# LAWS

## OF THE

# STATE OF MAINE

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**
**FIRST REGULAR SESSION**
**NON-EMERGENCY LAWS IS**
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**THE GENERAL EFFECTIVE DATE FOR**
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**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**
**2005**

**Sec. 11. 34-A MRSA §3039, sub-§1,** as amended by PL 1991, c. 314, §45, is further amended to read:

**1. Accounts.** The ~~chief administrative officer~~ commissioner shall ~~promulgate~~ adopt rules for use of the clients' account. These rules must include a provision allowing a client to remove that client's money from the clients' account and place it in any type of investment outside the facility chosen by the client. The chief administrative officer shall keep a record of all money in the clients' account and is responsible for safekeeping of the money while the client is in the custody of the department and for the delivery of that money to the client upon the client's discharge.

**Sec. 12. 34-A MRSA §3069, sub-§1,** as amended by PL 2003, c. 482, Pt. B, §1, is further amended to read:

**1. Involuntary.** When ~~an inmate~~ a prisoner of a correctional ~~or detention~~ facility has been determined by a competent medical authority to require inpatient treatment for mental illness, the chief administrative officer of that facility shall make application in accordance with Title 34-B, section 3863.

A. Any person with respect to whom an application and certification under Title 34-B, section 3863 are made may be admitted to either state mental health institute.

B. Except as otherwise specifically provided in this section, Title 34-B, chapter 3, subchapter ~~IV~~ 4, Article ~~III,~~ 3 is applicable to the person as if the admission of the person were applied for under Title 34-B, section 3863.

C. A copy of the document by which the person is held in the facility must accompany the application for admission.

D. If the sentence being served at the time of admission has not expired or commitment has not been terminated in accordance with law at the time the person is ready for discharge from hospitalization, the person must be returned by the appropriate officers of the correctional ~~or detention~~ facility.

E. Admission to a hospital under this section has no effect upon a sentence then being served or a commitment then in effect. The sentence continues to run and the commitment remains in force, unless terminated in accordance with law.

**Sec. 13. 34-A MRSA §9887** is enacted to read:

**§9887. Supervision fee**

The department may impose on a person accepted for supervision under this compact a supervision fee of between $10 and $50 per month, as determined by the department, for the term of supervision by the department. In determining the amount of the fee, the department shall take into account the financial resources of the person and the nature of the burden the payment imposes. A request for transfer of supervision may not be denied solely because the person is not able to pay the fee. When a person fails to pay the supervision fee, the department may request the person's return to the sending state unless the failure to pay was not attributable to the person's willful refusal to pay or to a failure on the person's part to make a good faith effort to obtain the funds required for the payment.

See title page for effective date.

## CHAPTER 330

**H.P. 1124 - L.D. 1588**

### An Act To Amend Certain Laws Administered by the Department of Environmental Protection

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

**Sec. 1. 12 MRSA c. 421, sub-c. 2,** as amended, is repealed.

**Sec. 2. 32 MRSA §10015, last ¶,** as enacted by PL 1989, c. 845, §14 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the ~~District~~ Superior Court. Civil penalties accrue to the Ground Water Oil Clean-up Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter ~~IV~~ 4, and is subject to judicial review exclusively in the ~~District~~ Superior Court in accordance with Title 5, chapter 375, subchapter ~~VII~~ 7, ~~substituting the term "District Court" for "Superior Court,"~~ notwithstanding any other provision of law.

**Sec. 3. 36 MRSA §5219-X,** as enacted by PL 2003, c. 698, §1, is amended to read:

**§5219-X. Biofuel commercial production and commercial use**

**1. Definition.** As used in this section, unless the context otherwise indicates, the term "biofuel" means any commercially produced liquid or ~~gaseous product~~

~~or energy source~~ gas used to propel motor vehicles or otherwise substitute for liquid or gaseous fuels that is derived from agricultural crops or residues or from forest products or byproducts, as distinct from petroleum or other fossil carbon sources. "Biofuel" includes, but is not limited to, ethanol, methanol derived from biomass, levulinic acid, biodiesel, pyrolysis oils from wood, hydrogen or methane from biomass, or combinations of any of the above that may be used to propel motor vehicles either alone or in blends with conventional gasoline or diesel fuels or that may be used in place of petroleum products in whole or in part to fire heating devices or any stationary power device. The biofuel must be offered for sale and income must be derived from the commercial production of biofuel.

