

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**SECOND SPECIAL SESSION**

December 12, 1991 to January 7, 1992

**SECOND REGULAR SESSION**

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J.S. McCarthy Company  
Augusta, Maine  
1992

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

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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## CHAPTER 804

H.P. 950 - L.D. 1372

**An Act to Improve the Efficiency and  
Effectiveness of the State's Natural Resources  
Protection Programs**

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

## PART A

**Sec. A-1. 38 MRSA §341-D, sub-§1**, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

**1. Rulemaking.** Subject to the Maine Administrative Procedure Act, ~~Title 5, chapter 375~~, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

If a comment is received during the hearing process on any rule proposed by the board regarding a specific provision in the rule that imposes a regulatory burden more stringent than the burden that would be imposed by the adoption of a federal minimum standard, the board shall respond to that comment in the basis statement of the adopted rule.

**Sec. A-2. 38 MRSA §342, sub-§14** is enacted to read:

**14. Environmental priorities report.** Contingent upon available funding, the commissioner shall conduct a study of the State's environmental priorities and shall report annually to the Governor and the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters on the findings and implementation strategy for the study. The commissioner shall include agencies of government as well as the public in conducting this study. The study must evaluate the risks posed by different environmental problems based on their threat to the public health and the environment, recommend environmental priorities and recommend strategies for reducing the risks associated with each priority.

**Sec. A-3. 38 MRSA §344, sub-§7**, as enacted by PL 1983, c. 453, §4, is amended to read:

**7. Permit by rule.** The Board of Environmental Protection may permit, by rule, any class of activities ~~which that~~ would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no

significant impact upon the environment. Any such rule ~~shall must~~ describe with specificity the class of activities covered by the rule; and may establish standards of design, construction or use as may be ~~deemed considered~~ necessary to avoid adverse environmental impacts. Any such rule ~~shall must~~ require notification to the commissioner prior to the undertaking of the regulated activity.

The commissioner shall annually review activities requiring permits or approval from the department to determine whether any additional classes of activities are more effectively administered under a permit by rule system. As part of this review, the commissioner shall solicit public comments on recommendations for activities to be included under permit by rule and shall review the performance of the existing permit by rule program, including a review of the compliance record of the permit by rule program. The commissioner shall annually recommend to the board any additional categories of permits for the board to permit by rule.

**Sec. A-4. 38 MRSA §345-A, sub-§2-A** is enacted to read:

**2-A. Intervenor procedures.** The board shall adopt rules that define the procedures and scope of participation for intervenors.

## PART B

**Sec. B-1. 38 MRSA §343-B** is enacted to read:

**§343-B. Preapplication and presubmission meetings**

At the request of a potential applicant or when required by rule, the department shall hold a preapplication meeting to identify the issues, types of information and documentation necessary for the department to properly assess a specific project. For any application that has had a preapplication meeting, the department shall also hold a presubmission meeting to review the application prior to the application being filed by the applicant.

The board may adopt rules that identify classes of applications that require an applicant to attend a preapplication and presubmission meeting held by the department prior to submitting the application.

**Sec. B-2. 38 MRSA §344, sub-§1**, as amended by PL 1989, c. 890, Pt. A, §20 and affected by §40, is further amended to read:

**1. Acceptance and notification.** The commissioner shall, ~~within 10 working days of receipt of an application, determine whether the application is in a form acceptable for processing and shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted.~~ If a written notice of accep-

tance or nonacceptance is not mailed to the applicant within 15 working days of receipt of the application, the application is deemed to be accepted as complete for processing on the 15th working day after receipt by the department. If the application is not accepted, the commissioner shall return the application to the applicant with the reasons for nonacceptance specified in writing. Any applicant whose application has not been accepted by the commissioner shall attend a presubmission meeting with the department before resubmitting that application. The commissioner shall notify the board of all applications accepted as complete.

An application is acceptable as complete for processing if the application is properly filled out and information is provided for each of the items included on the form. Acceptance of an application as complete for review does not constitute a determination by the department on the sufficiency of that information and does not preclude the department from requesting additional information during processing.

The commissioner shall require the applicant to provide notice to the public for each application for a permit or license accepted. The commissioner shall solicit comments from the public for each application in a manner prescribed by the board in the rules.

All correspondence notifying an applicant of denial of an application by the board or commissioner ~~shall~~ must be by certified mail, return receipt requested.

**Sec. B-3. 38 MRSA §344, sub-§2-A, ¶C,** as enacted by PL 1989, c. 890, Pt. A, §22 and affected by §40, is amended to read:

C. For those applications ~~which that~~ which do not fall under the permit by rule provisions of subsection 7, the commissioner shall decide upon the application ~~as expeditiously as possible after notifying the applicant of acceptance of the application pursuant to the provisions of section 344-B.~~

**Sec. B-4. 38 MRSA §344-B** is enacted to read:

**§344-B. Timetables for processing permit applications**

Pursuant to the provisions of this section, the commissioner shall determine and annually publish a processing time for each type of permit or license issued by the department. When establishing processing times for permits or licenses, the commissioner shall take into consideration all duties and responsibilities of the department and the availability of resources.

