

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 28, 1995 to December 1, 1995**

**SECOND REGULAR SESSION**  
**January 3, 1996 to April 4, 1996**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 4, 1996**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

E. The business receiving the investment must have annual gross sales of \$2,000,000 or less and the operation of the business must be the full-time professional activity of the principal owner, as determined by the authority. The principal owner and the principal owner's spouse, ~~parents, brothers, sisters and children~~ are not eligible for a credit for investment in that business. A tax credit certificate may not be issued to a parent, brother, sister or child of a principal owner if the parent, brother, sister or child has any existing ownership interest in the business.

**Sec. 4. 10 MRSA §1100-T, sub-§2-A, ¶E,** as enacted by PL 1995, c. 424, §3, is amended to read:

E. Each business receiving an investment from a private venture capital fund must have annual gross sales of \$2,000,000 or less and the operation of the business must be the full-time professional activity of the principal owner, as determined by the authority. The principal owner and principal owner's spouse, ~~parents, brothers, sisters and children~~ are not eligible for a credit for investment in that business or the private venture capital fund. A tax credit certificate may not be issued to a parent, brother, sister or child of a principal owner if the parent, brother, sister or child has any existing ownership interest in the business.

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

Effective April 10, 1996.

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## CHAPTER 659

S.P. 748 - L.D. 1858

### An Act Regarding Agricultural Irrigation Ponds

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

**Whereas,** current law requires an individual permit pursuant to the laws governing the protection of natural resources for the alteration of a stream for the purpose of constructing an irrigation pond; and

**Whereas,** it is necessary to allow a simplified, general permit procedure for alteration of certain streams in order to meet the needs of farmers for pond construction prior to this year's growing season; 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. 38 MRSA §480-Y** is enacted to read:

#### **§480-Y. Creation of agricultural irrigation ponds**

**1. General permit.** A general permit is required for the alteration of a freshwater, nontidal stream to construct an agricultural irrigation pond. If the provisions of this section are met, an individual permit is not required.

**2. Eligibility criteria.** The following eligibility criteria must be met.

A. The farm must have an irrigation management plan, referred to in this section as the "irrigation plan." The irrigation plan must identify the total number of irrigated acres on the farm or on a specified management unit, the amount of water needed, the potential sources of water for irrigating the field and the water management practices that will be used to ensure that the amount of water used for crop irrigation will be kept to a minimum. For the purposes of this subsection, "farm" has the same meaning as in Title 17, section 2805.

B. The department must have assessed the affected area as having no significant habitat for fish and wildlife. For the purposes of this section, "significant habitat" means the same as "significant wildlife habitat" in section 480-B, subsection 10; a fish spawning or nursery habitat; a habitat required for migration of fish species to or from a spawning or nursery habitat; or a habitat otherwise supporting a moderate to high population of salmonid species as determined by the Department of Inland Fisheries and Wildlife.

C. The pond may not be located in a wetland containing endangered or threatened plant species as determined pursuant to Title 5, section 13078, subsection 3 or containing a natural community that is imperiled (S2) or critically imperiled (S1) as defined by the Natural Areas Program pursuant to Title 5, section 13076.

D. A site assessment must be conducted by the department prior to the submission of an application. The department may defer a site assessment for a reasonable period when winter conditions prevent the department from properly evaluating the affected area.

**3. Standards.** The following standards must be met.

A. The pond, dams and outlets must be designed by a professional engineer to United States Natural Resources Conservation Service standards.

B. Dam fill material must be specified by the professional engineer and must be compacted to 95% of standard proctor. Compaction testing must be conducted with tests performed at a minimum of 2 per dam site or one every 100 feet of dam length, whichever is greater.

C. The pond outlet must be designed to passively discharge a minimum flow equal to inflow or the site-specific aquatic base flow, whichever is less, at all times. The site-specific aquatic base flow must be that specified by the department following consultation with the Department of Inland Fisheries and Wildlife, the United States Natural Resources Conservation Service and other qualified advisors during the site assessment.

D. The pond outlet must be designed and maintained to ensure a cold water release by using a method such as a bottom draw and to induce dissolved oxygen by using a method such as a riprap slope to increase water turbulence.

E. An erosion control plan must ensure that siltation or sedimentation downstream of the dam site is kept to a minimum, to the fullest extent practical, during construction, operation and maintenance of the irrigation pond.

F. The landowner shall maintain a permanently vegetated buffer strip that consists of field grasses or woody vegetation 25 feet wide around the pond except where slopes are equal to or greater than 20%, in which case the buffer strip must be 75 feet wide. Unless recommended to be thinned or mowed on an annual basis by the department or the United States Natural Resources Conservation Service, buffer strip vegetation may not be cut. An access road and irrigation pipes may cross through the buffer strip.

