LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

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J.S. McCarthy Company
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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

CHAPTER 384

H.P. 84 - L.D. 112

An Act to Ensure Adequate Enforcement of Air Quality Law

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

Sec. 1. 38 MRSA §352, sub-§2, ¶A, as amended by PL 1987, c. 787, §7, is further amended to read:

A. ~~Processing~~ Except for those fees assessed under section 353-A, processing fees ~~shall~~ must be assessed for costs incurred in determining the acceptability of an application for processing and in processing an application to determine whether it meets statutory and regulatory criteria.

Sec. 2. 38 MRSA §352, sub-§2, ¶C, as enacted by PL 1983, c. 574, §1, is amended to read:

C. ~~Licensing~~ Except for those fees assessed under section 353-A, licensing fees ~~shall~~ must be assessed for direct costs incurred in monitoring, inspecting and sampling to ~~assure~~ ensure proper compliance by a licensee.

Sec. 3. 38 MRSA §352, sub-§2, ¶E is enacted to read:

E. The air emission license fees assessed under section 353-A for those facilities licensed under section 590 must be assessed to support activities for the Bureau of Air Quality Control including licensing, compliance, enforcement, monitoring, data acquisition and administration.

Sec. 4. 38 MRSA §352, sub-§5, as amended by PL 1989, c. 502, Pt. A, §167, is further amended in that part designated "TABLE I" by repealing that part relating to "TITLE 38" SECTION 590 and inserting in its place the following:

590, Air emissions licenses	See section 353-A

Sec. 5. 38 MRSA §353, sub-§2, as repealed and replaced by PL 1991, c. 66, Pt. A, §4, is amended to read:

2. Processing fee. ~~A~~ Except for annual air emission fees pursuant to section 353-A, a processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing the application results in the application being returned to the applicant. The commissioner may not refund the processing fee if the application is denied by the board or the commissioner. If the application is withdrawn by the applicant within 30 days of the start of processing, the processing fee must be refunded, except in the case of nonferrous metal mining applications. If an application for nonferrous metal mining is withdrawn by the applicant within 30 days of the date of filing, 1/2 of the application fee must be refunded.

Sec. 6. 38 MRSA §353, sub-§3, as repealed and replaced by PL 1991, c. 66, Pt. A, §5, is amended to read:

3. License fee. ~~A~~ The license fee assessed in section 352, subsection 5 must be paid at the time of filing the application. Failure to pay the license fee at the time of filing results in the application being returned to the applicant. The commissioner shall refund the license fee if the board or commissioner denies the application or if the application is withdrawn by the applicant. Notwithstanding the provisions of this subsection, the license fee for a subdivision must be paid prior to the issuance of the license.

The license fees for nonferrous metal mining must be paid annually on the anniversary date of the license for the life of the project, up to and including the period of closure and reclamation.

Sec. 7. 38 MRSA §353, sub-§5, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §13, is further amended to read:

5. Renewals or amendments. ~~The~~ As set forth in section 353-A, except for renewals or amendments issued under section 590, the processing fee for renewals or amendments is equal to direct costs up to 1/2 the processing fee for initial applications. The license fee for renewals is identical to the initial license fee. The license fee for amendments may not exceed the initial license fee.

Sec. 8. 38 MRSA §353-A is enacted to read:

§353-A. Annual air emissions license fees

1. Fees assessed. After the effective date of this section, a licensee must pay an annual fee assessed on the sum of all licensed allowable air pollutants, except for carbon monoxide, as follows:

Annual licensed emissions in tons	Per ton fee
1 - 1,000	$2
1,001 - 4,000	$4
over 4,001	$8

2. Fee adjustment. The commissioner may adjust the per ton fees on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics.

3. Schedule. The fee for existing licenses must be paid on the anniversary date of the license. The annual fee for new applications must be estimated and paid at the time of filing the application. When the processing of the application is complete, the final annual fee is determined. Any additional amount is due prior to the issuance of the license. Any overpayment must be refunded. If the application is denied, 50% of the initial annual fee must be refunded. The effective date of the license becomes the anniversary date.

4. Maximum and minimum fees. The minimum annual fee is $100 per year. The maximum annual fee is $100,000 per year.

5. Transition for existing licenses. A licensee of a source in existence on the effective date of this section may request a revision to that license to reduce the sum of the licensed allowable air pollutants.

6. Electrical generating facilities. The annual fee for an electrical generating facility owned or operated by a regulated electric utility that has operated the facility at not more than 20% of its capacity factor over the most recent 4-year period is calculated on the 20% capacity factor. If the facility exceeds the 20% capacity factor in any calendar year, the annual fee is based on actual emissions.

