

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 13, 2002 to November 14, 2002**

**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 2002 to June 14, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**FEBRUARY 13, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 13, 2003**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2003**

**Sec. 19. 38 MRSA §570-K, sub-§5**, as enacted by PL 2001, c. 605, §3, is amended to read:

**5. Spill prevention and control.** An above-ground oil storage facility used in the marketing and distribution of oil to others must be operated in compliance with the federal requirements for the preparation and implementation of spill prevention control and countermeasure plans under 40 Code of Federal Regulations, 112 ~~(2001)~~ in effect on April 17, 2003. Failure to comply with those federal requirements in accordance with the deadlines set by the United States Environmental Protection Agency constitutes a violation of this Title. If the department believes that a facility's plan does not satisfy those federal requirements, the department shall request an opinion from the United States Environmental Protection Agency as to the legal adequacy of the plan and any amendment necessary to bring the facility into compliance with those federal requirements. The department shall prepare educational and technical materials for use by facilities affected by this subsection. This subsection is repealed October 1, 2005.

**Sec. 20. PL 1991, c. 817, §28**, as amended by PL 1997, c. 374, §15, is further 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date.** That section of this Act that amends the Maine Revised Statutes, Title 38, section 570, first paragraph, as repealed and replaced by Public Law 1987, chapter 735, section 72, takes effect December 31, ~~2005~~ 2010.

**Sec. 21. PL 1991, c. 817, §30**, as amended by PL 1997, c. 374, §16, is further amended to read:

**Sec. 30. Effective date.** 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, ~~2005~~ 2010.

See title page for effective date.

## CHAPTER 246

### H.P. 1090 - L.D. 1493

#### An Act To Expedite the Removal of Overboard Discharge

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

**Sec. 1. 38 MRSA §353-B, sub-§2, ¶A**, as amended by PL 2001, c. 230, §1, is further amended to read:

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

Discharge Group		Base fee not to exceed	Maximum fee for individual in group
Publicly owned treatment facilities, greater than 6,000 gallons per day but less than 5 million gallons per day and no significant industrial waste	annual fee	\$175	none
Publicly owned treatment facilities, 6,000 gallons per day or less	annual fee	\$60	\$180
Publicly owned treatment facilities, greater than 5 million gallons per day or with significant industrial waste	annual fee	\$770	none
Major industrial facility, process wastewater (based on EPA list of major source discharges)	annual fee	\$1,850	none
Other industrial facility, process wastewater	annual fee	\$630	none

Food handling or packaging wastewater	annual fee	\$315	\$2,100	Aquatic pesticide application	annual fee*	\$200	---
Fish rearing facility	annual fee	\$230	\$1,400	Snow dumps	annual fee*	\$125	---
Noncontact cooling water	annual fee	\$90	\$7,000	Salt and sand storage pile	annual fee*	\$150	---
Industrial or commercial sources, miscellaneous or incidental nonprocess wastewater	annual fee	\$115	\$2,100	Log storage permit	annual fee*	\$200	---
Municipal combined sewer overflow	annual fee	\$115	\$1,400	General permit coverage	annual fee*	\$100	---
Sanitary wastewater, excluding overboard discharge	annual fee	\$60	\$1,200	Experimental discharge license	license fee*	\$500	---
Sanitary overboard discharge, commercial sources	annual fee	<del>\$85</del> <u>\$210</u>	\$1,200	Mixing zone, in addition to other applicable fees	flat fee*	\$4,000	---
Sanitary overboard discharge, residential sources 600 gallons per day and less	annual fee	<del>\$50</del> <u>\$175</u>	---	Formation of sanitary district	flat fee*	\$300	---
Sanitary overboard discharge, residential sources more than 600 gallons per day	annual fee	<del>\$60</del> <u>\$200</u>	\$600	Transfer of license for residential or commercial sanitary wastewater	flat fee*	\$100	---
Sanitary overboard discharge, public sources	annual fee	<del>\$75</del> <u>\$210</u>	\$500	<p>*Discharge or license quantity fees do not apply to these categories.</p> <p>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.</p>			

