

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

Sec. A-10. Effective date. This Part takes effect January 1, 1999 with the exception of section 9 of this Part which takes effect August 1, 1998.

PART B

Sec. B-1. 5 MRSA §19203, sub-§2, as amended by PL 1995, c. 404, §4, is further amended to read:

2. Designated health care provider. To a health care provider designated by the subject of the test in writing pursuant to Title 22, section 1711-C. ~~When a patient has authorized disclosure of HIV test results to a person or organization providing health care, the patient's health care provider may make these results available only to other health care providers working directly with the patient, and only for the purpose of providing direct medical or dental patient care.~~ Any health care provider who discloses HIV test results in good faith pursuant to this subsection is immune from any criminal or civil liability for the act of disclosing HIV test results to other health care providers;

Sec. B-2. 5 MRSA §19203, sub-§9, as repealed and replaced by PL 1987, c. 811, §3, is amended to read:

9. Medical records. As part of a medical record when release or disclosure of that record is authorized pursuant to ~~section 19203-D~~ Title 22, section 1711, 1711-B, subsection 1 or section 1711-C, subsection 3, 6 or 11; or

Sec. B-3. 5 MRSA §19203, last ¶, as repealed and replaced by PL 1987, c. 811, §3, is amended to read:

Nothing in this section may be construed as prohibiting the entry of an HIV test result on the patient's medical record ~~in accordance with this chapter.~~

Sec. B-4. 5 MRSA §19203-D, as amended by PL 1995, c. 404, §14, is repealed.

Sec. B-5. 22 MRSA §1711-B, sub-§5, as enacted by PL 1991, c. 142, §2, is amended to read:

5. HIV test. Release of information regarding the HIV infection status of a patient is governed by ~~Title 5, section 49203-D~~ 1711-C.

Sec. B-6. Effective date. This Part takes effect January 1, 1999.

Effective January 1, 1999, unless otherwise indicated.

CHAPTER 794

H.P. 1291 - L.D. 1836

An Act to Facilitate Delegation of the Federal Waste Discharge Permitting Program

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

PART A

Sec. A-1. 30-A MRSA §4452, sub-§3, ¶G, as amended by PL 1991, c. 732, §3, is further amended to read:

G. The penalties for violations of ~~waste discharge licenses issued by the municipality pursuant to Title 38, section 413, subsection 8, or violations of a septage land disposal or storage site permit issued by the Department of Environmental Protection under Title 38, chapter 13, subchapter 1, are as prescribed in Title 38, section 349.~~

Sec. A-2. 38 MRSA §341-A, sub-§3, ¶B, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

B. When the State receives authority to issue permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as commissioner who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.

Sec. A-3. 38 MRSA §341-C, sub-§8, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

8. Federal Water Pollution Control Act requirements. When the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as a board member who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. For

the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.

Sec. A-4. 38 MRSA §344, sub-§1-A, as enacted by PL 1991, c. 183, is amended to read:

1-A. Governing rules. An application for a permit, license or approval is processed under the substantive rules in effect on the date the application or request for approval is determined to be complete for processing. Notwithstanding Title 1, section 302, after the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402 (c)(1) of the Federal Water Pollution Control Act, as amended, any waste discharge license issued or modified by the State pursuant to its authority to grant permits under the Federal Water Pollution Control Act must comply with State statutory or regulatory requirements that take effect prior to final issuance of that license.

Sec. A-5. 38 MRSA §347-A, sub-§6 is enacted to read:

6. Public participation in enforcement settlements. After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, Section 1251 et seq., as amended, in any civil enforcement action brought under this section, section 348 or 349 involving discharges regulated by the Federal Water Pollution Control Act, the department shall publish notice of and provide at least 30 days for public comment on any proposed settlement as follows.

A. In the case of administrative consent agreements, the proposed agreement must be filed with the board and notice of the filing must be placed on the board's agenda at least 30 days before the board takes any action on the agreement. The Attorney General and the department shall receive and consider, and the department shall provide the board with summaries of, any written comments relating to the proposed agreement.

B. In the case of judicial enforcement, each proposed judgment by consent must be filed with the court at least 30 days before the judgment is entered by the court. Prior to the entry of judgment, notices of the proposed judgment must be published in a newspaper having general circulation in the area in which the alleged violation occurred, and the Attorney General and the department shall receive and consider, and file with

the court, any written comments relating to the proposed judgment.

C. The Attorney General shall reserve the right to withdraw or withhold its consent to the proposed judgment if the comments, views or allegations concerning the judgment disclose facts or considerations that indicate that the proposed judgment is inappropriate, improper or inadequate and oppose an attempt by any person to intervene in the action. When the public interest in this notification process is not compromised, the Attorney General may permit an exception to publication as set forth in this section in a specific case where extraordinary circumstances require a period shorter than 30 days or a notification procedure other than that set forth in this section.

Sec. A-6. 38 MRSA §347-C, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §5, is further amended to read:

§347-C. Right of inspection and entry

Employees and agents of the Department of Environmental Protection may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples and, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board.

Sec. A-7. 38 MRSA §349, sub-§1, as amended by PL 1993, c. 349, §71, is further amended to read:

1. Criminal penalties. Any person who intentionally, knowingly, recklessly or with criminal negligence violates any provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, is guilty of a Class E crime and may be punished accordingly, except, notwithstanding Title 17-A, section 1301, subsection 1-A, paragraph C or Title 17-A, section 1301, subsection 3, paragraph E, the fine for such a violation may not be less than ~~\$100~~ \$2,500 nor more than \$25,000 for each day of the violation, except that the minimum amount for knowing violations is \$5,000 for each day of violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.

