LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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
1997

revoking the taxpayer's liquor license in accordance with Title 28-A, section 707 and chapter 33; or

See title page for effective date.

CHAPTER 374

H.P. 1123 - L.D. 1579

An Act to Ensure Stable Funding of Pollution Abatement Programs Administered by the Department of Environmental Protection

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

Sec. 1. 38 MRSA §352, sub-§2-A is enacted to read:

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

Sec. 2. 38 MRSA §352, sub-§3, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §11, is further amended to read:

3. Maximum fee. ~~Except as provided in this subsection, no fee may exceed the maximum established in Table I.~~ The commissioner shall set the actual fees and shall publish a schedule of all fees by August 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. A special fee may not exceed $40,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application ~~must~~ shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application. The processing fee for that application must be the actual cost to the department. The applicant ~~shall~~ must be billed quarterly and all fees paid prior to receipt of the permit.

Sec. 3. 38 MRSA §353-A, sub-§2, as enacted by PL 1991, c. 384, §8 and affected by §16, is amended to read:

2. Fee adjustment. The commissioner may adjust the per ton fees, the annual fee surcharge set forth in subsection 1-A and the maximum and minimum fees set forth in subsection 4 on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics.

Sec. 4. 38 MRSA §568-A, sub-§1, ¶B-2 is enacted to read:

B-2. An applicant is not eligible for coverage for any discharge discovered or reported to the commissioner after October 1, 1998 if the discharge is from an underground oil storage facility or tank that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department or from an aboveground oil storage facility that has underground piping that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department. An applicant who would otherwise not be eligible for coverage pursuant to this paragraph is not subject to this exclusion from coverage for such a discharge discovered or reported to the commissioner on or before October 1, 1999 if the facility or tank was not operated or used to store oil after the applicable compliance date under section 563-A and the applicant:

(1) Can not secure financing to remove the facility or tank as evidenced by letters from 3 financial institutions; or

(2) Can not obtain the services of a certified underground oil storage tank installer or remover required pursuant to section 566-A as evidenced by letters from 3 certified underground oil storage tank installers or removers.

Sec. 5. 38 MRSA §568-A, sub-§7 is enacted to read:

7. Repeal date. This section is repealed December 31, 2005.

Sec. 6. 38 MRSA §569-A, sub-§5, ¶A, as amended by PL 1993, c. 553, §3 and affected by §8, is further amended to read:

A. Until December 31, ~~1999~~ 2005, a fee is assessed of 44¢ per barrel of gasoline; 25¢ per barrel of refined petroleum products and their by-products other than gasoline, liquid asphalt and #6 fuel oil, including #2 fuel oil, kerosene, jet fuel and diesel fuel; and 4¢ per barrel of #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7, and on a person required to register with the commissioner under section 545-B who first transports oil into the State. The fee is not assessed on pe-

troleum products that are exported from this State. These fees must be paid monthly on the basis of records certified to the commissioner. This subsection does not apply to waste oil transported into the State in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I.

Sec. 7. 38 MRSA §569-A, sub-§13, as enacted by PL 1991, c. 817, §26, is amended to read:

13. Repeal date. This section is repealed ~~on~~ December 31, ~~1999~~ 2005.

Sec. 8. 38 MRSA §569-B, sub-§4, as amended by PL 1995, c. 399, §18 and affected by §21, is further amended to read:

4. Funding. A fee of ~~9¢~~ 3¢ per barrel of gasoline and ~~8¢~~ 2¢ per barrel of refined petroleum products and their by-products other than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel oil, kerosene, jet fuel and diesel fuel, is assessed on the transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7. These fees must be paid monthly by the oil terminal facility licensees on the basis of records certified to the commissioner and credited to the Ground Water Oil Clean-up Fund upon receipt by the department~~, except that the commissioner shall transfer the amount of these fees in excess of 3¢ per barrel of gasoline and 2¢ per barrel of refined petroleum products and their by products, other than gasoline and liquid asphalt, as follows~~.

~~A. Sixty-two and one-half percent of the excess must be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.~~

~~B. Thirty-seven and one-half percent of the excess must be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks that are located on owner-occupied or residential rental property and have been identified by the department as leaking or posing an environmental threat or as having been abandoned.~~

~~After an aggregate sum of $5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of $3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to this subsection must be reduced by 6¢ per barrel.~~ If the fund balance is reduced to $3,000,000 or less, the Fund Insurance Review Board may adopt rules increasing the fees imposed under this subsection by up to 10¢ per barrel for gasoline and up to 5¢ per barrel for other petroleum products, except liquid asphalt and #6 fuel oil, as necessary to avoid a shortfall in the fund. The board may use the emergency rule-making procedures under Title 5, section 8054 to ensure that the fee increase is instituted in time to avoid a shortfall. Any fee increase adopted pursuant to board rules terminates and the original fees imposed by this subsection apply when the fund balance reaches $5,000,000.