**2. Credit allowed.** A taxpayer engaged in the production of biofuels in the State who has received certification under subsection 4 is allowed a credit against the tax imposed by this Part on income derived during the taxable year from the production of biofuel in the amount of 5¢ per gallon of liquid biofuel or gaseous biofuel with a BTU equivalent to that of one gallon of gasoline that replaces the use of petroleum or liquid fuels derived from other fossil carbon sources. In blends with petroleum or other nonbiofuels, the credit is allowed only on the portion of that blend that the biofuel constitutes. Biofuel for which the credit is allowed must meet state and federal regulatory requirements applicable to the nature and intended use of the fuel produced.

**3. Limitations.** A person entitled to a credit under this section for any taxable year may carry over and apply the portion of any unused credits to the tax liability on income derived from the production of biofuel for any one or more of the next succeeding 5 taxable years. The credit allowed, including carryovers, may not reduce the tax otherwise due under this Part to less than zero.

**4. Certification.** A taxpayer engaged in the production of biofuels who is claiming a credit under subsection 2 shall provide information to the Commissioner of Environmental Protection regarding the biofuel being produced, including the quantity of biofuel products, the type of forest or agricultural product being utilized, the nature and composition of the biofuel being produced, the proportion and composition of any nonbiofuel with which the biofuel is blended, the BTU equivalent of the biofuel as compared to the BTU value of one gallon of gasoline and the type of application for which it is intended to be used. Upon review of the information, the Commissioner of Environmental Protection shall provide the taxpayer with a letter of certification stating that the biofuel produced during the taxable year is eligible for a tax credit under this section and stating the number of gallons of biofuel produced during the taxable year.

**5. Application.** This section applies to tax years beginning on or after January 1, 2004.

**Sec. 4. 38 MRSA §343-B, first ¶,** as enacted by PL 1991, c. 804, Pt. B, §1 and affected by §7, is amended to read:

At the request of a potential applicant or when required by rule, the department shall hold a preapplication meeting to identify the issues, types of information and documentation necessary for the department to properly assess a specific project. For any application that has had a preapplication meeting, the department shall also hold a presubmission meeting to review the application prior to the application being filed by the applicant unless the department determines that the presubmission meeting is unnecessary based upon the complexity of the application, status of development of the application or other factors and the applicant agrees not to hold a presubmission meeting.

**Sec. 5. 38 MRSA §347-A, sub-§3,** as enacted by PL 1989, c. 311, §4, is amended to read:

**3. Emergency orders.** Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations ~~which~~ the department administers or of the terms or conditions of any of the department's orders~~, which~~ that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order ~~issued under this emergency procedure shall~~ must be made by the sheriff or deputy sheriff ~~within the county where the person to whom the order is directed operates or resides~~ or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. In the event that the persons are so numerous that the specified method of service is a practical impossibility or the commissioner is unable to identify the person or persons causing or contributing to the hazard, the commissioner shall make the order known through prominent publication or announcement in news media serving the affected area.

The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but within 48 hours after receipt of the order the person may apply to the board for a hearing on the order ~~which shall be held by the board within~~

~~48 hours after receipt of application~~. ~~Within 7 days after the hearing, the board shall make findings of fact and continue, revoke or modify the order.~~ Within 7 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

**Sec. 6. 38 MRSA §352, sub-§2, ¶G** is enacted to read:

G. The license, notice, registration and certification fees administered by the department under this Title must be doubled at the time an application is submitted if it is received after the date on which submission is required by law. This increase may be reduced at the commissioner's discretion with a showing of mitigating circumstances.

**Sec. 7. 38 MRSA §361-A, sub-§1-J,** as amended by PL 2001, c. 232, §5, is further 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, ~~2001~~ 2005.

**Sec. 8. 38 MRSA §361-A, sub-§1-K,** as amended by PL 2001, c. 232, §6, is further 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, ~~2001~~ 2005.

**Sec. 9. 38 MRSA §420-D, sub-§2,** as amended by PL 2003, c. 318, §1, is further amended to read:

**2. Review.** If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within ~~30~~ 45 calendar days. If structural means are used to meet those standards, the department shall review the application within 90 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B or if a joint order is required pursuant to subsection 5. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit requirement applicable to projects in a designated area of the municipality. The municipality or quasi-municipality may elect to have this substitution take effect at the time the system is approved by the department, or at the time the system is completed as provided in an implementation schedule approved by the department.