Sec. A-8. 38 MRSA §349, sub-§6, as enacted by PL 1983, c. 796, §19, is amended to read:

6. Maximum penalties. The maximum civil penalty may exceed \$10,000 for each day of that violation, but ~~shall~~ may not exceed \$25,000 for each day of the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years, and the maximum criminal penalty may exceed \$25,000 for each day of violation, but may not exceed twice the amounts in subsection 1, when it can be shown that there has been a previous violation of the same law by the same party.

Sec. A-9. 38 MRSA §349, sub-§9, as amended by PL 1995, c. 235, §1, is repealed and the following enacted in its place:

9. Unavoidable malfunctions. The following considerations apply to violations resulting from unavoidable malfunctions.

A. The commissioner may exempt from civil penalty an air emission in excess of license limitations if the emission occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner in writing within 48 hours and submit a written report, together with any exemption requests, to the department on a quarterly basis. The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.

B. An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge and takes corrective action as soon as possible. There is not an affirmative defense if the mal-

function is caused, entirely or in part, by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation. The burden of proof is on the licensee seeking the affirmative defense under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner orally within 24 hours, and in writing within 5 days. The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.

Sec. A-10. 38 MRSA §361-A, sub-§§1-I, 1-J and 1-K are enacted to read:

1-I. Clean Water Act. "Clean Water Act" means the Federal Water Pollution Control Act, as defined in paragraph 1-K.

1-J. Code of Federal Regulations. "Code of Federal Regulations" means the codification of regulations published in the Federal Register by the Federal Government, and includes those regulations effective on or before January 1, 1997.

1-K. Federal Water Pollution Control Act. "Federal Water Pollution Control Act" means federal Public Law 92-500 or 33 United States Code, Sections 1251 et seq., including all amendments effective on or before January 1, 1997.

Sec. A-11. 38 MRSA §361-A, sub-§7, as enacted by PL 1973, c. 450, §4, is amended to read:

7. Waters of the State. "Waters of the State" means any and all surface and subsurface waters ~~which that~~ are contained within, flow through, or under or border upon this State or any portion thereof of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

Sec. A-12. 38 MRSA §413, sub-§§2, 2-B and 2-D, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §28, are further amended to read:

2. Exemptions. ~~No person may be deemed~~ A person is not considered in violation of this section for the discharge of rock, sand, dirt or other pollutants resulting from erosion related to agricultural activities, subject to the following conditions.

A. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates.

B. The commissioner has certified that the plan meets the objectives of this chapter.

C. The commissioner determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan.

D. After the State receives authority to grant permits under the Federal Water Pollution Control Act, this exemption will not apply to any discharges considered point sources under federal law, including discharges from concentrated animal feeding operations and discharges from silvicultural point sources, as defined by federal law.

2-B. Exemptions; snow dumps. ~~The board department may by rule exempt license categories of snow dumps from the need to obtain a license under this section when it finds that the exempted activity would not have a significant adverse effect on the quality or classifications of the waters of the State, except there may be no snow dumps directly into the fresh surface waters of the State.~~

2-D. Exemptions; road salt or sand-salt storage piles. The commissioner may exempt any road salt or sand-salt storage area from the need to obtain a license under this section for discharges to groundwaters of the State when the commissioner finds that the exempt activity will not have a significant adverse effect on the quality or classifications of the ~~waters~~ groundwaters of the State. In making this finding, the commissioner's review must include, but is not limited to, the location, structure and operation of the storage area.

Owners of salt storage areas shall register the location of storage areas with the department on or before January 1, 1986. As required by section 411, the department shall prioritize municipal or quasi-municipal sand-salt storage areas prior to November 1, 1986.

Sec. A-13. 38 MRSA §413, sub-§2-E, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §28, is repealed.

Sec. A-14. 38 MRSA §413, sub-§2-F, as enacted by PL 1987, c. 769, Pt. A, §173, is amended to read:

2-F. Exemption; aquaculture. ~~Not~~ Until the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, a person may not be considered in violation of this section if:

A. The discharge activity is associated with off-shore marine aquaculture operations in the estuarine and marine waters; and

B. As a condition of obtaining a leasehold from the Department of Marine Resources, the Department of Environmental Protection certifies that the aquaculture activities mentioned in this subsection will not have a significant adverse effect on water quality or violate the standards ascribed to the receiving waters' classifications.

Sec. A-15. 38 MRSA §413, sub-§2-G, ¶B, as enacted by PL 1995, c. 493, §2 and affected by §21, is amended to read:

B. A discharge to surface waters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if the discharge complies with the instructions of ~~the commissioner or the commissioner's designee and, where applicable,~~ an on-scene coordinator pursuant to 40 Code of Federal Regulations, Part 300.

Sec. A-16. 38 MRSA §413, sub-§8, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §28, is repealed.

Sec. A-17. 38 MRSA §413, sub-§9, as enacted by PL 1987, c. 769, Pt. A, §175, is repealed.

Sec. A-18. 38 MRSA §413, sub-§10 is enacted to read:

10. Marine aquaculture projects. After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, the department may issue to an owner of a marine aquaculture project a license for the discharge of pollutants to those waters only if the following conditions are satisfied:

A. An application for a leasehold has been accepted as complete by the Department of Marine Resources and a copy of an approved leasehold is provided to the department prior to any discharge of pollutants;

B. The project will not have a significant adverse effect on water quality or violate the standards of the receiving water's classification;

C. The project will be managed and monitored in accordance with a program approved by the Department of Marine Resources;

D. The project is not located in waters classified as SA under section 465-B, subsection 1; and

E. Other applicable requirements of this chapter are met.

A license issued pursuant to this subsection is void if water quality is significantly affected by the project.

For the purposes of this subsection, an aquaculture project is a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable plants or animals in estuarine or marine waters.

Sec. A-19. 38 MRSA §414, sub-§2, as amended by PL 1993, c. 410, Pt. G, §5, is further amended to read:

2. Terms of licenses. Licenses are issued by the department for a term of not more than 5 years, except that licenses for overboard discharges may be issued for a term of not more than 10 years, as provided for in section 414-A, subsection 1-B, paragraph D. For the purposes of this section, "overboard discharge" is defined in accordance with section 466, subsection 9-A.

