowable fees shall not exceed the following: Filing fee, \$10; processing fee, \$65; and license fee, \$50.

Sec. 20. 38 MRSA §430, sub-§4 is enacted to read:

4. Notwithstanding section 425, a permit shall not be required for panning gold, provided that no power equipment is used.

Sec. 21. 38 MRSA §484, first ¶, as repealed and replaced by PL 1977, c. 300, §30, is amended to read:

In the event that the board determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such the hearing within 30 days of such determination, and shall cause notice of the date, time and place thereof to be given in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 22. 38 MRSA §551, sub-§6, as amended by PL 1985, c. 496, Pt. A, §13, is further amended to read:

6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund. The department shall seek recovery to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes, including interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small or the likelihood of success too uncertain; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D, E and H in connection with a prohibited discharge;

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursement made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd party claims in excess of \$15,000, except to the extent that the costs are covered by payments received under any federal program;

C. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection; and

D. The department may file claims with appropriate federal agencies to recover for the use of the fund all disbursement from the fund in connection with a prohibited discharge.

Sec. 23. 38 MRSA §552, as amended by PL 1977, c. 375, §17, is further amended to read:

§552. Liability

1. Licensee shall be liable. A licensee shall be liable for all acts and omissions of its servants and agents, and carriers destined for the licensee's facilities from the time such carrier shall enter state waters until such time as the carrier shall leave state waters.

2. State need not plead or prove negligence. Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any per-

son, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the State of Maine for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D and E, or other damage incurred by the State. In any suit to enforce claims of the State under this section, to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the ~~person-causing-the-discharge-or-the~~ licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge.

**Sec. 24. 38 MRSA §569, sub-§6, as enacted by PL 1985, c. 496, Pt. A, §14, is amended to read:**

6. Reimbursements to the Ground Water Oil Clean-up Fund. The department shall seek recovery ~~to~~ for the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand shall be turned over to the Attorney General for collection.

**Sec. 25. 38 MRSA §583, sub-§1-A, as enacted by PL 1975, c. 669, §1, is amended to read:**

1-A. Portland Peninsula Air Quality Region. The Portland Peninsula Air Quality Region shall consist of that section of the City of Portland bordered on the west by Interstate 95 295, on the south and east by the Fore River and on the north by Casco Bay and the inlet to Back Bay.

**Sec. 26. 38 MRSA §586, as amended by PL 1971, c. 618, §12, is repealed.**

Sec. 27. 38 MRSA §606, as enacted by PL 1975, c. 282, §6, is repealed.

Sec. 28. 38 MRSA §611, sub-§4, as enacted by PL 1983, c. 359, §2, is amended to read:

4. Exemptions. Chromium emissions resulting from metal plating operations, the preparation of chrome tanning liquors or from processes, including leather processing, in which chromium is present only in the trivalent oxidation state processes, including leather processing, in which chromium is present only in the trivalent oxidation state; from metal plating operations; and from the preparation of chrome tanning liquors shall not be subject to these emission requirements.

Sec. 29. 38 MRSA §1304, sub-§12 is enacted to read:

12. Compliance orders. The commissioner may issue compliance orders subject to the provisions of this subsection.

A. Whenever, after investigation, the commissioner determines that there is or has been an unauthorized discharge of hazardous waste, constituents of hazardous waste, or waste oil into the environment which is endangering or causing damage to public health or the environment or that any person has violated or is in violation of any requirement of this subchapter, including rules adopted thereunder, relating to hazardous waste which is endangering or causing damage to public health or the environment or waste oil activities, he may issue an order requiring compliance immediately or within a specified time period or requiring corrective action or other response measures as necessary to remove the dangers to public health and safety or the environment.

The commissioner may require assurance of financial ability for completing corrective action and may require, where necessary, that corrective action be taken beyond a facility or site to remove the danger to the public health or the environment unless the person to whom the order is directed demonstrates to the commissioner that, despite that person's best efforts, he was unable to obtain the necessary permission to undertake such actions.

B. Any order issued under this subsection may be directed to any person who causes or caused or contributes or contributed to the discharge or violation. Such order shall contain findings of fact describing, insofar as possible, and with reasonable specificity, the nature of the discharge or violation, the wastes involved, the nature of the cause or contribution of the person with respect to the discharge or violation, the site of the activity, the required action, the time period for compliance and the danger to public health or safety of the environment.

C. Service of the commissioner's findings and an order shall be made by hand delivery by an authorized representative of the department or by certified mailing, return receipt requested, in accordance with the Maine Rules of Civil Procedure.

D. The person to whom the order is directed shall comply immediately or within a specified time period. That person may apply to the board within 10 days after receipt of the order for a hearing on the order. The hearing shall be held by a majority of the board members within 14 days after receipt of the application. Within 7 days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the order. At the hearing, all witnesses shall be sworn and the department shall establish the basis for the order and for naming the person to whom the order was directed. 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.