**Sec. 10. 38 MRSA §436-A, sub-§1,** as amended by PL 1989, c. 403, §4, is further amended to read:

**1. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands; ~~all lands below any identifiable debris line left by tidal action;~~ all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land ~~which~~ that is subject to tidal action during the ~~maximum spring~~ highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Sec. 11. 38 MRSA §467, sub-§3, ¶B,** as amended by PL 2003, c. 663, §2, is further amended to read:

B. East Machias River, tributaries - Class A unless otherwise specified.

(1) All tributaries entering below the Route 191 bridge in Jacksonville, except as specified in subparagraph (7) - Class B.

(2) Beaverdam Brook - Class AA.

(3) Seavey Brook in Crawford - Class AA.

(4) Harmon Brook in Crawford - Class AA.

(5) Northern Stream in Township 19 Eastern Division - Class AA.

(6) Creamer Brook in Township 19 Eastern Division - Class AA.

(7) Clifford Brook in Marion Township - Class AA.

**Sec. 12. 38 MRSA §470-H** is enacted to read:

**§470-H. Water use standards; rules**

The board shall adopt rules that establish water use standards for maintaining in-stream flows and GPA lake or pond water levels that are protective of aquatic life and other uses and that establish criteria for designating watersheds most at risk from cumulative water use. Standards adopted under this section must be based on the natural variation of flows and water levels, allowing variances if use will still be protective of water quality within that classification. Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 13. 38 MRSA §480-B, sub-§2,** as amended by PL 1989, c. 430, §3, is further amended to read:

**2. Coastal wetlands.** "Coastal wetlands" means all tidal and subtidal lands~~, including all areas below any identifiable debris line left by tidal action~~; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland ~~which~~ that is subject to tidal action during the ~~maximum spring~~ highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Sec. 14. 38 MRSA §480-E-1,** as amended by PL 2001, c. 232, §15, is repealed and the following enacted in its place:

**§480-E-1. Delegation of permit-granting authority to 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 chapter.

**1. Activity located in organized and unorganized area.** If an activity is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the activity within the organized area is subject to department review under this article if that portion is an activity pursuant to this article. That portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission is not subject to the requirements of this article except as provided in subsection 2.

**2. Allowed use.** If an activity is located as described in subsection 1, the department may review that portion of the activity within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of an activity approved by the department under this subsection.

Review by the department of subsequent modifications to a development approved by the department is required, except that the Maine Land Use Regulation Commission shall issue modifications to permits issued by the department pursuant to this article 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. 15. 38 MRSA §480-Q, sub-§§24 and 25,** as enacted by PL 2001, c. 618, §5, are amended to read:

**24. Existing lawns and gardens.** Maintenance, but not enlargement, of~~,~~ lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter ~~I~~ 1, article 2-B; ~~and~~

**25. Existing agricultural fields and pastures.** Maintenance, but not enlargement, of~~,~~ agricultural fields and pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter ~~I~~ 1, article 2-B~~.~~; and

**Sec. 16. 38 MRSA §480-Q, sub-§26** is enacted to read:

**26. Overboard wastewater system.** Installation, maintenance or removal of a licensed overboard discharge treatment system, including the outfall pipe, if:

A. Erosion control measures are taken to prevent sedimentation of the water;

B. Effects of construction activity on the protected natural resource are minimized; and

C. The activity is approved by the department as provided in the department's rules concerning overboard discharges adopted pursuant to section 414-A.

**Sec. 17. 38 MRSA §480-U, sub-§2, ¶A,** as amended by PL 1999, c. 401, Pt. BB, §18, is further amended by amending subparagraph (3) to read:

(3) Contains endangered or threatened plant species ~~listed under Title 5, section 3315~~ as defined in Title 12, section 544;

**Sec. 18. 38 MRSA §482, sub-§2, ¶B,** as repealed and replaced by PL 1997, c. 502, §5, is amended to read:

B. Is a metallic mineral mining or advanced exploration activity as defined in this section or an oil or gas exploration or production activity that includes drilling or excavation under water;

**Sec. 19. 38 MRSA §488, sub-§9,** as amended by PL 1997, c. 502, §9, is repealed and the following enacted in its place:

**9. Development within unorganized areas.** A development located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, other than a metallic mineral mining or advanced exploration activity or an oil terminal facility, is exempt from the requirements of this article.