Sec. 9. 38 MRSA §569-B, sub-§8, as enacted by PL 1991, c. 817, §26, is amended to read:

8. Effective date. This section takes effect December 31, ~~1999~~ 2005.

Sec. 10. 38 MRSA §570-A, 2nd ¶, as enacted by PL 1991, c. 66, Pt. A, §32, is amended to read:

This section is repealed December 31, ~~1999~~ 2005.

Sec. 11. 38 MRSA §570-B, 2nd ¶, as enacted by PL 1991, c. 66, Pt. A, §33, is amended to read:

This section is repealed December 31, ~~1999~~ 2005.

Sec. 12. 38 MRSA §570-I, 2nd ¶, as enacted by PL 1991, c. 66, Pt. C, §2, is amended to read:

This section ~~is effective~~ takes effect December 31, ~~1999~~ 2005.

Sec. 13. 38 MRSA §570-J, 2nd ¶, as enacted by PL 1991, c. 66, Pt. C, §2, is amended to read:

This section is effective December 31, ~~1999~~ 2005.

Sec. 14. PL 1989, c. 865, §25 is repealed.

Sec. 15. PL 1991, c. 817, §28 is amended to read:

Sec. 28. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as repealed and replaced by Public Law 1987, chapter 735, section 72, takes effect December 31, ~~1999~~ 2005.

Sec. 16. PL 1991, c. 817, §30 is amended to read:

Sec. 30. Repeal. That section of this Act that amends the Maine Revised Statutes, Title 38, section

570, first paragraph, as amended by Public Law 1989, chapter 865, section 17 and affected by sections 24 and 25, is repealed December 31, ~~1999~~ 2005.

See title page for effective date.

CHAPTER 375

H.P. 1137 - L.D. 1593

An Act to Ensure Safe Abatement of Lead Hazards

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

Sec. 1. 22 MRSA §1315, sub-§3-D, as enacted by PL 1995, c. 453, §3, is amended to read:

3-D. Interim controls. "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment and operation of management and resident education programs.

Sec. 2. 22 MRSA §1315, sub-§4-B, as enacted by PL 1991, c. 810, §7, is amended to read:

4-B. Lead abatement. "Lead abatement" means ~~the removal, renovation, enclosure, repair, encapsulation, handling, transportation or disposal of materials that contain lead~~ any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Lead abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures.

"Lead abatement" does not include renovation and remodeling as defined in Title 38, section 1291, subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

Sec. 3. 22 MRSA §1315, sub-§§4-C to 4-F, as enacted by PL 1991, c. 810, §7, are repealed.

Sec. 4. 22 MRSA §1315, sub-§4-G is enacted to read:

4-G. Lead-based paint activities. "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as interim controls, lead screening, lead determination and deleading.

Sec. 5. 22 MRSA §1315, sub-§5-B, as enacted by PL 1991, c. 810, §9, is amended to read:

5-B. Lead inspector. "Lead inspector" means a person licensed by the ~~department~~ Department of Environmental Protection pursuant to Title 38, chapter 12-B to perform environmental lead inspections.

Sec. 6. 22 MRSA §1321, sub-§5, as enacted by PL 1995, c. 453, §12, is repealed.

Sec. 7. 22 MRSA §1321, sub-§6 is enacted to read:

6. Lead-based paint activities prohibition. A person may not perform lead-based paint activities unless that person is licensed by the Department of Environmental Protection pursuant to Title 38, chapter 12-B or unless that person is at least 18 years of age and is performing lead abatement in the dwelling of which the person is the owner and occupant.

A person who conducts lead-based paint activities without a license in violation of this section commits a civil violation for which a penalty of up to $1,000 may be adjudged. A person who engages in lead testing or lead abatement or who advertises those services in violation of this chapter also violates Title 5, chapter 10.

This subsection does not limit the authority of the department or any other state agency under law.

Sec. 8. 22 MRSA §1322-A, as amended by PL 1995, c. 453, §14, is repealed.

Sec. 9. 22 MRSA §1322-B, as enacted by PL 1991, c. 810, §30, is repealed.

Sec. 10. 22 MRSA §1323, sub-§3, as amended by PL 1995, c. 453, §16, is repealed.

Sec. 11. 22 MRSA §1323, sub-§3-A is enacted to read:

3-A. Department inspections. Performing inspections of residential child-care facilities, preschool facilities and other dwellings for the purpose of determining the existence of environmental lead hazards;

Sec. 12. 22 MRSA §1323, sub-§§4 and 5, as enacted by PL 1991, c. 810, §31, are repealed.