

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

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

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
OF THE
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ture and the Commissioner of Marine Resources consents to that lease;

(5) No portion of any existing or proposed lease may be subleased after August 1, 1988, for a period of time of more than 5 years for the purpose of providing berthing space for any boat or vessel. This subparagraph shall not apply to any existing sublease or assignments thereof or to any subleasing plan or arrangement approved by the director prior to April 15, 1988. This subparagraph is repealed 91 days after the adjournment of the First Regular Session of the 114th Legislature; and

(6) The director may grant the proposed lease if the director finds that, in addition to any other findings that the director may require, the proposed lease:

- (a) Will not unreasonably interfere with navigation;
- (b) Will not unreasonably interfere with fishing or other existing marine uses of the area; and
- (c) Will not unreasonably diminish the availability of services and facilities necessary for commercial marine activities.

This subparagraph is repealed 91 days after the adjournment of the First Regular Session of the 114th Legislature.

B. For dredging, impounded areas and underwater cables and pipelines, the director shall develop such terms and conditions as ~~he~~ the director deems reasonable.

C. The director shall charge an administrative fee of \$25 for each lease in addition to any rent.

D. The director may establish a reasonable minimum rent to which any lease is subject, but it shall not exceed \$75 per year.

See title page for effective date.

CHAPTER 311

H.P. 629 - L.D. 852

An Act to Strengthen and Improve Enforcement of Environmental Laws

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

Sec. 1. 4 MRSA §152, sub-§6, as repealed and replaced by PL 1987, c. 737, Pt. C, §§2 and 106; and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is repealed and the following enacted in its place:

6. Environmental laws. Original jurisdiction, concurrent with that of the Superior Court to grant equitable relief and impose penalties in proceedings involving alleged violations of a local environmental ordinance or regulation or a state environmental law or rule, including, but not limited to, the following:

A. The laws pertaining to the Maine Land Use Regulation Commission, Title 12, chapter 206-A;

B. The minimum lot size law, Title 12, sections 4807 to 4807-G;

C. Shoreland zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 12, sections 4811 to 4817;

D. The plumbing and subsurface waste water disposal rules adopted by the Department of Human Services under Title 22, section 42;

E. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;

F. Local ordinances enacted under Title 22, section 2642, and in accordance with Title 30-A, section 3001;

G. Local land use ordinances enacted under Title 30-A, section 3001;

H. Local building codes adopted pursuant to Title 30-A, section 3001, and in accordance with Title 30-A, chapter 185, subchapter I;

I. Automobile junkyards, Title 30-A, chapter 183, subchapter I;

J. Regulation and inspection of plumbing, Title 30-A, chapter 185, subchapter III;

K. Malfunctioning domestic waste water disposal units, Title 30-A, section 3428;

L. The subdivision law, Title 30-A, section 4551; local subdivision ordinances enacted under Title 30-A, section 3001; and subdivision regulations adopted under Title 30-A, section 4551;

M. Local zoning ordinances enacted under Title 30-A, section 3001, and in accordance with Title 30-A, section 4503;

N. All laws administered by the Department of Environmental Protection, Title 38, chapters 2 to 16; and

O. Local ordinances regarding air pollution control enacted pursuant to Title 38, section 597.

Sec. 2. 4 MRSA §152, sub-§7, as enacted by PL 1987, c. 419, §1, is repealed.

Sec. 3. 38 MRSA §347, as amended by PL 1987, c. 810, §§7, 8 and 11, is repealed.

Sec. 4. 38 MRSA §§347-A to 347-C are enacted to read:

§347-A. Violations

1. General procedures. Whenever it appears to the department, after investigation, that there is or has been a violation of this Title, of rules promulgated under this Title or of the terms or conditions of any Department of Environmental Protection or Board of Environmental Protection license, permit or order, the department may do one or more of the following, including, but not limited to:

A. Resolve the violation through an administrative agreement approved by the board and the Attorney General;

B. Refer the violation to the Attorney General for prosecution;

C. Schedule and hold an enforcement hearing on the alleged violation pursuant to subsection 2; or

D. With the prior approval of the Attorney General, initiate a civil action pursuant to section 342, subsection 7.

2. Hearings. The commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of any hearing held pursuant to subsection 1, paragraph C. The notice shall specify the act or omission which is claimed to be in violation of law or regulation.