The provisions of this section apply only to new permit and license applications.

**1. Publication of timetables.** No later than August 1st of each year, the commissioner shall publish pro-

cessing timetables for each permit and license issued by the department. Permit and license processing timetables must be published simultaneously in all newspapers designated by the Secretary of State as papers of record under Title 5, section 8053, subsection 5. The commissioner shall enter the published processing timetables into the record of the board at the first meeting of the board following publication.

Except as provided in this section, the deadline governing the processing of an application is determined by the timetable in effect on the date the application is determined to be complete.

**2. Consultation.** Prior to publishing timetables pursuant to subsection 1, the commissioner shall review the proposed processing timetables with an advisory committee established for that purpose. The commissioner shall appoint the members of the advisory committee. In appointing the members, the commissioner shall seek to appoint a committee that is broadly representative of business, environmental and other interest groups. The purpose of the committee is solely advisory.

**3. Processing period.** The processing period for an application begins on the date the commissioner notifies the applicant that the application is complete. Except as provided in paragraph A, the consent of the applicant is required to stop the processing period or to extend the deadline.

A. The processing time for an application stops if:

(1) The commissioner determines that a public hearing is required. Under this subparagraph, the processing period may be stopped only for as long as necessary to accommodate the public hearing process and must commence at the end of the comment period following the public hearing;

(2) The board assumes jurisdiction over an application. If the board assumes jurisdiction over an application, the board shall set a new timetable for the application and shall stop the processing period or extend the deadline subject to the conditions of this subsection. The forfeiture provisions of subsection 5 do not apply to timetables set by the board; or

(3) The commissioner determines that the applicant has significantly modified the application. Under this subparagraph, the processing period is stopped until the applicant and the commissioner agree to a new timetable.

B. The commissioner may stop the processing time with the consent of the applicant for any period of

time agreeable to the commissioner and the applicant if the commissioner determines that:

(1) Additional information is required from the applicant;

(2) Agencies other than the department that are required to comment on an application do not respond within the time frames established by a memorandum of understanding between the agencies; or

(3) The applicant wishes to stop the processing period or to extend the deadline.

Expiration of a processing period may not be the sole reason for denial of an application.

**4. Multiple permits.** For projects that require more than one permit from the department, the commissioner and the applicant shall determine the timetable or timetables applicable to all permit or license applications required for that project at a presubmission meeting.

**5. Forfeiture.** If the commissioner fails to approve or deny an application prior to the applicable deadline, the commissioner shall pay the applicant an amount equal to 50% of the permit or license processing fee. The remainder of the permit or license processing fee is payable to the applicant if the commissioner does not approve or deny the application within 120 calendar days after that deadline. Forfeitures payable under this subsection may not exceed the permit or license processing fee paid by the applicant.

**6. Report.** Beginning on January 1, 1994, the commissioner shall report annually to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters on permitting and licensing activities under this section. The report must include, but is not limited to, a list of the reasons for permit or license extensions and a summary of the number of permit or license extensions required as a result of the failure of an outside agency to provide the department with comments within the required time established by a memorandum of understanding.

**Sec. B-5. Application.** The provisions of this Act apply only to new permit or license applications the Department of Environmental Protection determines to be complete on or after August 1, 1992. Nothing in this Act may be construed to apply to any permit or license renewals or amendments, or to permit or license applications the department determines to be complete prior to August 1, 1992.

**Sec. B-6. Timetables published prior to August 1, 1992.** Prior to August 1, 1992, the Commissioner of Environmental Protection must publish timetables for each type of permit and license issued by the department. The commissioner shall publish permit and

license timetables in a manner consistent with the provisions of this Part.

**Sec. B-7. Effective date.** Sections 1 to 5 of this Part take effect August 1, 1992.

**PART C**

**Sec. C-1. 5 MRSA §12004-I, sub-§22-B** is enacted to read:

<u>22-B.</u>	<u>Pollution Pre-</u>	<u>Expenses</u>	<u>38 MRSA</u>
<u>Environ-</u>	<u>vention Adviso-</u>	<u>Only</u>	<u>§343-D</u>
<u>ment: Nat-</u>	<u>ry Committee</u>		
<u>ural Re-</u>			
<u>sources</u>			

**Sec. C-2. 38 MRSA §342, sub-§4, ¶B,** as enacted by PL 1991, c. 520, §1, is amended to read:

B. The Office of Pollution Prevention is established within the department to review department programs and make recommendations to the commissioner on means of integrating pollution prevention into department programs. The Office of Pollution Prevention has the following functions:

- (1) To establish pollution prevention priorities within the department;
- (2) To coordinate department pollution prevention activities with those of other agencies and entities;
- (3) To ensure that rules, programs and activities of the department are consistent with pollution prevention goals and do not hinder pollution prevention initiatives;
- (4) To provide technical assistance, training and educational activities to assist the general public, governmental entities and the regulated community with development and implementation of pollution prevention programs as funds allow;
- (5) To establish an award program to recognize businesses, local governments, department staff and others that have implemented outstanding or innovative pollution prevention programs, activities or methods;
- (6) To identify opportunities to use the state procurement system to encourage pollution prevention;
- (7) To develop procedures to determine the effectiveness of the department's pollution prevention programs and activities; and

(8) To assume responsibility for the administration and implementation of chapter 26; and

(9) To administer and evaluate the Technical and Environmental Assistance Program established in section 343-B.

The commissioner shall designate an employee of the department to manage the functions of the Office of Pollution Prevention. That person may provide independent testimony to the Legislature, may make periodic reports to the administrator of the federal Environmental Protection Agency for transmittal to the United States Congress and may address problems or concerns related to the functions of the office, including the investigation of complaints concerning the Technical and Environmental Assistance Program.

The commissioner shall identify a staff person or persons in each bureau of the department whose primary responsibility is to provide guidance to any party through the permit review process.

**Sec. C-3. 38 MRSA §§343-C and 343-D** are enacted to read:

**§343-C. Technical and Environmental Assistance Program**

The Technical and Environmental Assistance Program, referred to in this section as the "program," is administered by the Office of Pollution Prevention. Participation in the program by any person is voluntary. The department may not require any person to participate in the program.

**1. Program components.** The program must:

A. Provide for the development, collection and coordination of information concerning compliance methods and technologies;

B. Provide for the encouragement of lawful cooperation among persons engaged in activities regulated by the department;

C. Provide assistance with pollution prevention and accidental release detection and prevention;

D. Ensure that a person engaging in an activity that is subject to regulation by the department is informed of that person's rights and obligations under environmental programs administered by the department, and assist persons in determining the applicable permitting and programmatic requirements of the department; and

E. Develop procedures to consider requests from regulated persons to modify work practice or technological compliance methods or the milestones for implementing those methods.

Any instance of noncompliance identified as a result of a person requesting assistance through the program must be corrected by that person. The commissioner is not required to initiate a formal enforcement action against a person found to be in noncompliance as a result of a request for assistance through the program.

**2. Other duties.** In administering the program, the Office of Pollution Prevention shall:

A. Operate a telephone hotline to enhance accessibility of the program;

B. Prepare reports periodically on the status of the program for distribution to the public, the Legislature and other appropriate federal and state agencies; and

C. Periodically review the program with trade associations, municipal organizations and regulated persons.

**§343-D. Pollution Prevention Advisory Committee**

The Pollution Prevention Advisory Committee, established by Title 5, section 12004-I, subsection 22-B and referred to in this section as the "committee," serves as a review body to assess the progress in the reduction of toxics use, toxics release and hazardous waste and implementation of the provisions of chapter 26, the Office of Pollution Prevention and the Technical and Environmental Assistance Program and may render advisory opinions to the commissioner on the effectiveness of each.

**1. Appointment; composition.** The committee consists of 15 voting members.

A. The Governor shall appoint 4 representatives from the business community, 2 elected or appointed municipal officials and 2 representatives of organized labor.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member.

D. The commissioner or the commissioner's designee is a voting member.

The Commissioner of Labor, the Director of the Maine Emergency Management Agency and the Executive Director of the Maine Waste Management Agency serve as ex officio members and do not vote on committee matters.

**2. Terms.** Except for the commissioner, who shall serve a term coincident with that person's appointment as the commissioner, all members are appointed for staggered terms of 3 years. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2, 3-year terms.

**3. Compensation.** Members are entitled to compensation for expenses according to Title 5, section 12004-I, subsection 22-B.

**4. Quorum; actions.** A quorum is a majority of the voting members of the committee. An affirmative vote of the majority of the members present at a meeting is required for any action. Action may not be considered unless a quorum is present.

**5. Chair.** The Governor shall appoint one member to serve as chair.

**6. Meetings.** The committee shall meet at least 4 times per year and at any time at the call of the chair or upon written request to the chair by 4 of the voting members.

