

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
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

PROFESSIONAL AND FINANCIAL
REGULATION, DEPARTMENT OF

CHAPTER 464

S.P. 540 - L.D. 1475

Board of Registration in Medicine

Personal Services	\$1,250	\$1,250
All Other	100,000	125,000
TOTAL	<u>\$101,250</u>	<u>\$126,250</u>

Provides funding for an additional board member and the costs of the Department of Attorney General incurred during the investigation of complaints brought to the board.

Board of Osteopathic Examination
and Registration

Personal Services	\$220	\$330
All Other	200	300
TOTAL	<u>\$420</u>	<u>\$630</u>

Provides funds for the per diem and expenses of the additional board member.

DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION

TOTAL	<u>\$101,670</u>	<u>\$126,880</u>
TOTAL ALLOCATIONS	<u>\$198,441</u>	<u>\$242,938</u>

See title page for effective date.

CHAPTER 463

H.P. 993 - L.D. 1382

An Act Concerning Atlantic Salmon

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

12 MRSA §6255, sub-§5-A is enacted to read:

5-A. Replacement salmon; additional tags. Notwithstanding any other provision of this chapter, the first person in a season who, in cooperation with the commission or the Department of Marine Resources or the Department of Inland Fisheries and Wildlife, presents a salmon for shipment to the President of the United States shall be entitled to take one additional salmon, and shall be issued, at no cost, one additional tag bearing that person's license number.

See title page for effective date.

An Act to Implement, Administer and Enforce
the United States Emergency Planning and
Community Right-to-Know Act of 1986

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

Whereas, hazardous and toxic substances are used in the State which may pose acute and chronic health hazards to individuals who live and work in the State and who are exposed to these substances as a result of fires, spills, industrial accidents or other types of releases or emissions; and

Whereas, protection of the general public from these potential health hazards must be accomplished through the cooperative efforts of employers, workers, emergency responders and the general public; and

Whereas, the Legislature recognizes that protection of the individuals who live and work in the State can and should be accomplished without placing unnecessary burdens on employers; and

Whereas, the United States Congress failed to appropriate sufficient funds for implementing, administering and enforcing the Emergency Planning and Community Right-to-Know Act of 1986 at the state level; 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. 5 MRSA §12004-G, sub-§13-A is enacted to read:

<u>13-A. Environ-</u>	<u>State</u>	<u>Not</u>	<u>37-B MRSA §792</u>
<u>ment/Natural</u>	<u>Emergency</u>	<u>Authorized</u>	
<u>Resources</u>	<u>Response</u>		
	<u>Commission</u>		

Sec. 2. 22 MRSA c. 271, sub-c. III, as enacted by PL 1987, c. 763, §2, is repealed.

Sec. 3. 37-B MRSA c. 13, sub-c. III-A is enacted to read:

SUBCHAPTER III-A

COORDINATION AND ADMINISTRATION

OF THE SUPERFUND AMENDMENTS AND

REAUTHORIZATION ACT OF 1986

§791. General provisions

1. Purpose. This subchapter is intended to be consistent with and facilitate implementation of the provisions of the United States Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499.

2. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. “CERCLA hazardous substance” means a substance on the list defined in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law 96-510, Section 101(14), as amended.

B. “Extremely hazardous substance” shall have the meaning set forth in the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 302, and listed in 40 Code of Federal Regulations, Part 355.

C. “Hazardous chemical” means all hazardous chemicals as defined under 40 Code of Federal Regulations, Part 355.20.

D. “Hazardous material” means all chemicals and chemical categories defined as extremely hazardous substances and hazardous chemicals in 40 Code of Federal Regulations, Part 355.20 and toxic chemicals in 40 Code of Federal Regulations, Part 372.3.

E. “Reportable quantity” means for any CERCLA hazardous substance or extremely hazardous substance, the reportable quantity established in 40 Code of Federal Regulations, Part 302, Table 302.4 or in 40 Code of Federal Regulations, Part 355, Appendixes A and B, for such substance.

F. “Threshold planning quantity” shall have the meaning set forth in the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 302, and listed in 40 Code of Federal Regulations, Parts 355, 370 and 372.

§792. State Emergency Response Commission

1. Composition and terms. The State Emergency Response Commission, referred to in this subchapter as the “commission,” as established by Title 5, section 12004-G, subsection 13-A, to implement effective emergency response to releases of hazardous chemicals. The commission is composed of 14 members as follows:

A. The Commissioner of Environmental Protection or the commissioner’s permanent designee;

B. The Commissioner of Human Services or the commissioner’s permanent designee;

C. The Director of the Office of Emergency Medical Services, Department of Human Services, or the director’s permanent designee;

D. The Commissioner of Labor or the commissioner’s permanent designee;

E. The Commissioner of Transportation or the commissioner’s permanent designee;

F. The Director of the Maine Emergency Management Agency, who shall serve as chair;

G. The Chief of the State Police or the chief’s permanent designee;

H. A representative, appointed by the Governor, of municipal government;

I. A representative, appointed by the Governor, of the Maine Fire Chiefs’ Association;

J. A representative, appointed by the Governor, of a professional firefighters’ union;

K. A representative, appointed by the Governor, of private commerce and industry;

L. A representative, appointed by the Speaker of the House of Representatives, of volunteer firefighters;

M. A representative, appointed by the President of the Senate, of an environmental organization representative of the general public; and

N. A representative, appointed by the Speaker of the House of Representatives, of organized labor.

The Governor and legislative leadership shall request a list of 3 names from organizations covered under paragraphs H to N from which to make final appointments. All appointed members shall serve for a term of 4 years from the date appointed. Appointed members shall serve the following initial terms: one member for 1 year, 2 members for 2 years, 2 members for 3 years and 2 members for 4 years. Appointed members shall be allowed to serve for 2 consecutive terms.

2. Powers and duties. The general duties of the commission are to oversee the implementation of a comprehensive program of planning and training for effective emergency response to releases of hazardous materials. Specifically, the commission shall:

A. Advise the director on rules promulgated under this subchapter;

B. Designate emergency planning districts to facilitate implementation of emergency response plans;

C. Provide for the necessary appointment of local emergency planning committees;

D. Supervise and coordinate local emergency planning committee activities;

E. Review emergency response plans developed by the committees;

F. Receive chemical spill notifications required pursuant to state law and the provisions of the United States Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499;

G. Provide the public with information upon request, consistent with the provisions of state and federal law, on emergency response plans, potential chemical hazards and safety;

H. Rule on trade secrets in cooperation with the United States Environmental Protection Agency;

I. Monitor, observe, participate in and review certain emergency drills and exercises;

J. Review and monitor hazardous materials training programs in the State;

K. Conduct joint emergency operations from the State Emergency Operations Center; and

L. Undertake any other actions necessary to accomplish the purposes of this subchapter.

3. Voting. All votes require a quorum with at least 8 members present.

§793. Local emergency planning committees

There are established local emergency planning committees, referred to in this subchapter as "committees" for each emergency planning district designated by the commission pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, Public Law 99-499.

1. Local committees established. The commission shall, by resolution, appoint the members of the local emergency planning committee of each emergency planning district. The committee shall consist of at least 14 members and, except as provided in subsection 2, shall include representatives from each of the following organizations or groups: elected state and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital and transportation personnel; broadcast and print media; citizens living near local facilities; employees working in local facilities; community groups; and owners and operators of facilities subject to the emergency planning requirement of this subchapter.

2. Modification of committees. Members of the public may, by written petition, request the commission to modify the representation of those groups or organizations on a local emergency planning committee. If the commission reduces or eliminates representation of a group or organization on a committee, it shall declare the position of the member representing that group or organization to be

abolished and the person whose position is so abolished shall cease to serve as a member of the committee on the effective date of the commission's declaration. Appointments of members to the committee to fill positions established as a result of modification to the composition of the committee shall be made in the same manner as original appointments under this subchapter.

§794. Local emergency response plans

1. Plan development. The local emergency planning committee of each emergency planning district shall prepare and submit to the commission a local emergency response plan for the district. The district's plan shall contain all of the following in compliance with federal law:

A. An identification of each facility within the district that:

(1) Has any extremely hazardous substance present at the facility in an amount that exceeds the threshold planning quantity for the substance; and

(2) Annually manufactures, processes or otherwise uses an amount of a toxic chemical that exceeds the threshold planning quantity for the substance;

B. An identification of facilities contributing or subjected to additional risk due to their proximity to facilities identified under paragraph A, subparagraph (1);