G. All instream construction activities must be conducted between July 15th and October 1st of the same year unless the department determines in the site assessment that an earlier start date will not cause a significant adverse impact to fish and wildlife resources.

**4. Submissions.** The following provisions apply to the submission of applications.

A. An application must be filed with the department and must include the following:

(1) The application cover sheet, as provided by the department;

(2) The United States Geological Survey topographical map with the boundaries of the farm and the pond site clearly marked;

(3) A photograph of the stream at the proposed dam site;

(4) A copy of the irrigation plan for the farm;

(5) Site plans showing existing and proposed topography, stream channel location, existing wetland boundaries, maximum pool elevation, normal pool elevation, dam footprints, outlet location, emergency spillway location, access roads, stockpile locations and buffer strips;

(6) Cross sections through the dam and outlet structure, including proposed maximum pool elevation and normal pool elevation;

(7) A plan to maintain minimum flow downstream, including any calculations used to create the plan;

(8) A complete erosion control plan using practices contained in the "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" (1991) unless otherwise approved or required by the department. The erosion control plan must include a narrative with a sequence for implementing the plan, provisions to inspect and maintain erosion controls and a site plan showing locations of control measures. The plan must include provisions for maintaining a dry construction site. These provisions may consist of construction during a no-flow period, a temporary cofferdam or a stream diversion. The erosion control plan must also include provisions for dewatering and disposal of dredged and excavated soil material. The disposal of soil material dredged from the stream must comply with the requirements of the State's solid waste management rules;

(9) Test pit logs and test results from a minimum of 2 test pits dug in the footprint of the dam and results of tests done under the direction of a professional engineer on the dam fill material; and

(10) A copy of the property deed, lease, purchase and sale agreement or other legal document establishing that the applicant has title or right to or interest in the property proposed for pond development.

All design materials used to show that the dam design meets the standards of the general permit must be signed and stamped by a professional engineer.

B. Following construction and prior to operation of the irrigation pond, the permittee must submit an inspection report by a professional engineer stating that the professional engineer inspected the dam and that it was constructed in conformance with the standards established in subsection 3. The report must specifically include evidence that the proper number of compaction tests were done and proper compaction specifications have been achieved. The inspection report must include a copy of the job diary and information on when inspections were done and what was inspected.

**5. Review period.** Work may not commence until 30 days after the department has accepted an application for processing.

**6. Notification.** The department shall notify the applicant in writing within 30 days of acceptance for processing if the department determines that the requirements of this section have not been met. This notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this section within the specified time period, a general permit is deemed to have been granted.

**7. Fees.** The department shall assess a fee for review of an application filed pursuant to this section. The fee must be equivalent to the amount assessed for activities requiring an individual permit for stream alterations.

**8. Violation.** A violation occurs when an activity takes place that is not in compliance with the provisions of this section or the plans submitted with the application. Any deviation from the approved plans must receive prior department approval.

**Sec. 2. 38 MRSA §488, sub-§11,** as enacted by PL 1993, c. 383, §26 and affected by §42, is amended to read:

**11. Farm and fire ponds.** A pond or ponds having a total surface area of less than 10 acres, on a parcel, that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review

under this article. This provision does not provide an exemption for mining or advanced exploration activity.

**Sec. 3. Evaluation period.** The Department of Environmental Protection shall monitor the effectiveness of the general permit established by the Maine Revised Statutes, Title 38, section 480-Y from the effective date of this Act until October 1, 1997. The department shall provide an interim report by February 1, 1997 and a final report by January 1, 1998 to the joint standing committee of the Legislature having jurisdiction over natural resource matters. The reports must include information on the number of applications submitted for review and an assessment of the overall effectiveness of the general permit in terms of administrative efficiency and equivalent or enhanced protection of the natural resources affected. The reports must include recommendations on any necessary statutory changes.

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

Effective April 10, 1996.

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## CHAPTER 660

H.P. 1346 - L.D. 1841

### An Act to Distribute the Assets of the Maine Sardine Council to Council Members upon Dissolution of the Council by the Legislature

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

**Sec. 1. 32 MRSA §4167, sub-§§7, 8 and 9** are enacted to read:

**7. Dissolution; assets to council members.** Upon dissolution of the council by the Legislature, all assets of the council, including property, equipment and unexpended cash balances derived from the tax imposed on sardines under Title 36, chapter 713 and any other sources, must be distributed by the Legislature in an equitable manner among all companies with representatives on the council on the date of dissolution. Prior to distributing the assets of the council, the Legislature must review recommendations from the joint standing committee of the Legislature having jurisdiction over marine resource matters regarding the distribution of assets to council members.

**8. Audit prior to dissolution.** Prior to the dissolution of the council, the State Auditor must conduct an audit of the financial records of the council and report the findings to the joint standing committee