**Sec. 30.** 38 MRSA §1319-H, sub-§1, ¶A, as amended by PL 1983, c. 342, §7, is further amended to read:

A. Any person who applies for a license for a hazardous waste facility shall pay the appropriate fee. An application for a license will not be considered complete and will not be processed until this fee is received. Application fees are as follows.

- (1) Disposal facility ..... \$10,000
- (2) Commercial treatment facility ... 7,000
- (3) On-site treatment facility ..... 4,000
- (4) Other waste facility for hazardous waste, including treatment facilities other



than on-site and commercial treatment facilities .....	2,500
(5) Waste oil storage facility .....	2,500
<u>(6) Treatment facility under license by rule provisions where the hazardous waste treated is less than 200 kilograms per calendar month .....</u>	<u>75</u>

Sec. 31. 38 MRSA §1319-H, sub-§2, ¶E is enacted to read:

E. Treatment facility under license by rule provisions where the hazardous waste treated is less than 200 kilograms per calendar month .....100

Sec. 32. 38 MRSA §1362, sub-§1, as enacted by PL 1983, c. 569, §1, is amended to read:

1. Hazardous substance. "Hazardous substance" means:

A. Any substance identified by the board under section 1303-A;

B. Any substance identified by the board under section 1319;

C. Any substance designated pursuant to the ~~Federal~~ United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, ~~Section~~ Sections 101 and 102 (Superfund);

D. Any toxic pollutant listed under the United States Federal Water Pollution Control Act, Section 307(a);

E. Any hazardous air pollutant listed under the United States Clean Air Act, Section 112; ~~and~~

F. Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to the United States Toxic Substances Control Act, Section 7; and

G. Waste oil as defined in section 1303.

Sec. 33. 38 MRSA §1364, sub-§2, as enacted by PL 1983, c. 569, §1, is amended to read:

2. Rules. The board may adopt rules related to the handling of hazardous substances and the designation and mitigation of uncontrolled hazardous substance sites. The board may provide by rule that any person who knows or has reason to believe that any hazardous substance is present in ground water beneath a site which is owned or operated by that person provide notice of that condition to the department if the concentration of the hazardous substance in ground water exceeds state or federal recommended contaminant levels for drinking water.

Sec. 34. 38 MRSA §1364, sub-§§3 and 4, as enacted by PL 1983, c. 569, §1, are amended to read:

3. Investigation and evaluation. The department may investigate and sample sites where hazardous substances are stored or handled to identify uncontrolled hazardous substance sites. During the course of the investigation, the commissioner may require submission of information or documents which relate or may relate to the site under investigation from any person who the department has reason to believe may be a responsible party. The information may include, among other things, the nature and amounts of hazardous substances or other wastes which arrived or may have arrived at the site, manner of transportation, treatment or disposal of the hazardous substances or other wastes and any other information relating to the site or to threats posed by the potential site.

4. Designation. In accordance with section 1365, the commissioner may declare a site to be an uncontrolled hazardous substance site. The designation may be appealed only upon the issuance of an order pursuant to section 1365, subsection 5.

Sec. 35. 38 MRSA §1365, sub-§4, as enacted by PL 1983, c. 569, §1, is amended to read:

4. Compliance, appeal. The person to whom the order is directed shall comply immediately. A person to whom it is directed may apply to the board for a hearing on the order if the application is made within 5 days after receipt of the order by a responsible party. The hearing shall be held by the board within 3 5 days after receipt of application. The nature of the hearing before the board shall be an appeal. At the hearing all witnesses shall be sworn and the department shall first establish the basis for the order and for naming the person to whom the order was directed. The burden of going forward shall then shift 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.

**Sec. 36. Transition.** Consistent with the Maine Revised Statutes, Title 5, chapter 69, for any position affected by this Act and subject to the Personnel Law on the effective date of this Act, the incumbent in the position shall retain his appointment subject to the Personnel Law until 3 years after the effective date of this Act. The incumbent shall be compensated according to the terms of his salary range prior to the effective date of this Act during the 3-year period unless that incumbent elects to waive the provisions of this section. If that incumbent waives the provisions of this section, he shall be compensated according to the provisions of the Maine Revised Statutes, Title 2, section 6, subsection 4.

Effective July 16, 1986.

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## CHAPTER 747

H.P. 1210 - L.D. 1717

### AN ACT Relating to the Passamaquoddy Indian Reservation.

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

**Sec. 1.** 30 MRSA §6203, sub-§5, as enacted by PL 1979 c. 732, §§1 and 31, is amended to read:

5. Passamaquoddy Indian Reservation. "Passamaquoddy Indian Reservation" means those lands reserved to the Passamaquoddy Tribe by agreement with the State of Massachusetts dated September 19, 1794, excepting any parcel within such lands transferred to a person or entity other than a member of the Passamaquoddy Tribe subsequent to such agreement and prior to the effective date of this Act. If any lands reserved to the Passamaquoddy Tribe by the aforesaid agreement hereafter are acquired by the Passamaquoddy Tribe, or the secretary on its behalf, that land shall be included within the Passamaquoddy Indian