Any hearing conducted under the authority of this subsection shall be in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by that person to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the department shall, as soon as practicable, make findings of fact based on the record and, if it finds that a violation exists, shall issue an order aimed at ending the violation. The person to whom an order is directed shall immediately comply with the terms of that order.

3. Emergency orders. Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations which the department administers or

of the terms or conditions of any of the department's orders, which is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order issued under this emergency procedure shall be made by the sheriff or deputy sheriff within the county where the person to whom the order is directed operates or resides. 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.

The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but the person may apply to the board for 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. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

§347-B. Modification, revocation or suspension of license

After written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, the board may modify in whole or in part any license, or issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds that:

1. Violation of license. The licensee has violated any condition of the license;

2. Misrepresentation. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;

3. Threat. The licensed discharge or activity poses a threat to human health or the environment;

4. Failure to include standard or limitation. The license fails to include any standard or limitation legally required on the date of issuance;

5. Change in condition or circumstance. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license; or

6. Violation of law. The licensee has violated any law administered by the board.

For the purposes of this section, the term "license" includes any license, permit, order, approval or certification issued by the board and the term "licensee" means the holder of the license.

All orders of the board or the commissioner may be enforced by the Attorney General. If any order of the board or the commissioner is not complied with within the time period specified, the board or the commissioner, respectively, shall immediately notify the Attorney General of this fact.

§347-C. Right of inspection and entry

Employees and agents of the Department of Environmental Protection may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, take samples and conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the Board of Environmental Protection.

See title page for effective date.

CHAPTER 312

H.P. 667 - L.D. 909

An Act to Amend the Underground Oil and Hazardous Substance Storage Tank Installer Laws

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there are over 8,000 underground storage tanks that must be removed by October 1989; and

Whereas, a significant portion of these tanks store gasoline; and

Whereas, certified underground storage tank installers and underground gasoline tank removers are needed to help private citizens meet removal requirements; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 32 MRSA §10002, sub-§§3-B, 5-C and 5-D are enacted to read:

3-B. Gasoline. "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.

5-C. Underground gasoline storage tank. "Underground gasoline storage tank" means a tank or container,

10% or more of which is underground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of gasoline. The term does not include tanks or containers that are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

5-D. Underground gasoline storage tank remover. "Underground gasoline storage tank remover" means a person certified under this chapter to remove underground gasoline storage tanks.

Sec. 2. 32 MRSA §10004, sub-§2, as amended by PL 1987, c. 410, §5, is further amended to read:

2. Rules. The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil or underground hazardous substance storage tank installation and removal and underground gasoline storage tank removal.

Sec. 3. 32 MRSA §10006, sub-§1, as amended by PL 1987, c. 410, §7, is further amended to read:

1. Certification required. No person may practice, or ~~hold himself out as authorized~~ profess to practice, as an underground oil or underground hazardous substance storage tank installer or underground gasoline storage tank remover in this State or use the words "underground oil storage tank ~~installer~~ or installer," "underground hazardous substance storage tank ~~installer~~ installer," "underground gasoline storage tank ~~remover~~ remover" or other words or letters to indicate that the person using the words or letters is a certified underground oil or underground hazardous substance storage tank installer practitioner or underground gasoline storage tank remover practitioner unless he that person is certified in accordance with this chapter.

Sec. 4. 32 MRSA §10006, sub-§§3 and 4 are enacted to read:

3. Proper underground oil storage tank installer certification class required. No person may install or advertise to install underground oil storage tanks unless the person has the appropriate class of certification in accordance with this subsection.

A. A Class 1 underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed underground oil storage tanks.

B. A Class 2 underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed, heavy oil storage or impressed-current cathodically-protected tanks.