Sec. A-20. 38 MRSA §414, sub-§§2-A, 3 and 6, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §29, are further amended to read:

2-A. Relicensing. The relicensing of an existing licensed waste discharge prior to or after the expiration of the term of the existing license is subject to all of the requirements of this chapter. For the purposes of this chapter, the term "relicense" includes, without limitation, the terms "renewal," "renew," "reissue" and "extend." Relicensing of a waste discharge may be denied for any of the reasons set forth in section 341-D.

3. Inspection and records. Authorized representatives of the commissioner and the Attorney General ~~shall~~ have access at any reasonable time, to and through any premises where a discharge originates or is located or where required records are kept, including records of industrial users of publicly owned treatment works, for the purposes of inspection, testing and sampling. The department may order a discharger to produce and ~~shall have~~ has the right to copy any records relating to the handling, treatment or discharge of pollutants and may require any licensee to keep such records relating ~~thereto to the handling, treatment or discharge of pollutants~~ as the department determines necessary. The department also may order, in writing, a discharger or industrial user of publicly owned treatment works to produce such records, reports and other information as may reasonably be required in order to determine if that person is in violation of any law, order, rule, license,

permit, approval or decision of the board or commissioner related to a wastewater discharge.

6. Confidentiality of records. Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part ~~thereof of any record, report or information,~~ other than the names and addresses of applicants, license applications, licenses and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes ~~which that~~ are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, ~~provided that~~ as long as this disclosure is material and relevant to any issue under consideration by the department.

Sec. A-21. 38 MRSA §414, sub-§8 is enacted to read:

8. Effect of license. Issuance of a license under this chapter does not convey any property right of any sort, or exclusive privilege. Except for toxic effluent standards and prohibitions imposed under the Federal Water Pollution Control Act, Section 307, as amended, compliance with a license during its terms constitutes compliance with this chapter. It is not a defense for a licensee in an enforcement action that it would have been necessary to halt or reduce the licensed activity in order to maintain compliance with the conditions of the license. The licensee shall take all reasonable steps to minimize or prevent any discharge in violation of a license that has a reasonable likelihood of adversely affecting human health or the environment.

Sec. A-22. 38 MRSA §414-A, sub-§§1 and 1-A, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §30, are further amended to read:

1. Generally. The ~~board~~ department shall issue a license for the discharge of any pollutants only if it finds that:

A. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

B. The discharge either by itself or in combination with other discharges will not lower the

quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter;

C. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the department finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with section 464, subsection 4, paragraph F. The finding must be made following procedures established by rule of the board pursuant to section 464, subsection 4, paragraph F;

D. The discharge will be subject to effluent limitations that require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents that are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations. If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgment, after consultation with the applicant and other interested parties of record. In determining best practicable treatment for each category or class, the department shall consider the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives; and

E. A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard is only applicable to applications to discharge pesticides.

1-A. License for copper sulfate applications in public water supplies. The commissioner ~~shall issue upon application, an emergency license within 48 hours of application~~ may issue licenses to treat public

water supplies with copper sulfate or related compounds. The commissioner may not issue more than 2 consecutive ~~emergency~~ licenses for the same body of water.

A. ~~An emergency~~ A license may only be issued if the Department of Human Services, Division of Health Engineering has determined that:

- (1) An abundant growth of algae producing taste or odor exists to such a degree that the water supply is in danger of becoming unhealthful or unpalatable;
- (2) The abundance of algae is a sporadic event. For purposes of this section, "sporadic" means occurring not more than 2 years in a row; and
- (3) The algae cannot effectively be controlled by other methods.

B. Any ~~emergency~~ license issued under this subsection is for one application or series of applications not to exceed 6 months, as provided in the terms of the license.

C. The commissioner shall impose all conditions necessary to meet the requirements of this section and all other relevant provisions of law.

~~D. The board and the Department of Human Services shall jointly adopt rules to carry out the purposes of this section.~~

Sec. A-23. 38 MRSA §414-A, sub-§1-B, ~~¶D,~~ as amended by PL 1993, c. 410, Pt. G, §6, is further amended to read:

D. ~~The~~ Until the State receives authority to issue permits under the Federal Water Pollution Control Act, the department shall limit to a maximum of 10 years the term of any overboard discharge license or conditional permit, including relicensings, issued after June 1, 1987. For the purposes of this section, "overboard discharge" is defined in accordance with section 466, subsection 9-A. ~~Licenses issued after June 1, 1987 for a 5 year term, must be extended to a 10 year term upon payment of the processing and licensing fees, prorated for the increased term of the license.~~ All licenses in existence on June 1, 1987, with expiration dates occurring in 1989 or 1990, expire on the date stated in the license. All other licenses in existence on June 1, 1987 expire on the same day and month stated in the existing license but in a new year, determined by the following schedule:

Current Expiration Date	New Date
1991, 1992	1990
1993, 1994	1991
1995, 1996	1992
1997, 1998	1993

After the State receives authority to issue permits under the Federal Water Pollution Control Act, the term of any overboard discharge license or conditional permit may not be more than 5 years.

Sec. A-24. 38 MRSA §414-A, sub-§4, as amended by PL 1993, c. 232, §2, is further amended to read:

4. License conditions affecting bypasses. In fashioning license decisions and conditions, the department shall consider the extent to which operation of the licensed facility will require an allowance for bypass of wastewater from any portion of a treatment facility when necessary for essential maintenance to assure efficient operation of the licensed facility, when unavoidable to prevent loss of life, personal injury or severe property damage and otherwise subject to applicable effluent limitations and standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, reasonably controlled and infrequent bypasses will be necessary for this purpose, and there is no feasible alternative to the bypass, such as the use of auxillary treatment facilities, retention of untreated wastes or maintenance during normal equipment downtime, the department shall fashion appropriate license allowances and conditions.