**7. Staff support.** The commissioner shall provide the committee with staff support.

**8. Duties; powers.** The committee may review and may render advisory opinions to the commissioner on the operation and effectiveness of the following programs:

**A. Toxics Use, Toxics Release and Hazardous Waste Reduction Program, established in chapter 26. The committee may:**

(1) Review program priorities for toxics use, toxics release and hazardous waste reduction and may identify user groups as priorities for department technical assistance activities;

(2) Review the criteria for the submission of toxics use, toxics release and hazardous waste reduction plans;

(3) Study and evaluate the practicability of achieving reductions in the use or release of specific substances through the use of substitutes, alternate procedures or processes or other means of achieving toxics use, toxics release and hazardous waste reduction;

(4) Recommend revisions to the department, if appropriate, to toxics use, toxics release and hazardous waste reduction goals and to the Toxics Use, Toxics Release and Hazardous Waste Reduction Program; and

(5) Evaluate existing programs related to chemical production and use, hazardous waste generation, industrial hygiene, worker safety and public exposure to toxics and toxics releases and recommend coordination of information and program changes or development;

**B. The Technical and Environmental Assistance Program established under section 343-B. In reviewing that program, the committee may:**

(1) Review information developed or distributed by the Technical and Environmental Assistance Program to ensure that the information is understandable to the general public; and

(2) Prepare periodic reports to the Governor on the compliance status of the Technical and Environmental Assistance Program. The reports must be forwarded to the federal Environmental Protection Agency complying with the requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-511, as amended; the federal Regulatory Flexibility Act, 5 United States Code, Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-481, as amended; and

**C. The Office of Pollution Prevention established under section 342, subsection 4, paragraph B.**

In conducting its review under paragraphs A to C, the committee may submit recommendations for statutory changes to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters.

**Sec. C-4. 38 MRSA §2310**, as amended by PL 1991, c. 520, §§20 and 21, is repealed.

**Sec. C-5. Transition; Toxic Waste Advisory Committee.** On the effective date of this Part, those persons serving as members of the former Toxic Waste Advisory Committee under the Maine Revised Statutes, Title 38, section 2310 are deemed to be members of the Pollution Prevention Advisory Committee established in Title 38, section 343-D and may serve the remainder of their appointed terms.

1. Not later than 30 days after the effective date of this Part, the Governor shall appoint 2 elected or appointed municipal officials as members of the Pollution



Prevention Advisory Committee pursuant to Title 38, section 343-D.

**PART D**

**Sec. D-1. Natural resource protection law review.** Before March 1, 1993, the Maine Land Use Regulation Commission shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the procedures and related issues of the commission developing consistent standards for and administering the review of activities under the Maine Revised Statutes, Title 38, chapter 3, subchapter I, article 5-A for protected natural resources in areas of the State subject to the jurisdiction of the commission. Subject to available funding, the commission shall prepare maps delineating the boundaries of freshwater wetlands meeting the definition set forth in Title 38, section 480-B, subsection 4 for areas subject to the jurisdiction of the commission. These activities are to be funded through the municipal cost component of the unorganized territories. The report must describe the progress made by the commission in preparing these maps.

**Sec. D-2. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1992-93

**CONSERVATION, DEPARTMENT OF**

**Land Use Regulation Commission**

Positions	(1.0)
Personal Services	\$44,519
All Other	51,181
Capital Expenditures	4,300

Provides funds for one Chief Planner position and contractual mapping services. This appropriation will be reimbursed from the Unorganized Territory Education and Services Fund, increasing General Fund revenue by \$100,000 in fiscal year 1992-93.

**DEPARTMENT OF CONSERVATION**  
**TOTAL** \$100,000

See title page for effective date, unless otherwise indicated.

**CHAPTER 805**

**S.P. 680 - L.D. 1802**

**An Act to Adopt a New Article for the Uniform Commercial Code**

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

**Sec. 1. 9-A MRSA §3-404-A** is enacted to read:

**§3-404-A. Interlocking leases**

**1.** A lessor who enters into a consumer lease for the purpose of enabling a consumer to obtain the use and possession of goods from a seller who is a merchant with respect to the goods is subject to all claims and defenses of the consumer against the seller with respect to the leased goods if:

A. The lessor was a person having a legal relationship with the seller and the relationship was not remote or was a factor in entering into the lease;

B. The seller guaranteed the lease or otherwise assumed the risk of loss by the lessor upon the lease; or

C. The lessor directly supplied the seller with a form used by the lessee to evidence or secure the lease.

**2.** The lessor's liability under this section may not exceed the amount that would be due to the lessor if the lease were terminated on the date the lessor receives notice of a claim or defense of the lessee against the seller.

**Sec. 2. 11 MRSA §1-105, sub-§(2)**, as amended by PL 1977, c. 696, §117, is further amended to read:

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs a contrary agreement and is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Leases. Sections 2-1105 and 2-1106.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6-102.

Applicability of the Article on Investment Securities. Section 8-106.

Perfection provisions of the Article on Secured Transactions. Section 9-103.