C. A copy of the facility emergency response plan as defined in section 795;

D. A composite statement of specialized equipment, facilities, personnel and emergency response organizations available within the district to respond to releases of hazardous materials;

E. An evaluation of the need for resources to develop, implement, and exercise the emergency plan, including recommendations for additional resources and mechanisms for providing those resources;

F. An identification of procedures for reliable, effective and timely notification and communication among emergency responders within the district and to the public in the event of a release of an extremely hazardous substance or CERCLA hazardous substance from a facility identified under paragraph A, subparagraph (1);

G. Designations of community emergency coordinators;

H. The methods for determining the occurrence of a release of an extremely hazardous substance from each facility identified under paragraph A and for identification of the geographic area or population likely to be affected by such a release;

I. Evacuation plans including, but not limited to, provisions for precautionary evacuation and alternative traffic routes in the event of a release of an extremely hazardous substance from a facility identified in paragraph A;

J. An identification of routes likely to be used for the transportation of extremely hazardous substances identified under paragraph A;

K. The development of training programs, seminars and other forms of educational programs for personnel of facilities identified under paragraph A, emergency response personnel of political subdivisions within the district and medical personnel; and

L. The development of methods and schedules for exercising the plan.

2. Plan adoption. After completion of a local emergency response plan for the district, the committee shall submit the plan to the commission for review and recommendations.

A. Prior to the adoption of the local emergency response plan for the district by the commission, the plan shall be subject to a 30-day public comment period. Copies of the plan shall be placed in the town hall of each community included in the plan within the emergency planning district and any other location designated by the committee. Members of the general public shall have free access to the plan for review.

B. At least annually, each committee shall conduct an exercise of its local emergency response plan. The committee shall notify the commission at least 30 days before each exercise.

3. Plan review. Each committee shall annually, or more frequently as changed circumstances in the emergency planning district or at any facility in the district may require, review the local emergency response plan of the district. The review shall include, without limitation:

A. An evaluation of the need for funds, personnel, equipment and facilities to develop, revise, implement and exercise the plan; and

B. Recommendations and requests to the commission regarding the additional funds that may be required for those purposes and the means for providing them.

§795. Facility emergency response plans

The operators of any facility that stores any extremely hazardous substance in a quantity above the threshold planning quantity are subject to the following.

1. Written plans. A written plan in accordance with agency guidelines to protect public health and safety in the event of an accidental release must be prepared and submit-

ted by the facility operators to the commission, committee and fire department with jurisdiction over the facility no later than 6 months from the effective date of this subchapter. The plan must satisfy the requirements of the agency and shall, at a minimum:

A. Identify the facility emergency coordinator and that person's alternate;

B. Describe the emergency warning systems and list nearby emergency and health personnel;

C. Describe employee training and testing programs;

D. Describe available response equipment and protective garments;

E. Describe emergency health treatment procedures including notification, facility evacuation and community evacuation and shelter-in-place procedures;

F. Identify transportation routes and transportation methods for extremely hazardous substances;

G. List the names of all companies providing sudden and nonsudden accidental coverage to the facility; and

H. List any mutual aid agreements between the facility and emergency responders or public safety agencies.

Emergency response plans required pursuant to other state or federal laws may be used to fulfill these requirements if the plans contain the provisions required by this section.

2. Annual test. An annual test demonstration and annual review must be held by the facility owners or operators to ensure public health and safety.

3. Emergency response equipment. By October 1, 1989, the operators of facilities covered under this subchapter shall, through mutual aid agreements with a committee or local emergency response officials, provide for use by emergency personnel, primary response equipment which shall at a minimum include protective clothing and breathing apparatus necessary to contain or extinguish releases of substances handled by their facility. Facilities may coordinate the provision of equipment with other facilities in the locality as well as the appropriate municipal public safety agencies.

Any person or facility that provides personnel or equipment through a mutual aid agreement with a committee or local emergency response officials is immune from civil liability to the same extent provided government employees and political subdivisions in Title 14, chapter 741 for acts performed within the scope of the mutual aid agreement.

§796. Material safety data sheets

1. Data sheets. Any person who owns or operates a facility and is required to prepare or have available a material safety data sheet for a hazardous chemical under the United States Occupational Safety and Health Act of 1970, Public Law 91-596, as amended, and regulations promulgated under it shall submit to the local emergency planning committee of the emergency planning district in which the facility is located, the commission and the fire department having jurisdiction over the facility, either data sheets or lists for which data sheets are available of the hazardous chemicals and extremely hazardous substances that are stored at the facility in an amount that exceeds the threshold planning quantity for those chemicals or substances. The hazardous chemicals and extremely hazardous substances shall be grouped together on any such data sheets by the categories of health and physical hazards. The data sheets shall include, without limitation, all criteria set forth in 29 Code of Federal Regulations, Section 1910.1200.

2. Content of lists. The list of chemicals referred to in subsection 1 must include each of the following:

A. A list of hazardous chemicals for which material safety data sheets are required under subsection 1 grouped in categories of health and physical hazards;

B. The chemical name or the common name of each such chemical as provided on the material safety data sheet; and

C. Any hazardous component of each such chemical as provided on the material safety data sheet.

3. Revised data sheets. Within 3 months after the discovery of new information about a hazardous chemical or extremely hazardous substance identified in the data sheet required by subsection 1, paragraph A or within 3 months after obtaining a hazardous chemical or extremely hazardous substance for which reporting is required by subsection 1, paragraph A, the owner or operator of a facility shall prepare and submit a revised data sheet or a revised list of chemicals for which data sheets are available that meets the requirements of subsection 1, paragraph A and contains the new information to the local emergency planning committee, the commission, and the fire department having jurisdiction over the facility.

§797. Maine chemical inventory reporting form

Any person required to submit a facility emergency response plan, material safety data sheet or list of hazardous chemicals and extremely hazardous substances must submit a Maine chemical inventory reporting form to the commission, the local emergency planning committee and the local fire department with jurisdiction over the facility, by March 1st annually. This form shall require information on the inventory of extremely hazardous substances and hazardous chemicals for the previous calendar year. These forms shall state, at a minimum:

1. Chemical name. The chemical name of each substance listed;

2. Maximum weight. The maximum number of pounds of each substance present at any time during the preceding year;

3. Average amount. The average daily amount of each substance present during the preceding year;

4. Chemical storage. A brief description of the manner of the chemical's storage;

5. Chemical location. The chemical's location at the facility;

6. Information withholding. An indication if the person is electing to withhold information from disclosure under section 800; and

7. Transportation. A description of the manner in which the substance is shipped to the facility.

§798. Emergency notification

1. Immediate notification. In the event of an unlicensed release from any facility where a CERCLA hazardous substance or an extremely hazardous substance is produced, used or stored, that requires reporting under the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 103 (a) or the Superfund Amendments and Reauthorization Act of 1986, Title III, Section 304(a), the owner or operator of the facility at which the release occurs must immediately contact the local fire department with jurisdiction over the site, the State Police as the designated agent for the commission and the community emergency coordinator. This oral notification must contain, to the extent known at the time of notice and so long as no delay in responding to the emergency results, information included in the Maine Emergency Management Agency's AR-1 form including:

A. The specific location of the release;

B. Identification of the chemical released and the estimated quantity released;

C. The time and duration of the release;

D. The environmental media into which the chemical was released;

E. Any known or anticipated acute or chronic health risks;

F. Any precautions that should be taken, including evacuation or medical surveillance; and

G. The names and telephone numbers of parties to be contacted for further information.

2. Transportation releases. For releases of substances covered under this subchapter during transportation, the responsible party must contact the State Police.

3. Follow-up report. Within 14 days of the release, the owner or operator must file with the commission and committee a follow-up emergency notice, which details all of the information in subsection 1, along with:

A. Actions taken to respond to and contain the release;

B. The cause of the release and the events leading to it;

C. The known or anticipated health risks of the release and any medical attention needs of exposed persons; and

D. The measures taken or to be taken to avoid recurrence.

§799. Toxic chemical release forms

Under this section, every facility with 10 or more employees and within Standard Industrial Classification Codes 20-39 must file toxic chemical release forms for routine releases with the United States Environmental Protection Agency, the commission and the local emergency planning committee by October 1, 1989, and annually thereafter consistent with the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Section 313, and 40 Code of Federal Regulations, Part 372. Those forms shall be made available to the public by the commission and the local emergency planning committee.