Sec. A-25. 38 MRSA §414-A, sub-§5 is enacted to read:

5. Modification, reopening and revocation. The following actions may be taken to reopen, modify or revoke and reissue waste discharge licenses. All actions taken under this subsection must be with notice to the licensee and all other interested parties of record and with opportunity for hearing. Actions may be appealed as set forth in sections 341-D and 346.

A. The department may reopen a license to add or change conditions or effluent limitations for toxic compounds identified in 40 Code of Federal Regulations, Section 401 or to include schedules of compliance to implement industrial pretreatment rules adopted by the board. Additionally, at the time of license issuance, the department may include as a condition of a license a provision for reopening the license for inclusion or change of specific limitations when facts available upon issuance indicate that changed

circumstances or new information may be anticipated.

B. A request for modification of a license may be made by the licensee for any valid cause or changed circumstance. The department may initiate a license modification:

- (1) When necessary to correct legal, technical or procedural mistakes or errors;
- (2) When there has been or will be a substantial change in the activity or means of treatment that occurred after the time the license was issued;
- (3) When new information other than revised rules, guidance or test methods becomes available that would have justified different conditions at the time the license was issued;
- (4) When a pollutant not included in the license may be present in the discharge in quantities sufficient to require treatment, such as when the pollutant exceeds the level that can be achieved by the technology-based treatment standards appropriate to the licensee, or contribute to water quality violations;
- (5) When necessary to remove net limits based on pollutant concentration in intake water when the licensee is no longer eligible for them, consistent with federal law;
- (6) When necessary to make changes as a result of the failure of one state to notify another state whose waters may be affected by a discharge; or
- (7) When necessary to include pretreatment compliance schedules required pursuant to federal law.

C. Notwithstanding Title 5, section 10051, the board may modify, revoke or suspend a license when the board finds that any of the conditions specified in section 341-D, subsection 3 exist or upon an application for transfer of a license.

Sec. A-26. 38 MRSA §414-B, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §31, is further amended to read:

2. Pretreatment standards. The department may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants ~~which~~ that interfere with, pass through or otherwise are incompatible with those treatment works. In addition, the department may establish pretreatment standards for designated toxic pollutants ~~which~~ that

may be introduced into a publicly owned treatment works. In order to assume and properly administer the authority to issue and enforce permits under the Federal Water Pollution Control Act, the department may adopt rules as necessary, provided that the rules comply with the Federal Water Pollution Control Act or 40 Code of Federal Regulations, Part 403.

The department may require that any license for a discharge from a publicly owned treatment works include conditions to require the identification of pollutants, in terms of character and volume, from any significant source introducing pollutants subject to pretreatment standards, and to assure compliance with these pretreatment standards by each of these sources.

Sec. A-27. 38 MRSA §414-B, sub-§2-A, as enacted by PL 1979, c. 444, §9, is amended to read:

2-A. Prohibited discharge through publicly owned treatment works. The discharge to a publicly owned treatment works of any pollutant ~~which that~~ interferes with, passes through or otherwise is incompatible with these works, or ~~which that~~ is a designated toxic pollutant, is prohibited unless in compliance with pretreatment standards established for the applicable class or category of discharge. Violation of the terms and conditions of local pretreatment regulations or a user contract, permit or similar agreement between an industrial user and the owner of a publicly owned treatment works is prohibited. A violation may be enforced by the State or the owner of the treatment works or through joint action.

Sec. A-28. 38 MRSA §418, sub-§2, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §35, is further amended to read:

2. Storage; permit. Whoever proposes to use the inland waters of this State for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, shall apply to the department for a permit for that use. Applications for these permits must be in a form prescribed by the commissioner. If the department finds, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct that use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed ~~40~~ 5 years, with such terms and conditions as, in its judgment, may be necessary to protect the quality, standards and rights.

In the event the department determines it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application.

At that hearing the department shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of the use. If, after hearing, the department determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct the use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed ~~40~~ 5 years, with such terms and conditions as in its judgment may be necessary to protect the quality, standards and rights.

Sec. A-29. 38 MRSA §451, 2nd ¶, as amended by PL 1991, c. 66, Pt. A, §11, is further amended to read:

The department may establish a mixing zone for any discharge at the time of application for a waste discharge license. The department shall attach a description of the mixing zone as a condition of a license issued for that discharge. After opportunity for a hearing in accordance with section 345-A, the department may establish by order a mixing zone with respect to any discharge for which a license has been issued pursuant to section 414 or for which an exemption has been granted by virtue of section 413, subsection 2. ~~Prior to the commencement of any enforcement action to abate a classification violation, the department shall establish in the manner provided in this paragraph a mixing zone with respect to the discharge sought to be affected.~~

Sec. A-30. 38 MRSA §464, sub-§4, ¶A, as corrected by RR 1993, c. 1, §113, is amended to read:

A. Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges:

- (1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that discharges into these waters that were licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist;
- (2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;
- (3) Any discharge into a tributary of GPA waters that by itself or in combination with other activities causes water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters;

(4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;

(5) Discharge of pollutants to any water of the State that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range; ~~and~~

(6) New discharges of domestic pollutants to the surface waters of the State that are not conveyed and treated in municipal or quasi-municipal sewage facilities. For the purposes of this subparagraph, "new discharge" means any overboard discharge that was not licensed as of June 1, 1987, except those discharges that were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the department with clear and convincing evidence. For purposes of licensing, the department shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge will take place as a new discharge of domestic pollutants; ;

(7) After the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under the Federal Water Pollution Control Act, Section 402(c)(1), any proposed license to which the administrator has formally objected under 40 Code of Federal Regulations, Section 123.44, as amended, or any license that would not provide for compliance with applicable requirements of that Act or regulations adopted thereunder;

(8) Discharges for which the imposition of conditions can not ensure compliance with applicable water quality requirements of this State or another state;

(9) Discharges that would, in the judgment of the Secretary of the United States Army, substantially impair anchorage or navigation;

(10) Discharges that would be inconsistent with a plan or plan amendment approved

under the Federal Water Pollution Control Act, Section 208(b); and

(11) Discharges that would cause unreasonable degradation of marine waters or when insufficient information exists to make a reasonable judgment whether the discharge would cause unreasonable degradation of marine waters.

Notwithstanding subparagraph (6), the department may issue a wastewater discharge license allowing for an increase in the volume or quantity of discharges of domestic pollutants from any university, college or school administrative unit sewage facility, ~~provided that~~ as long as the university, college or school administrative unit has a wastewater discharge license valid on the effective date of this paragraph and the increase in discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11) or other applicable laws.

PART B

Sec. B-1. 38 MRSA §352, sub-§2, ¶A, as amended by PL 1991, c. 384, §1 and affected by §16, is further amended to read:

A. Except for those fees assessed under ~~section~~ sections 353-A and 353-B, processing fees 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. B-2. 38 MRSA §352, sub-§2, ¶C, as amended by PL 1991, c. 384, §2 and affected by §16, is further amended to read:

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

Sec. B-3. 38 MRSA §352, sub-§2, ¶F, as enacted by PL 1993, c. 735, §2, is amended to read:

F. Waste discharge license fees assessed under ~~section 352~~ 353-B for facilities licensed under ~~section~~ Title 36, section 656 and sections 362-A, 413, 418, 451 and 1101 must be used to support activities for water quality control operations, including licensing, compliance evaluation, monitoring, data acquisition, data management and administration.

Sec. B-4. 38 MRSA §352, sub-§5-A, as amended by PL 1995, c. 704, Pt. A, §1 and affected

by Pt. C, §2, is further amended by amending Table I to read:

TABLE I MAXIMUM FEES IN DOLLARS			
TITLE 36 SECTION	PROCESSING FEE	CERTIFICATION FEE	
656, sub-§1, ¶E, Pollution Control Facilities			sanitary wastewater only
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760, sub-§29, water pollution control facilities	\$250	\$20	2. All others 4,800 8,800
B. Air pollution control and §1760, sub-§30, air pollution control facilities	250	20	E. Publicly owned treatment works
			1. Flow of less than or equal to 50,000 gallons per day and no significant industrial component 100 400
			2. Flow of greater than 50,000 gallons per day, but less than 0.5 million gallons per day and no significant industrial component 100 1,400
			3. Flow of at least 0.5 million gallons per day, but less than 5 million gallons per day and no significant industrial component 100 3,600
			4. Flow of at least 5 million gallons per day or a significant industrial component 300 5,400
TITLE 38 SECTION	PROCESSING FEE	LICENSE FEE	
344, sub-§7, Permit by rule		\$50 \$0	F. Special discharges
362-A. Experiments		175 175	1. Aquatic pesticides 130 75
413, Waste discharge licenses		See section 353-B	2. Dredge spoils 130 75
A. Residential (10-year term)	450	150	418. Log storage 55 25
B. Commercial (10-year term)			451. Mixing zones 1,200 2,200
1. Flow of less than 2,000 gallons per day	4,800	1,280	451-A, Time schedule 25 25
2. Flow of 2,000 to 20,000 gallons per day inclusive	4,800	4,000	480-E, Natural resources protection
3. Flow of greater than 20,000 gallons per day	4,800	9,600	A. Any alteration of a protected natural resource, except coastal wetlands and coastal sand dunes, causing less than 20,000 square feet of alteration of the resource 140 50
C. Industrial minor (based upon EPA list of major and minor source discharges)			B. Any alteration of a coastal wetland causing less than 20,000 square feet of alteration of the resource 240 60
1. Discharges of cooling water, sanitary wastewater or treated storm water only	1,500	480	C. Any alteration of a protected natural resource, except coastal sand dunes, causing 20,000 square feet or more of alteration of the resource .015/sq. ft. 005/sq. ft. alteration alteration
2. All others	1,500	6,000	D. Any alteration of a coastal sand dune 3,500 1,500
D. Industrial major (based upon EPA list of major source discharges)			E. Condition compliance 84 0
1. Discharge of cooling water or	4,800	3,000	F. Minor modification 184 0
			485-A, Site location of development
			A. Residential subdivisions
			1. Affordable housing 50/lot 50/lot

2. On public water and sewers	175/lot	175/lot
3. All Other	250/lot	250/lot
B. Industrial parks	460/lot	460/lot
C. Mining	1,500	1,000
D. Structures	4,000	2,000
D-1. Traffic		
Scoping meeting with no further review	500	0
Scoping meeting with further review	500	1,500
"Scoping meeting" refers to the process described in section 484, subsection 2, paragraph B		
E. Other	1,000	1,000
543, Oily waste discharge	40	160
560, Vessels at anchorage	125	100
587, Ambient air quality or emissions standards variances	5,050	50
590, Air emissions licenses	See section 353-A	
633, Hydropower projects		
A. New or expanded generating capacity	450/MW	50/MW
B. Maintenance and repair or other structural alterations not involving an increase in generating capacity	150	50
1101, Sanitary districts	450	50
33 United States Code, Chapter 26, Water Quality Certifications, in conjunction with applications for hydropower project licensing or relicensing		
A. Initial consultation	1,000	0
B. Second consultation	1,000	0
C. Application		
1. Storage	1,000	0
2. Generating	300/MW	50/MW
1304, Waste management		
A. Septage disposal		
1. Site designation	50	25
B. Land application of sludges and residuals program approval		
1. Industrial sludge	400	400
2. Municipal sludge	300	275
3. Bioash	300	275
4. Wood ash	300	75
5. Food waste	300	75
6. Other residuals	300	175
C. Landfill		
1. Closing plans for nonmunicipal landfills	1,500	1,500
2. Closing plans for	500	500

municipal landfills		
3. Variance requests for attenuation landfills	175	175
4. Preliminary information reports	175	175
5. License transfers	500	175
6. Special waste disposal		
a. One-time disposal of quantities of 6 cubic yards or less	50	50
b. One-time disposal of quantities greater than 6 cubic yards	100	100
c. Program approval for routine disposal of a special waste	300	300
D. Incineration facilities		
1. Fuel substitution activities	1,575	1,500
2. License transfer	175	175
E. License transfer other than for landfills and incinerators	100	100

Sec. B-5. 38 MRSA §353, sub-§2, as amended by PL 1993, c. 735, §7, is further amended to read:

2. Processing fee. Except for annual air emission fees pursuant to section 353-A and annual waste discharge fees pursuant to section 353-B, 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. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. 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. B-6. 38 MRSA §353, sub-§5, as amended by PL 1991, c. 384, §7 and affected by §16, is further amended to read:

5. Renewals or amendments. As set forth in ~~section~~ sections 353-A and 353-B, except for renewals or amendments issued under ~~section~~ sections 413 and 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. B-7. 38 MRSA §353-B is enacted to read:

§353-B. Annual waste discharge license fees

1. Fees assessed. After the effective date of this section, licensees must pay annual waste discharge license fees consisting of a base or minimum plus amounts from paragraph B, reflecting the quantity of pollutants actually discharged or licensed to be discharged and paragraph C, in consideration of the potential for water quality impact.

A. A base fee is assessed for the categories of waste discharge licenses identified in subsection 2, paragraph A. When a license authorizes discharges in more than one category, only the largest base fee may be applied to the license. When discharge fees described in paragraph B are not applicable or appropriate for a particular license group or discharge activity, only the base fee is assessed.

B. In addition to the base fee amount, fees are assessed in consideration of the quantity and nature of pollutants discharged. When data are available, average daily discharge quantities are used in computing fees for conventional and nonconventional pollutants discharged from publicly owned sanitary and industrial process wastewater sources. When data are not available and for other pollutants and categories, fees are determined using the discharge limits established in a waste discharge license.

C. In addition to the base and discharge fees described in paragraphs A and B, fees may be assessed for the following.

(1) The base fee may be increased by a factor reflecting the initial dilution of an effluent as discharged to the receiving water. This assessment is applied to publicly owned sanitary and industrial process wastewater sources licensed for more than 50,000 gallons per day and having initial dilutions of less than 1,000 to one. The assessment is determined by multiplying the applicable base fee times 1.5 divided by the square root of the chronic dilution factor.

(2) When a license authorizes multiple discharge points from the same location, there is an additional fee of \$35 per discharge point.

D. If there are no discharges pursuant to a waste discharge license during an entire year, only the base fee is assessed for that year plus applicable water quality impact and multiple discharge points adjustments from paragraph C may be assessed.

2. Maximum fee amounts and rates. Waste discharge license fees are as set out in this section.

A. The base and maximum fees that may be assessed to categories of discharge activities are as follows.

<u>Discharge Group</u>	<u>annual fee</u>	<u>Base fee not to exceed</u>	<u>Maximum fee for individual in group</u>
<u>Publicly owned treatment facilities, greater than 6,000 gallons per day but less than 5 million gallons per day and no significant industrial waste</u>	annual fee	\$175	none
<u>Publicly owned treatment facilities, greater than 5 million gallons per day or with significant industrial waste</u>	annual fee	\$770	none
<u>Major industrial facility, process wastewater (based on EPA list of major source discharges)</u>	annual fee	\$1,850	none
<u>Other industrial facility, process wastewater</u>	annual fee	\$630	none
<u>Food handling or packaging wastewater</u>	annual fee	\$315	\$2,100
<u>Fish rearing facility</u>	annual fee	\$230	\$1,400
<u>Noncontact cooling water</u>	annual fee	\$90	\$7,000

<u>Industrial or commercial sources, miscellaneous or incidental non-process wastewater</u>	annual fee	\$115	\$2,100	<p><u>When a license authorizes multiple discharge points in different categories in the same license, the total maximum fee for the license may not exceed the maximum fee for the most significant category plus 1/2 of the maximum fee for each of the other applicable categories.</u></p> <p><u>B. The annual rate per unit for various pollutants and groups of discharges used in computing discharge and license quantity fees may not exceed the limits set out in this paragraph. When a license authorizes the discharge of pollutants fitting more than one category, the appropriate fee is due for each group and type of pollutant.</u></p>																																
<u>Municipal combined sewer overflow</u>	annual fee	\$115	\$1,400																																	
<u>Sanitary wastewater, commercial sources</u>	annual fee	\$60	\$1,200																																	
<u>Sanitary wastewater, residential sources 600 gallons per day and less</u>	annual fee	\$45	---																																	
<u>Sanitary wastewater, residential sources more than 600 gallons per day</u>	annual fee	\$60	\$600	<table border="0"> <tr> <td><u>License group or type of pollutant</u></td> <td><u>Rate</u></td> </tr> <tr> <td><u>Conventional pollutants, license rate</u></td> <td><u>\$1.25 per pound</u></td> </tr> <tr> <td><u>Conventional pollutants, discharge rate</u></td> <td><u>\$2.40 per pound</u></td> </tr> <tr> <td><u>Conventional pollutants, primary treatment only</u></td> <td><u>\$0.55 per pound</u></td> </tr> <tr> <td><u>Conventional pollutants, food handling or packing facilities</u></td> <td><u>\$0.05 per pound</u></td> </tr> <tr> <td><u>Nonconventional or toxic pollutants</u></td> <td><u>Variable*</u></td> </tr> <tr> <td><u>Heat (as licensed flow x temperature x 8.34)</u></td> <td><u>\$0.045 per million BTU</u></td> </tr> <tr> <td><u>Flow: fish rearing facilities</u></td> <td><u>\$45 per million gallons</u></td> </tr> <tr> <td><u>Flow: combined sewer overflows (based on treatment facility design)</u></td> <td><u>\$55 per million gallons</u></td> </tr> <tr> <td><u>Flow: nonprocess from industrial or commercial sources</u></td> <td><u>\$175 per million gallons</u></td> </tr> <tr> <td><u>Flow: publicly owned treatment facilities</u></td> <td><u>\$630 per million gallons</u></td> </tr> <tr> <td><u>Flow: process from industrial or commercial sources</u></td> <td><u>\$630 per million gallons</u></td> </tr> <tr> <td><u>Flow: treated storm water</u></td> <td><u>\$17.50 per million gallons</u></td> </tr> <tr> <td><u>Flow: sanitary from commercial sources</u></td> <td><u>\$0.02 per gallon</u></td> </tr> <tr> <td><u>Flow: sanitary from residential sources</u></td> <td><u>\$0.02 per gallon</u></td> </tr> <tr> <td><u>Flow: sanitary from publicly owned facilities less than 6,000 gallons per day</u></td> <td><u>\$0.02 per gallon</u></td> </tr> </table>	<u>License group or type of pollutant</u>	<u>Rate</u>	<u>Conventional pollutants, license rate</u>	<u>\$1.25 per pound</u>	<u>Conventional pollutants, discharge rate</u>	<u>\$2.40 per pound</u>	<u>Conventional pollutants, primary treatment only</u>	<u>\$0.55 per pound</u>	<u>Conventional pollutants, food handling or packing facilities</u>	<u>\$0.05 per pound</u>	<u>Nonconventional or toxic pollutants</u>	<u>Variable*</u>	<u>Heat (as licensed flow x temperature x 8.34)</u>	<u>\$0.045 per million BTU</u>	<u>Flow: fish rearing facilities</u>	<u>\$45 per million gallons</u>	<u>Flow: combined sewer overflows (based on treatment facility design)</u>	<u>\$55 per million gallons</u>	<u>Flow: nonprocess from industrial or commercial sources</u>	<u>\$175 per million gallons</u>	<u>Flow: publicly owned treatment facilities</u>	<u>\$630 per million gallons</u>	<u>Flow: process from industrial or commercial sources</u>	<u>\$630 per million gallons</u>	<u>Flow: treated storm water</u>	<u>\$17.50 per million gallons</u>	<u>Flow: sanitary from commercial sources</u>	<u>\$0.02 per gallon</u>	<u>Flow: sanitary from residential sources</u>	<u>\$0.02 per gallon</u>	<u>Flow: sanitary from publicly owned facilities less than 6,000 gallons per day</u>	<u>\$0.02 per gallon</u>
<u>License group or type of pollutant</u>	<u>Rate</u>																																			
<u>Conventional pollutants, license rate</u>	<u>\$1.25 per pound</u>																																			
<u>Conventional pollutants, discharge rate</u>	<u>\$2.40 per pound</u>																																			
<u>Conventional pollutants, primary treatment only</u>	<u>\$0.55 per pound</u>																																			
<u>Conventional pollutants, food handling or packing facilities</u>	<u>\$0.05 per pound</u>																																			
<u>Nonconventional or toxic pollutants</u>	<u>Variable*</u>																																			
<u>Heat (as licensed flow x temperature x 8.34)</u>	<u>\$0.045 per million BTU</u>																																			
<u>Flow: fish rearing facilities</u>	<u>\$45 per million gallons</u>																																			
<u>Flow: combined sewer overflows (based on treatment facility design)</u>	<u>\$55 per million gallons</u>																																			
<u>Flow: nonprocess from industrial or commercial sources</u>	<u>\$175 per million gallons</u>																																			
<u>Flow: publicly owned treatment facilities</u>	<u>\$630 per million gallons</u>																																			
<u>Flow: process from industrial or commercial sources</u>	<u>\$630 per million gallons</u>																																			
<u>Flow: treated storm water</u>	<u>\$17.50 per million gallons</u>																																			
<u>Flow: sanitary from commercial sources</u>	<u>\$0.02 per gallon</u>																																			
<u>Flow: sanitary from residential sources</u>	<u>\$0.02 per gallon</u>																																			
<u>Flow: sanitary from publicly owned facilities less than 6,000 gallons per day</u>	<u>\$0.02 per gallon</u>																																			
<u>Sanitary wastewater, public sources less than 6,000 gallons per day</u>	annual fee	\$60	\$180																																	
<u>Aquatic pesticide application</u>	annual fee*	\$200	---																																	
<u>Snow dumps</u>	annual fee*	\$125	---																																	
<u>Salt and sand storage pile</u>	annual fee*	\$150	---																																	
<u>Log storage permit</u>	annual fee*	\$200	---																																	
<u>General permit coverage for storm water discharges</u>	annual fee*	\$100	---																																	
<u>Experimental discharge license</u>	license fee*	\$500	---																																	
<u>Mixing zone, in addition to other applicable fees</u>	flat fee*	\$4,000	---																																	
<u>Formation of sanitary district</u>	flat fee*	\$300	---																																	
<u>Transfer of license for residential or commercial sanitary wastewater</u>	flat fee*	\$100	---																																	

*Discharge or license quantity fees do not apply to these categories.

*The license rate per pound is \$10.50 divided by the licensed effluent concentration. The dis

charge rate per pound is \$21 divided by the licensed effluent concentration.

For the purposes of this section, the term "conventional pollutant" means oxygen-demanding compounds, suspended or dissolved solids, oil and grease. The term "nonconventional pollutants" means other chemical constituents subject to fees. Excluded from fees are the following: pH, residual chlorine, settleable solids, bacteria, whole effluent toxicity tests, color, any compound without numeric license limitations and effluent concentrations reported as being below acceptable detection limits.