**Sec. 2. 38 MRSA §361-A, sub-§3-C** is enacted to read:

**3-C. Overboard discharge.** "Overboard discharge" has the same meaning as in section 466, subsection 9-A.

**Sec. 3. 38 MRSA §411-A, sub-§2,** as amended by PL 2001, c. 232, §10, is repealed.

**Sec. 4. 38 MRSA §411-A, sub-§2-A** is enacted to read:

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

A. For an owner of overboard discharge with an annual income less than \$25,000, 100%;

B. For an owner of overboard discharge with an annual income between \$25,000 and \$50,000, 90%;

C. For an owner of overboard discharge with an annual income between \$50,001 and \$75,000, 50%;

D. For an owner of overboard discharge with an annual income between \$75,001 and \$100,000, 35%;

E. For an owner of overboard discharge with an annual income over \$100,000, 25%; and

F. For a publicly owned overboard discharge facility, 50% to a maximum of \$150,000.

For purposes of this subsection, "annual income" means the sum of all the property owner's federal taxable income for the previous year for single family dwellings, gross profits for the previous year for commercial establishments and gross rents for the previous year for rental properties, as listed on the relevant federal income tax returns.

**Sec. 5. 38 MRSA §411-A, sub-§4,** as amended by PL 1991, c. 499, §14, is repealed and the following enacted in its place:

**4. Reimbursement.** The commissioner shall utilize grants under this section to reimburse individuals for the cost of removing any overboard discharge, subject to the provisions of subsection 2-A, when:

A. The removal occurred after September 30, 1989 but was carried out according to plans and specifications approved by the commissioner in advance of construction and prior to the offering of a grant under this section;

B. The removal resulted in the elimination of sources of contamination to shellfish areas or public nuisance conditions; and

C. The removal is required under section 413, subsection 3 or section 414-A, subsection 1-B.

**Sec. 6. 38 MRSA §413, sub-§3,** as amended by PL 1989, c. 890, Pt. B, §28 and affected by Pt. A, §40, is further amended to read:

**3. Transfer of ownership.** In the event that any person possessing a license issued by the department transfers the ownership of the property, facility or

structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer are jointly and severally liable for any violation thereof until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

Except when it has been demonstrated within 5 years prior to a transfer that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Human Services pursuant to Title 22, section 42 based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharge. If an alternative to the overboard discharge is identified, the alternative system must be installed within 90 days of property transfer, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A.

**Sec. 7. 38 MRSA §414, sub-§2,** as amended by PL 1997, c. 794, Pt. A, §19, 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. 8. 38 MRSA §414, sub-§3-A,** as repealed and replaced by PL 1991, c. 294, §1, is repealed and the following enacted in its place:

**3-A. Inspection of overboard discharge systems.** The department shall inspect all licensed overboard discharge systems. The cost of the inspections must be assessed as part of the annual license fee. For residential overboard discharges

owned by individuals, the department shall provide a fee reduction based on the adjusted gross income of the license holder on the most recent tax return under the federal Internal Revenue Code of 1986. If the license holder's adjusted gross income is less than \$15,000, the license holder may reduce the total fee by \$125. Any overboard discharge license owner with a mechanical treatment system must provide annual proof of a private maintenance contract for maintenance of that system.

**Sec. 9. 38 MRSA §414, sub-§3-B,** as enacted by PL 1991, c. 294, §2, is repealed.

**Sec. 10. 38 MRSA §414-A, sub-§1-B, ¶A,** as enacted by PL 1989, c. 442, §3 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §30, is further amended to read:

A. The department shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of relicensing; when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Human Services pursuant to Title 22, section 42; that will not result in an overboard discharge, based on documentation from a licensed site evaluator provided by the applicant and approved by the department. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharges. If a technologically proven alternative is identified, the alternative must be installed within 180 days of the application's being accepted by the department, subject to availability of funding under section 411-A. If the applicant is not eligible for funding under section 411-A, the alternative system must be installed within 180 days. If the applicant is eligible for funding but no funding is available, the installation of an alternative system may be postponed until funding is available.

**Sec. 11. 38 MRSA §414-A, sub-§1-B, ¶B,** as amended by PL 1993, c. 223, §3, is further amended to read:

B. For the purposes of this subsection, the department may not require the installation or use of wastewater holding tanks as a "technologically proven alternative method of wastewater disposal" except in the following cases:

(1) Seasonal residential overboard discharges that are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service, when the elimination of the discharge alone or in conjunction with the

elimination of other discharges will result in the opening of a shellfish harvesting area or the removal of a public nuisance condition;

(2) All overboard discharges located within the boundaries of a sanitary or sewer district when the district has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district; and

(3) All overboard discharges located within the municipality when the municipality has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the municipality's services who are physically connected to the sewers of the municipality.

**Sec. 12. 38 MRSA §414-A, sub-§1-B, ¶C,** as enacted by PL 1989, c. 442, §3 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §30, is repealed.

**Sec. 13. 38 MRSA §414-A, sub-§1-B, ¶D,** as amended by PL 1997, c. 794, Pt. A, §23, is repealed.

**Sec. 14. 38 MRSA §464, sub-§4, ¶A,** as amended PL 1997, c. 794, Pt. A, §30, is further amended by amending subparagraph (6) to read:

(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. The volume of the discharge from an overboard discharge facility that was licensed as of June 1, 1987 is determined by the actual or estimated volume from the facilities connected to the overboard discharge facility during the 12 months preceding June 1, 1987 or the volume allowed by the previous license, whichever is less, unless it is found by the department that an error was made during prior licensing. The months during which a discharge may occur from an overboard discharge facility that was licensed as of

June 1, 1987 must be determined by the actual use of the facility at the time of the most recent license application prior to June 1, 1987 or the actual use of the facility during the 12 months prior to June 1, 1987, whichever is greater. If the overboard discharge facility was the primary residence of an owner at the time of the most recent license application prior to June 1, 1987 or during the 12 months prior to June 1, 1987, then the facility is considered a year-round residence. "Year-round residence" means a facility that is continuously used for more than 8 months of the year. 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 takes place as a new discharge of domestic pollutants;

See title page for effective date.

## CHAPTER 247

### H.P. 1040 - L.D. 1417

#### An Act To Make Changes to the Laws Governing Aquaculture Leasing

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

**Sec. 1. 5 MRSA §12004-I, sub-§57-C**, as reallocated by RR 1995, c. 2, §9, is amended to read:

<b>57-C.</b>	<del>Maine</del>	Not	12 MRSA
Marine	<del>Salmon</del>	Authorized	§6080
Resources	Aquaculture		
	Advisory		
	Council		

**Sec. 2. 12 MRSA §6072, sub-§1**, as amended by PL 1983, c. 301, §1, is further amended to read:

**1. Authority.** The commissioner may lease areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section ~~shall be~~ is exclusive. For the purposes of this section, the deputy commissioner may serve in the place of the commissioner. For the purposes of this section, the commissioner or the deputy commissioner serving in the place of the commissioner may

authorize in writing qualified professional department staff to sign lease documents.

**Sec. 3. 12 MRSA §6072, sub-§6, ¶D**, as enacted by PL 1999, c. 591, §2, is repealed.

**Sec. 4. 12 MRSA §6072, sub-§7-A**, as amended by PL 1999, c. 267, §2, is further amended to read:

**7-A. Decision.** The commissioner may grant the lease if the proposed project meets the following conditions as defined by ~~regulation~~ rule:

A. Will not unreasonably interfere with the ingress and egress of riparian owners;

B. Will not unreasonably interfere with navigation;

C. Will not unreasonably interfere with fishing or other uses of the area taking into consideration the number and density of aquaculture leases in an area. For the purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years;

D. Will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna;

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; ~~and~~

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally owned, ~~state-owned~~ state-owned or federally owned beaches and parks or municipally owned, ~~state-owned~~ state-owned or federally owned docking facilities;

G. Will not result in unreasonable impact from noise or light at the boundaries of the lease site; and

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

The commissioner shall adopt rules to quantify permissible impact under paragraph G and to establish