LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
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PUBLIC LAWS

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1991

that exceeds the maximum amount established under Title 9-A, Part 2.

See title page for effective date.

CHAPTER 658

H.P. 1040 - L.D. 1513

An Act Relating to Best Practicable Treatment Determinations in Air Emission Licensing

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

Sec. 1. 38 MRSA §590, as amended by PL 1991, c. 483, §3, is repealed and the following enacted in its place:

§590. Licensing

1. License required. After ambient air quality standards and emission standards have been established within a region, the board may by rule provide that a person may not operate, maintain or modify in that region any air contamination source or emit any air contaminants in that region without an air emission license from the department.

2. Applications. Applications for air emission licenses must be made in a form prescribed by the commissioner and contain the information related to the proposed air contamination source and emission of air contaminants required by rule of the board. All hearings under this section must be held in a municipality within the region where the proposed emission is to be located. At this hearing, the department shall solicit and receive testimony concerning the nature of the proposed emissions; their effect on existing ambient air quality standards within the region; the availability and effectiveness of air pollution control apparatus designed to maintain the emission for which a license is sought at the levels required by law; and the expense of purchasing and installing this apparatus. The department shall grant the license and may impose appropriate and reasonable conditions as necessary to secure compliance with ambient air quality standards if the department finds that the proposed emission will:

A. Receive the best practical treatment;

B. Not violate or be controlled so as not to violate applicable emission standards; and

C. Either alone or in conjunction with existing emissions, not violate or be controlled so as not to violate applicable ambient air quality standards.

3. Best practical treatment. Emissions from existing sources undergoing license renewal are receiving best practical treatment if those emissions are being controlled by an air pollution control apparatus installed less than 15 years prior to the date of license application approval or an accepted best practical treatment analysis shows that those emissions are being controlled in a manner consistent with emission controls commonly used in sources of similar age and design in similar industries, unless:

A. The applicant is proposing replacement of the existing air pollution control apparatus;

B. Additional reductions are necessary to achieve or maintain ambient air quality standards;

C. The department determines that emissions of air contaminants for which an ambient air quality standard has not been adopted pose an unreasonable risk to the environment or public health; or

D. Additional reductions are necessary to restore ambient air quality increments, even if the applicant has been previously authorized to use that increment.

The department may at the time of the license renewal require additional instrumentation; operating practices; automated process controls; replacement of component parts; emission testing, including requirements for continuous emission monitors; equipment maintenance programs; or record keeping to increase the efficiency of existing air pollution control apparatus or other pollution mitigating measures.

4. Low sulfur fuel. Best practical treatment does not include 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.

5. License conditions for start-up, shutdown and malfunctions. In making license decisions and conditions, the department shall consider the extent to which operation of the licensed facility requires an allowance for excess emissions during cold start-ups and shutdowns of the facility as long as that facility is operated to minimize emissions and is otherwise subject to applicable standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, infrequent emissions are unavoidable during these periods, the department may establish appropriate license allowances and conditions.

6. Installation period. If an air emission license renewal or amendment can be granted only if the licensee installs additional emission controls or other mitigating measures, then the licensee may continue to emit pollutants from air contaminant sources that will receive these controls or measures up to the same level allowed in its existing air emission license as long as the addi-

tional emission controls or mitigating measures are fully operational as soon as practicable but in no case later than 24 months after the department issues the license renewal or amendment, except as provided in this subsection. After a showing by the licensee that it can not install and bring to full operation required emission controls or mitigating measures within the 24-month period, the department may establish a later date for the installation and operation.

7. Compliance with federal law. The department has the authority to deny an air emission license for a new or modified major emitting source when it determines that the source will not comply with the requirements imposed pursuant to the Federal Clean Air Act, Title 1, Part C, subpart 2, as amended, related to the impairment of visibility in mandatory Class 1 federal areas.

See title page for effective date.

CHAPTER 659

H.P. 1263 - L.D. 1832

An Act Allowing Municipalities to Grant Limited Set-back Variances for Single-family Dwellings

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

Sec. 1. 30-A MRSA §4353, sub-§4, as amended by PL 1991, c. 47, §1, is further amended to read:

4. Variance. Except as provided in ~~subsection~~ subsections 4-A and 4-B, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The land in question can not yield a reasonable return unless a variance is granted;

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

C. The granting of a variance will not alter the essential character of the locality; and

D. The hardship is not the result of action taken by the applicant or a prior owner.

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

Sec. 2. 30-A MRSA §4353, sub-§4-A, as enacted by PL 1991, c. 47, §2, is amended to read:

4-A. Disability variance. The board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, section 4553 and the term "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

Sec. 3. 30-A MRSA §4353, sub-§4-B is enacted to read:

4-B. Set-back variance for single-family dwellings. A municipality may adopt an ordinance that permits the board to grant a set-back variance for a single-family dwelling. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

B. The granting of a variance will not alter the essential character of the locality;

C. The hardship is not the result of action taken by the applicant or a prior owner;

D. The granting of the variance will not substantially reduce or impair the use of abutting property; and

E. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

An ordinance adopted under this subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause