LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

requirement of this subsection and after providing a reasonable opportunity to correct the violation. The administrative order may include, but is not limited to, a requirement that the owner or operator of an underground oil storage facility cease deliveries of oil to, and operation of, the underground oil storage tank and associated piping that are the subject of the violation until the violation has been corrected.

C. Service of the commissioner's administrative order under paragraph B must be made by hand delivery by an authorized representative of the department or by certified mailing, return receipt requested.

D. The person to whom the administrative order under paragraph B is directed shall comply immediately or within the time period specified in the order. That person may appeal the order to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter VII.

Sec. 18. 38 MRSA §563-A, sub-§1-D is enacted to read:

1-D. Prohibition on delivery. Effective May 1, 2002, a person may not deliver oil to an underground oil storage tank identified by the department as in violation of subsection 1 or 1-A through the publication of a list of such nonconforming tanks. The department may revise the list as new information becomes available and shall take reasonable steps, such as targeted mailings and posting of information on the Internet, to disseminate the list of nonconforming tanks to persons in the oil delivery business.

See title page for effective date.

CHAPTER 232

H.P. 1108 - L.D. 1477

An Act to Amend Certain Laws Regarding Land and Water Quality Protection

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

Sec. 1. 22 MRSA §2660-C, sub-§1, ¶A, as amended by PL 1995, c. 581, §1, is repealed.

Sec. 2. 22 MRSA §2660-C, sub-§1, ¶¶A-1 and A-2 are enacted to read:

A-1. Three of the members must represent the water purveying community and must be associated with public water systems. One of the 3 must be associated with a public water system serving a population of not more than 1,000 people, one must be associated with a public water system serving a population of at least 1,001 but not more than 10,000 people and one must be associated with a public water system serving a population greater than 10,000.

A-2. Two members must be users of noncommunity water systems. One of the 2 must be a user of a transient noncommunity water system and one must be a user of a nontransient, noncommunity water system.

Sec. 3. 22 MRSA §2660-C, sub-§1, ¶B, as enacted by PL 1993, c. 410, Pt. DD, §4, is amended to read:

B. ~~Four~~ Three of the members must represent the drinking water public. ~~At least one of the 4 must be a user of a transient, noncommunity water system and at least one must be a user of a nontransient, noncommunity water system.~~

Sec. 4. 38 MRSA §346, sub-§3, as enacted by PL 1977, c. 300, §9, is repealed.

Sec. 5. 38 MRSA §361-A, sub-§1-J, as enacted by PL 1997, c. 794, Pt. A, §10, is amended to read:

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~~ 2001.

Sec. 6. 38 MRSA §361-A, sub-§1-K, as enacted by PL 1997, c. 794, Pt. A, §10, is amended to read:

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~~ 2001.

Sec. 7. 38 MRSA §410-G, as amended by PL 1989, c. 890, Pt. A, §40 and Pt. B, §23, is further amended to read:

§410-G. Report required

The commissioner in cooperation with the Department of Marine Resources shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources and the joint standing committee of the Legislature having jurisdiction over marine resources during the first regular session of each Legislature. ~~The initial report must include recommendations regarding the design of the monitoring program and the level of funding necessary to fully implement the program.~~ The report is due on or before March 15th. The report must address the problems or potential problems of marine and estuarine resources caused by industrial contaminants. The commissioner also shall prescribe remedial steps to address problems identified in the report. If the department does not receive funding for the Marine Environmental Monitoring Program described in section 410-F during all or part of the calendar year prior to the first regular session of a Legislature, then the reporting requirements of this section are waived.

Sec. 8. 38 MRSA §410-N, sub-§3, ¶A, as enacted by PL 1999, c. 722, §1, is amended to read:

A. The department or a person designated by the department may attempt eradication of an invasive aquatic plant from a water body if determined feasible by the department. If the commissioner determines that eradication activities must be undertaken immediately, a license is not required under ~~section 413 or~~ section 480-C for the use of a physical, chemical or biological control material by the department or a person designated by the department if the use of the control material is specifically related to the immediate eradication of invasive aquatic plant populations in the water body. Prior to undertaking an eradication activity and to the extent practical, the department shall notify landowners whose property is adjacent to the area where the activity will be undertaken.

Sec. 9. 38 MRSA §411, first ¶, as repealed and replaced by PL 1999, c. 790, Pt. A, §50, is amended to read:

The commissioner may pay an amount not to exceed 80% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners. The commissioner may make payments to the Maine Municipal Bond Bank to supply the State's share of the revolving loan fund established by Title 30-A, section 6006-A. The commissioner may pay up to 90% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners in which the construction cost of the project does not exceed $100,000 as long as ~~total expenditures for the small projects do not exceed $1,000,000 in any fiscal year and~~ not more than one grant is made to any applicant each year, except that the commissioner may pay a percentage of the cost of individual projects serving single-family dwellings, seasonal dwellings or commercial establishments according to the following schedule:

ANNUAL INCOME	SINGLE-FAMILY DWELLING	SEASONAL DWELLING
$0 to $5,000	100%	50%
$5,001 to $20,000	90%	50%
$20,001 to $30,000	50%	25%
$30,001 to $40,000	25%	25%
$40,001 or more	0%	0%

GROSS PROFIT	COMMERCIAL ESTABLISHMENT
$0 to $50,000	50%
$50,001 to $100,000	25%
$100,001 or more	0%

Sec. 10. 38 MRSA §411-A, sub-§2, as amended by PL 1999, c. 243, §4, is further amended to read:

2. Cost-share. The commissioner shall determine the portion of project expenses eligible for grants under this section as follows.

A. The commissioner shall pay 90% of the costs of a project that results in the removal of a year-round residential overboard discharge.

B. The commissioner shall pay 50% of the costs of a project that results in the removal of a commercial overboard discharge.

C. The commissioner shall pay 25% of the costs of a project that results in the removal of a seasonal residential overboard discharge, except that the commissioner shall pay 50% of the costs of that project if the Commissioner of Marine Resources certifies that the project is likely to result in the opening of a shellfish harvesting area that is closed under Title 12, section 6172.

For the purposes of this section ~~and section 414-A~~, "year-round residential overboard discharge" means an

overboard discharge from a human habitation occupied for more than 6 months in any calendar year and is the legal residence of the owner for federal and state income tax purposes.

Sec. 11. 38 MRSA §414-A, sub-§6 is enacted to read:

6. Cooling water intake structures. Any standard established by the department pursuant to section 413 or this section with respect to cooling water discharges and applicable to a point source must require that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts.

Sec. 12. 38 MRSA §414-B, sub-§1, as enacted by PL 1973, c. 450, §15, is amended to read:

1. Definition. "Publicly owned treatment works" means any ~~facility~~ device or system for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity. "Publicly owned treatment works" includes sewers, pipes or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

Sec. 13. 38 MRSA §420-D, first ¶, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by Pt. C, §2 and 1997, c. 603, §8, is amended to read:

A person may not construct, or cause to be constructed, a project that includes 20,000 square feet or more of impervious area or 5 acres or more of disturbed area in the direct watershed of a body of water most at risk from new development or one acre or more of impervious area or 5 acres or more of disturbed area in any other area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State.

Sec. 14. 38 MRSA §420-D, sub-§5, as amended by PL 1997, c. 502, §2 and affected by c. 603, §8, is further amended to read:

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development~~, unless the project requires review solely as a development that generates 100 or more passenger car equivalents at peak hour~~; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; and sections 631 to 636, permits for hydropower projects. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 and are in effect at the time of review as determined by the department.

Sec. 15. 38 MRSA §480-E-1, as enacted by PL 1999, c. 333, §20, is amended to read:

§480-E-1. Delegation of permit-granting authority to the Maine Land Use Regulation Commission

The Maine Land Use Regulation Commission shall issue all permits under this article for activities that are located wholly within its jurisdiction and are not subject to review and approval by the department under any other article of this Title. The Maine Land Use Regulation Commission shall issue modifications to department permits meeting these criteria for permits issued prior to September 18, 1999. The Maine Land Use Regulation Commission shall process these permits and modifications in accordance with the provisions of Title 12, sections 681 to 689 and rules and standards adopted under those sections.

The Maine Land Use Regulation Commission, in consultation with the department, shall annually review land use standards adopted by the commission to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan.

Sec. 16. 38 MRSA §480-V, as enacted by PL 1993, c. 721, Pt. F, §4 and affected by Pt. H, §1, is amended to read:

§480-V. Applicability

Except as provided in this section, this article applies to all protected natural resources in the State, including significant wildlife habitat that is within another protected natural resource.

1. Exemptions. This article does not apply to:

A. Significant wildlife habitat not within another protected natural resource, unless that significant

wildlife habitat is identified on a map adopted by the board~~; and~~.

~~B. Those portions of fragile mountain areas, deer wintering areas, seabird nesting islands and great ponds, rivers, streams and brooks within the jurisdiction of the Maine Land Use Regulation Commission under Title 12, chapter 206-A. The commission, in consultation with the department, shall periodically review land use standards adopted by the commission for these resources to ensure that the standards afford a level of protection consistent with the goals of this article, the goals of Title 12, chapter 206-A and the commission's comprehensive land use plan.~~

Sec. 17. 38 MRSA §480-Z, sub-§§5 and 6, as enacted by PL 1997, c. 101, §1 and affected by §2, are amended to read:

5. Report; evaluation. The department shall submit a report annually by February 1st to the joint standing committee of the Legislature having jurisdiction over natural resources matters regarding the wetlands compensation program. The report must include information on the amount and type of wetlands altered, the associated impact on wetland functions and values and the compensation required by the department. The information must be provided for each of the following categories: compensation projects implemented by the applicant, compensation authorized by the purchase of credits from a mitigation bank, compensation authorized by payment of compensation fees and wetland alterations for which compensation was not required.

By January 1, 2001 and February 1, 2002, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters an evaluation of the effectiveness and efficiency of the compensation program developed under this section, including the amount and type of wetlands altered, the effect on wetland functions and values, an assessment of the relative environmental benefit of each compensation option, an assessment of whether coastal wetlands should be included in the program, an assessment of the requirement that the compensation project be located in the same watershed as the affected wetland and a comparison of the compensation program developed under this section with compensation prior to the effective date of this section. The department may include recommendations for extending the program and any suggested statutory changes.

6. Repeal. This section is repealed October 15, ~~2001~~ 2003. The repeal of this section does not affect any valid permits, compensation projects, credits and compensation funds issued, implemented, purchased or established pursuant to this section.

Sec. 18. 38 MRSA §488, sub-§18, ¶¶B and C, as enacted by PL 1995, c. 493, §7, are amended to read:

B. A roundwood or lumber storage yard and any road associated solely with the yard, constructed prior to the effective date of this subsection, is exempt from review under this article provided the following requirements are met.

(1) Within one year after the effective date of this subsection, a notice of intent to comply must be provided to the department.

(2) Within 2 years of the effective date of this subsection, construction and operation of the yards and roads must be in compliance with the erosion and sedimentation control standards and storm water standards contained in board rules and adopted pursuant to section 484.

(3) Any expansion or alteration of such facilities must meet the requirements of paragraph A.

C. Notice of intent filed under this subsection must be complete, submitted on forms approved by the department and mailed by certified mail, return receipt requested. The notice must include a fee of $250. The fee for transfer or minor revision of the notice of intent is $105.

Sec. 19. 38 MRSA §488, sub-§18, ¶D, as enacted by PL 1995, c. 493, §7, is repealed.

Sec. 20. 38 MRSA §488, sub-§20, as enacted by PL 1995, c. 704, Pt. A, §20 and affected by Pt. C, §2, is amended to read:

20. Modifications in permitted subdivisions. Review is not required under this article in the following instances:

A. When the owner of a single lot in a subdivision with a permit under this article conveys a right of access to adjacent land that was not part of the permitted subdivision, if the right-of-way is not contrary to the terms of the subdivision permit and the right-of-way is not more than 50 feet long; or

B. When 2 lot owners in a subdivision with a permit under this article convey reciprocal easements for the purpose of constructing a common driveway in place of 2 separate driveways, if the single driveway reduces the total amount of impervious area in the affected subwatershed~~; or~~

and the single driveway is not contrary to the terms of the subdivision permit.

~~C. When a lot owner in a permitted subdivision seeks to relocate the proposed septic field that had been designated by the permit holder, if the septic field is no closer to the down-gradient property boundary and the relocation is approved by the required local and state agencies, such as the plumbing inspector and the Department of Human Services, Division of Health Engineering.~~

Sec. 21. Current membership of Maine Public Drinking Water Commission not affected. Notwithstanding the Maine Revised Statutes, Title 22, section 2660-C, members of the Maine Public Drinking Water Commission on the effective date of this Act continue to serve the remainder of their appointed terms except as provided in this section.

1. The person who on the effective date of this Act is representing public water systems serving at least 500 but not more than 3,300 people is appointed for the remainder of that person's term as a public member of the commission and is entitled to continue as chair of the commission.

2. The person who on the effective date of this Act is reprsenting public water systems serving at least 3,301 but not more than 10,000 people is appointed for the remainder of that person's term as the member representing public water systems serving from 1,001 to 10,000 people.

See title page for effective date.

CHAPTER 233

H.P. 938 - L.D. 1252

An Act to Create Certainty in Maine's Air Quality Program

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

Sec. 1. 38 MRSA §585-E, sub-§1, ¶C is enacted to read:

C. "California enhanced vapor recovery system" means a service station vapor recovery system certified by the California Air Resources Board under requirements approved by the California Air Resources Board on March 23, 2000.

Sec. 2. 38 MRSA §585-E, sub-§§2-A and 6 are enacted to read:

2-A. California enhanced vapor recovery system. The board may not adopt rules or requirements mandating that any service station install or retrofit a vapor recovery system to meet the requirements of a California enhanced vapor recovery system.

6. Section repeal. No later than April 1, 2002 the department shall provide to the joint standing committee of the Legislature having jurisdiction over natural resources matters an appropriate date for the repeal of this section.

See title page for effective date.

CHAPTER 234

H.P. 505 - L.D. 645

An Act to Allow Motor Vehicle Safety Inspection Stations to Set Their Own Vehicle Inspection Fees

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

Sec. 1. 29-A MRSA §1751, sub-§3, as amended by PL 1997, c. 786, §2, is repealed.

Sec. 2. 29-A MRSA §1751, sub-§3-A is enacted to read:

3-A. Inspection fees. An inspection station may charge the following fees:

A. For inspections performed under subsection 2, the fee may not be more than $12.50;

B. For inspections of pre-1996 model vehicles performed under subsection 2-A, the fee may not be more than $15.50; and

C. For inspections of 1996 and subsequent model vehicles performed under subsection 2-A, the fee may not be more than $18.50.

The inspection fee is payable whether the vehicle passes inspection or not.

Sec. 3. 29-A MRSA §1766, sub-§3, as amended by PL 1997, c. 786, §6 and affected by §14, is further amended to read:

3. Fee. Stickers are furnished by the Chief of the State Police at ~~$1.50~~ $2.50 each.

See title page for effective date.