7. Renewals and amendments. There are no additional fees assessed for license renewals or amendments.

8. Nonpayment of fee. Failure to pay the annual fee within 30 days of the anniversary date of a license is sufficient grounds for revocation of the license under section 341-D, subsection 3.

Sec. 9. 38 MRSA §589, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §163, is repealed and the following enacted in its place:

§589. Registration; penalties

The commissioner may require the registration of persons or air contamination sources, of a type the board may by rule prescribe, engaged in activities that emit air contaminants and may also require persons operating stationary air contamination sources to install, maintain and use reasonable emission monitoring devices as the board by rule may prescribe.

1. Reporting requirements. Persons may be required by the commissioner to periodically report on the location, size of outlet, height of outlet, rate and period of emission and composition of air contaminants, location and type of air pollution control apparatus and other information as prescribed by rule of the board.

A. The commissioner shall establish procedures for reporting ambient air quality data, including reporting violations of ambient air quality standards and emission standards.

B. A person may not be required to submit to the commissioner more than one copy of ambient air monitoring data or meteorological data more frequently than quarterly unless required by the federal Environmental Protection Agency.

2. Stack tests. A person is not required to conduct stack tests for particulate matter on a source monitored by a continuous monitoring device for opacity as specified by 40 Code of Federal Regulations, Part 60, Appendix B, specification 1 or appropriate surrogate parameters as required by the commissioner more frequently than once every 2 years unless visible emissions, operating parameters or another cause indicates the source may be operating out of compliance with any applicable emission standard.

3. Emission monitoring devices. Failure by a person to register, install, maintain and use emission monitoring devices or to file reports from those devices renders that person liable to the penalties prescribed in sections 348 and 349.

Sec. 10. 38 MRSA §590, first ¶, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §164, is further amended to read:

After ambient air quality standards and emission standards have been established within a region, the board may by rule provide that no person may operate ~~or~~, maintain or modify in that region any air contamination source or emit any air contaminants therein without an emission license from the department.

Sec. 11. 38 MRSA §590, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §164, is further amended by adding after the 2nd paragraph a new paragraph to read:

Best practical treatment may not require the use of fuel with a lower sulfur content than that specified in section 603-A unless a lower sulfur fuel is required to comply with applicable emission standards or applicable ambient air quality standards.

Sec. 12. 38 MRSA §§591-A and 591-B are enacted to read:

§591-A. Modifications to a licensed source

1. Modifications. Modification of a licensed source means any physical or operational change in an emission unit or emission source that:

A. Increases the quantity of any air contaminant emitted;

B. Increases the impact of the emissions of that emission unit or source on ambient air quality due to

changes in stack height, physical building characteristics or plume characteristics unless the commissioner finds that the change will not cause a violation of ambient air quality standards and ambient increment standards;

C. Results in the emission of any air contaminant not previously emitted;

D. Constitutes construction of a new emission unit; or

E. Constitutes the reconstruction of a new emission unit as defined in 40 Code of Federal Regulations, 60.15 (1990).

2. Changes not considered modifications. The following changes are not modifications to a licensed source:

A. Routine maintenance, repair and replacement;

B. An increase in the production rate at an existing source if the increase does not exceed the operating design capacity of the source, unless that change is prohibited under any federally enforceable permit condition established after January 6, 1975 pursuant to 40 Code of Federal Regulations, 52.21 (1990) or under regulations approved pursuant to 40 Code of Federal Regulations, Part 51, Subpart I or 40 Code of Federal Regulations, 51.166 (1990);

C. An increase in the hours of operation at an existing source, unless that change is prohibited under any federally enforceable permit condition established after January 6, 1975 pursuant to 40 Code of Federal Regulations, 52.21 (1990) or under regulations approved pursuant to 40 Code of Federal Regulations, Part 51, Subpart I or 40 Code of Federal Regulations, 51.166 (1990);

D. Use of an alternative fuel or raw material if the source is designed to accommodate that alternative fuel or raw material and if prior to January 6, 1975, the source is licensed to use that alternative fuel or raw material; or

E. Replacement of an air pollution control apparatus if the replacement is found by the department to be the best practical treatment for the emission.

§591-B. Meteorological data collection

1. Data requirements. A minimum of one year of acceptable on-site meteorological data is required for any modeling analysis. If more than one year of on-site data is available, all acceptable data must be used, up to a maximum of 5 years of data. If less than 5 consecutive years of acceptable on-site data is available, the source must continue to collect meteorological data to obtain an acceptable 5-year data base. Acceptable data means that the data meets the department's requirements based on the federal Environmental Protection Agency's guidelines on air quality models.