§800. Trade secrets

1. Withholding information. Information that constitutes a trade secret may be withheld from the local emergency planning committee or fire department, and specific chemical names and identifications may be withheld in accordance with this subchapter if:

A. The information has not been disclosed to any other person except the commission, the local emergency planning committee, a public official or a person bound by confidentiality agreement, and reasonable measures have been taken to protect confidentiality;

B. The information is not required to be disclosed by law;

C. Disclosure is likely to cause harm to the business's competitive position; and

D. The chemical identity in question is not readily discoverable through reverse engineering.

2. Substitute information. If trade secrecy is claimed, the owner or operator of the facility shall substitute on the relevant forms:

A. The generic class of the material;

B. Sufficient information so that emergency responders will not be hampered; and

C. Identification of potential adverse health effects posed by the hazardous chemical or extremely hazardous substance.

3. Exception. Trade secrecy cannot be claimed if:

A. The commission and the United States Environmental Protection Agency so rule;

B. Notification is required by a release; or

C. In the event of a life threatening situation, the information is requested by the State Toxicologist or a health professional treating a victim of exposure to the chemical.

§801. Fees

1. Fees required. The operators of any facility that is required to report to the State Emergency Response Commission under the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Title III, Sections 311, 312 and 313, are subject to the fees adopted pursuant to subsection 2. All fees collected pursuant to this section shall be deposited in the Emergency Response Commission Fund.

2. Fees established. The director, with the advice of the commission and subject to the Maine Administrative Procedures Act, Title 5, chapter 375, shall promulgate rules to establish a fee schedule for:

A. Registering facilities, not to exceed \$50 per facility; and

B. Reporting hazardous materials, on a weight basis per chemical.

3. Fee caps. Facility owners and operators shall be subject to maximum fees of \$5,000 per facility for reporting hazardous materials under this section.

4. Fee exemptions. The following operators are exempt from the following requirements under this section.

A. Retail marketers of petroleum products with a storage capacity of 75,000 pounds or less per product shall be exempt from the reporting fee.

B. Owners and operators of commercial agricultural operations shall be exempt from the fee requirements under this section for registering agricultural facilities and for hazardous materials used in the commercial production of farm products as defined in Title 17, section 2805, subsection 1, paragraph C. Farm product processing facilities are not exempt from the fee requirements. For the purposes of this

section, "processing" shall not include the packaging of raw commodities or farm products for resale.

§802. Emergency Response Commission Fund

The Emergency Response Commission Fund is established to be used by the agency as a nonlapsing fund for carrying out the purposes of this subchapter. All fees collected under this subchapter shall be credited to this fund. All fines or penalties assessed pursuant to section 806 shall be credited to this fund.

1. Disbursements allowed. The agency, with the advice of the commission, shall make disbursements from the fund for the following purposes:

A. To employ personnel within the agency to manage and coordinate data collected pursuant to this subchapter;

B. To fund county training programs for local emergency planning committees;

C. To provide training grants; and

D. To provide for the resource needs of the local emergency planning committees.

§803. Agency responsibilities

The Maine Emergency Management Agency has the following responsibilities under this subchapter.

1. Review facility emergency plans. The agency shall review facility area emergency plans submitted to the commission and make recommendations to the commission on their acceptance. The agency shall also develop model emergency plans.

2. Manage and coordinate data. The agency shall manage and coordinate data submitted pursuant to the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499.

3. Liaison. The agency shall provide liaison to the State Emergency Response Commission, local emergency planning committees and industrial facilities throughout the State that manufacture, use, store or process hazardous materials.

4. Monitor compliance. The agency shall monitor the compliance of facilities, owners and operators with this subchapter.

§804. Local authority

Nothing in this subchapter or rules adopted under it preempts or otherwise affects any ordinance, regulation or rule of a political subdivision, limits the authority of a political subdivision to adopt or enforce any ordinance, regulation, or rule that it is authorized to adopt or enforce pursuant to the Constitution of Maine and laws of this State, or limits the authority of any department or agency of this State to

adopt any rule or enforce any law or rule of this State that it is authorized to adopt or enforce under the laws of this State. This subchapter does not abridge rights of action or remedies in equity, under common law, or as provided by law.

§805. Community right to know

1. Availability to public. Each emergency response plan, material safety data sheet, list described in section 796, subsection 2, Maine chemical inventory reporting form, toxic chemical release form and follow-up emergency notice shall be made available to the general public, consistent with section 800, during normal working hours at the location or locations designated by the Administrator of the United States Environmental Protection Agency, the Governor, the commission or the local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 797, the commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 797 to be contained in a Maine chemical inventory reporting form.