Annual discharge or license quantity fees may be calculated using either pounds of pollutants or allowable flow, as is most appropriate for the circumstances of a particular discharge category, situation or location. License limits may be supplemented by applications and related supporting materials when necessary to calculate effluent quantities or concentrations.

3. Schedule. The fee for existing licenses must be paid on the anniversary date of the license or another date initially established by the department. This date, once established, remains the scheduled date for paying the annual fee, regardless of future changes of the anniversary date. 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 or following the first year of discharge, if applicable, the final annual fee is determined. Any additional amount due or refund of overpayment must be paid within 30 days of determination of the final fee. If the application is denied, 50% of the initial annual fee must be refunded.

4. Renewals, amendments and modifications. Except for transfers of licenses for discharges of sanitary wastewater from commercial or residential sources as provided for in subsection 2, there are no additional fees assessed for license renewals, amendments or modifications.

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

6. Initial year fee rates. Notwithstanding subsection 2, paragraph B, during the first year after the effective date of this section, the following discharge fee rates must be used in computing annual waste discharge license fees. All other provisions of subsection 2 apply.

License group or type of pollutant Rate

<u>Conventional pollutants, license rate</u>	<u>\$1.00 per pound</u>
<u>Conventional pollutants, discharge rate</u>	<u>\$1.90 per pound</u>
<u>Conventional pollutants, primary treatment only</u>	<u>\$0.45 per pound</u>
<u>Conventional pollutants, food handling or packing facilities</u>	<u>\$0.04 per pound</u>
<u>Nonconventional or toxic pollutants</u>	<u>Variable*</u>
<u>Heat (as licensed flow x temperature x 8.34)</u>	<u>\$0.036 per million BTU</u>
<u>Flow: fish rearing facilities</u>	<u>\$36 per million gallons</u>
<u>Flow: combined sewer overflows (based on treatment facility design)</u>	<u>\$45 per million gallons</u>
<u>Flow: nonprocess from industrial or commercial sources</u>	<u>\$140 per million gallons</u>
<u>Flow: publicly owned treatment facilities</u>	<u>\$500 per million gallons</u>
<u>Flow: process from industrial or commercial sources</u>	<u>\$500 per million gallons</u>
<u>Flow: treated storm water</u>	<u>\$14 per million gallons</u>
<u>Flow: sanitary from commercial sources</u>	<u>\$0.02 per gallon</u>
<u>Flow: sanitary from residential sources</u>	<u>\$0.02 per gallon</u>
<u>Flow: sanitary from publicly owned facilities less than 6,000 gallons per day</u>	<u>\$0.02 per gallon</u>

*The license rate per pound is \$8.40 divided by the licensed effluent concentration. The discharge rate per pound is \$16.80 divided by the licensed effluent concentration.

Sec. B-8. Revenue reductions due to pollution prevention. The Legislature recognizes the public benefits of pollution prevention efforts that result in reduced quantities of pollutants discharged into the waters of the State, and a fee system involving amounts of pollutants discharged provides a sound incentive for pollution prevention. The Legislature further recognizes that proper funding for water quality management programs must be maintained without creating economic disincentives or inequities from pollution prevention. Accordingly, future decreases in fee revenues due to pollution prevention should be acknowledged and offset by increased General Fund appropriations.

Sec. B-9. Explore available funding. The Commissioner of Environmental Protection shall explore all available funding opportunities prior to the implementation of the fee schedule established in the Maine Revised Statutes, Title 38, section 353-B, subsection 2, paragraph B.

Sec. B-10. Report. The Department of Environmental Protection shall monitor the effectiveness of the waste discharge licensing program and report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 1, 2001 concerning significant aspects of the program. The report must address the department's handling of increased responsibilities as a result of being delegated the National Pollutant Discharge Elimination System permit program by the United States Environmental Protection Agency, including the following issues: timely permit issuance, effluent toxics, technical assistance, data management, customer service, compliance and enforcement. The report may include recommendations concerning any necessary statutory changes. The department shall consult with representatives of the regulated community and other interested groups when preparing the report.

Sec. B-11. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

**ENVIRONMENTAL
PROTECTION,
DEPARTMENT OF
Maine Environmental
Protection Fund**

Positions - Legislative Count	(8,000)
Personal Services	\$192,584
All Other	30,000

Provides for the allocation of funds for 2 Clerk Typist III positions, 4 Environmental Specialist II positions, one Environmental Specialist III position and one Assistant Engineer position and operational support funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	<hr/> \$222,584
---	-----------------

Sec. B-12. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

**ATTORNEY GENERAL,
DEPARTMENT OF THE**

**Administration - Attorney
General**

Positions - Legislative Count	(0,500)
Personal Services	\$21,935
All Other	3,748

Allocates funds for a part-time Assistant Attorney General position to handle the expected increase in workload.

**DEPARTMENT OF
THE ATTORNEY
GENERAL
TOTAL**

\$25,683

See title page for effective date.

CHAPTER 795

H.P. 1530 - L.D. 2152

**An Act Regarding the Medicaid
Program**

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

Sec. 1. 22 MRSA §14, sub-§1, as amended by PL 1997, c. 395, Pt. E, §1, is further amended to read:

1. Recovery procedures. When benefits are provided or will be provided to a beneficiary under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX, or under the Maine Health Program, section 3189, for the medical costs of injury, disease, disability or similar occurrence for which a 3rd party is, or may be, liable, the commissioner may recover from that party the reasonable value of the benefits provided. This right of recovery is separate and independent from any rights or causes of action belonging to a beneficiary under the Medicaid program or under the Maine Health Program. For Medicaid recipients who participated in the Medicaid managed care program, "reasonable value" means the total value of coverable medical services provided