2. New data collection requirements. Once an acceptable on-site 5-year data base has been approved by the commissioner, it is acceptable for modeling purposes until:

A. The department's requirements based on federal requirements for meteorological data change;

B. Sufficient ambient air quality violations occur to make collection of additional meteorological data necessary; or

C. The emission source configuration is significantly changed.

Sec. 13. Report. The Commissioner of Environmental Protection shall report to the Joint Standing Committee on Energy and Natural Resources no later than February 1, 1993 on the Bureau of Air Quality Control's existing and anticipated budget needs and revenues. The report must include a description of the bureau's existing and anticipated activities, the budget needs for these activities and an analysis of whether the fee structure in the Maine Revised Statutes, Title 38, section 353-A must be changed to comply with the Federal Clean Air Act, Section 502 (b)(3) as amended in 1990.

Sec. 14. Rules. By July 1, 1992, the Board of Environmental Protection shall adopt rules for ambient air quality modeling protocols that include methodologies and information to be used in air emissions licensing.

Sec. 15. Allocation. The following funds are allocated from the Maine Environmental Protection Fund to carry out the purposes of this Act.

	1991-92	1992-93
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Environmental Protection Fund		
Positions	(7.0)	(7.0)
Personal Services	$149,424	$279,785
All Other	7,760	8,390
Capital Expenditures	303,700	270,700

Provides funds for a Senior Meteorologist position, 2 Civil Engineer II positions, an Environmental Specialist III position, 2 Environmental Specialist II positions, a Chemist III position, air monitoring equipment, 2 compact vehicles and computer equipment.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$460,884	$558,875

Sec. 16. Effective date. This Act takes effect on November 1, 1991.

Effective November 1, 1991.

CHAPTER 385

H.P. 814 - L.D. 1168

An Act to Clarify the Status of Employee Benefit Excess Insurance

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

Sec. 1. 24-A MRSA §409, as enacted by PL 1969, c. 132, §1, is amended to read:

§409. Insurance lines combinations

An insurer may be authorized to transact such kinds of insurance as it is qualified for under this Title, except that a reciprocal insurer ~~shall~~ may not transact life insurance. Qualified insurers may transact combinations of business as follows.

1. Multiple lines insurer. A multiple lines insurer is authorized to transact more than one kind of coverage if all kinds of coverage fall within the categories listed in sections 704 to 708.

2. All lines insurer. An all lines insurer is authorized to transact life insurance and one or more of the kinds of coverage, other than health insurance, that may be transacted by a multiple lines insurer.

3. Life or health insurer. A life or health insurer is authorized to transact life insurance, life and annuity insurance or health insurance as defined in sections 702 to 704. A life insurer, health insurer or a life and health insurer does not become an all lines insurer merely by transacting specific lines of casualty insurance that life or health insurers are expressly authorized by law to transact.

Sec. 2. 24-A MRSA §410, as amended by PL 1987, c. 707, §1, is further amended to read:

§410. Minimum paid-in capital and surplus requirements

1. To qualify for authority to transact any one kind of insurance, as defined in chapter 9, or combination of kinds of insurance as shown below, an insurer ~~shall~~ must possess and thereafter maintain unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or a reciprocal insurer, and when first so authorized ~~shall~~ must possess initial free surplus, all in amounts not less than as determined from the following table.

A health, life and health or multiple line (as described in section ~~710~~ 409) insurer may qualify for a certificate of authority to transact a legal services insurance business, as described in chapter 38, if it is otherwise qualified therefor and possesses and thereafter maintains, in addition to the amounts described in the following table, an additional amount of unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or reciprocal insurer, of not less than $500,000.

An insurer may qualify for a certificate of authority to transact solely financial guaranty insurance as defined in section 709-A, if it is otherwise qualified therefor and possesses and thereafter maintains paid-in capital stock in the amount of $2,500,000 and initial free surplus in an amount of $47,500,000 or, if the insurer is a foreign mutual or reciprocal insurer, minimum required basic surplus in an amount of $2,500,000 and initial free surplus in an amount of $47,500,000.

	Stock Insurers		Foreign mutual, Reciprocal Insurers	
Kind or Kinds of Insurance	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
Life	$1,500,000	$1,500,000	$1,500,000 *	$1,500,000 *
Health	1,000,000	1,000,000	1,000,000	1,000,000
Life and Health	2,500,000	2,500,000	2,500,000 *	2,500,000 *
Casualty	1,500,000	1,500,000	1,500,000	1,500,000
Marine and Transportation	1,500,000	1,500,000	1,500,000	1,500,000
Property	1,000,000	1,000,000	1,000,000	1,000,000
Surety	1,500,000	1,500,000	1,500,000	1,500,000
Title	500,000	500,000	500,000	500,000
Multiple line (as defined in section ~~710~~ 409)	2,500,000	2,500,000	2,500,000	2,500,000