2. Notice of public availability. Each committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets and Maine chemical inventory reporting forms have been submitted under this section. The notice shall state that follow-up emergency notices may subsequently be issued and announce that members of the public who wish to review any such plan, sheet, form or follow-up notice may do so at the location designated under subsection 1.

§806. Enforcement; penalties

1. Commission orders. The commission may issue orders requiring the owner or operator of a facility or other responsible person at a facility to abate a violation of any section of this subchapter or rule adopted under it.

2. Civil penalties. Except as provided in subsection 3 for a violation of section 798, a person who violates any provision of section 795 or 798 shall be subject to a civil penalty not to exceed \$25,000, payable to the Emergency Response Commission Fund, to be recovered in a civil action. A person who violates section 796 or 797 shall be subject to a civil penalty not to exceed \$1,000, payable to the Emergency Response Commission Fund, to be recovered in a civil action. Minimum penalties under this subsection shall be \$100 per day. Each day of violation constitutes a separate violation.

3. Criminal penalties. A person who intentionally, knowingly or recklessly fails to comply with the reporting requirements of section 798, subsection 1, commits a Class C crime and, notwithstanding Title 17-A, section 1301, is subject to a fine of not more than \$25,000 for the first offense and not more than \$50,000 for a subsequent offense. For purposes of determining a subsequent offense, the date of a conviction shall be deemed to be the date the sentence is imposed even though an appeal was taken.

4. Authority to bring civil actions. Civil actions may be brought as follows.

A. Any person may commence a civil action on that person's own behalf against the owner or operator of a facility for failure to do any of the following:

(1) Submit a follow-up emergency notice under section 798, subsection 3;

(2) Submit a material safety data sheet or a list under section 796;

(3) Complete and submit a Maine chemical inventory reporting form under section 797; or

(4) Complete and submit a toxic chemical release form under section 799.

B. No action may be brought against the owner or operator of a facility if the Federal Government or the State has commenced and is diligently pursuing an administrative order, civil action or criminal action to enforce the requirement concerned or to impose a civil penalty for an alleged violation of the requirement, either under this subsection or under comparable federal law or rule.

C. No action may be commenced under this subsection unless the plaintiff has given at least 60 days prior notice to the commission, the Attorney General and the owner or operator of the facility alleged to be in violation that the plaintiff will commence the action.

D. Action brought against an owner or operator under this section shall be brought in Superior Court for the county in which the alleged violation occurred.

E. Nothing in this subsection may restrict or expand any right which any person or class of persons may have under any federal or state law or common law to seek enforcement of any requirement or to seek any other relief.

F. In any action under this subsection, the Federal Government or the State, or both, may intervene as a matter of right.

G. In any action under this subsection, any person may intervene as a matter of right when that person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the court determines that the person's interest is adequately represented by existing parties in the action.

Sec. 4. Application; appointments. Members serving on the State Emergency Response Commission on the effective date of this Act shall continue to serve on the

commission until the expiration of their terms. Additional appointments to the commission required pursuant to the Maine Revised Statutes, Title 37-B, section 792, subsection 1 shall be made by the Governor and legislative leadership within 30 days of the effective date of this Act.

Sec. 5. Allocation. The following funds are allocated from the Emergency Response Commission Fund to carry out the purposes of this Act.

	1989-90	1990-91
DEFENSE AND VETERANS' SERVICES, DEPARTMENT OF		
Maine Emergency Management Agency		
Positions	(1)	(1)
Personal Services	\$24,815	\$26,853
All Other	20,000	18,000
Capital Expenditures	7,810	3,000
TOTAL	\$52,625	\$47,853

Provides funds to manage and coordinate data base information and to provide liaisons to the State Emergency Response Commission, local emergency planning committees and the industrial facilities throughout the State that manufacture, use, store or process extremely hazardous substances.

Maine Emergency Management Agency		
All Other	\$70,175	\$68,147
Provides funds for training grants, local emergency planning committees, and county-level emergency training.		
DEPARTMENT OF DEFENSE AND VETERANS' SERVICES		
TOTAL	\$122,800	\$116,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 26, 1989.

CHAPTER 465

H.P. 684 - L.D. 936

An Act to Provide for the Licensing of Counseling Professionals and to Create a Board of Counseling Professionals Licensure