A. If a development is located in part within an organized area and in part within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, that portion of the development within the organized area is subject to review under this article if that portion is a development pursuant to this article. That portion of the development within the jurisdiction of the commission is exempt from the requirements of this article except as provided in paragraph B.

B. If a development is located as described in paragraph A, the department may review those aspects of a development within the jurisdiction of the Maine Land Use Regulation Commission if the commission determines that the development is an allowed use within the subdistrict or subdistricts for which it is proposed pursuant to Title 12, section 685-B. A permit from the Maine Land Use Regulation Commission is not required for those aspects of a development approved by the department under this paragraph.

Review by the department of subsequent modifications to a development approved by the department is required. For a development or part of a development within the jurisdiction of the Maine Land Use Regulation Commission, the director of the commission may request and obtain technical assistance and recommendations from the department. The commissioner shall respond to the requests in a timely manner. The recommendations of the department must be considered by the Maine Land Use Regulation Commission in acting upon a development application.

**Sec. 20. 38 MRSA §551, sub-§2,** as amended by PL 2003, c. 551, §§9 and 10, is further amended by amending the first paragraph to read:

**2. Third-party damages.** Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses arising from physical bodily injury, directly or indirectly as a result of a discharge of oil prohibited by section 543 including all discharges of oil from interstate pipelines, in this subsection called the claimant, may apply within 12 months after the occurrence of a discharge to coastal waters and for other surface discharges within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner may, upon petition and for good cause shown, waive the time limitation for filing damage claims. All 3rd-party damage claims for which no determination of award has been made ~~or that have not been referred to a board of arbitration~~ must be processed in accordance with the substantive and procedural provisions of this section.

**Sec. 21. 38 MRSA §568-A, sub-§2, ¶C,** as amended by PL 1999, c. 652, §11, is further amended by amending subparagraph (1) to read:

(1) For aboveground tanks subject to the jurisdiction of the State Fire Marshal pursuant to 16-219 CMR, chapter ~~317~~ 34, the deductibles are:

(a) Five thousand dollars for failure to obtain a construction permit from the Office of the State Fire Marshal, when required under Title 25, chapter 318 and 16-219 CMR, chapter ~~317~~ 34;

(b) Five thousand dollars for failure to design and install piping in accordance with section 570-K and rules adopted by the department;

(c) Five thousand dollars for failure to comply with an existing consent decree, court order or outstanding defi-

ciency statement regarding violations at the aboveground facility;

(d) Five thousand dollars for failure to implement a certified spill prevention control and countermeasure plan, if required;

(e) Five thousand dollars for failure to install any required spill control measures, such as dikes;

(f) Five thousand dollars for failure to install any required overfill equipment;

(g) Five thousand dollars if the tank is not approved for aboveground use; and

(h) Ten thousand dollars for failure to report any leaks at the facility ~~as required by law~~.

**Sec. 22. 38 MRSA §568, sub-§3, ¶¶A and B,** as repealed and replaced by PL 1991, c. 66, Pt. A, §28, are amended to read:

A. Any orders issued under this section must contain findings of fact describing the manner and extent of oil contamination, the site of the discharge and the threat to the public health or environment. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

B. A responsible party to whom such an order is directed may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. ~~The board shall appoint an independent hearing examiner to hold a hearing as soon as possible after receipt of the application.~~ Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing ~~must be~~ is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. ~~Within 7 days after the hearing, the hearing examiner shall make findings of fact. The board shall vote to accept, reject or modify the findings of the hearing examiner at the next regularly scheduled board meeting and shall continue, revoke or modify the commissioner's order.~~ The decision of the board may be appealed to the Superior Court in accordance with ~~the Maine Administrative Procedure Act,~~ Title 5, chapter 375, subchapter ~~VII~~ 7.

**Sec. 23. 38 MRSA §569-A, sub-§2,** as amended by PL 2003, c. 551, §§15 and 16, is further amended by amending the first blocked paragraph to read:

All 3rd-party damage claims for which no determination of award has been made ~~or that have not been referred to a board of arbitration~~ must be processed in accordance with the substantive and procedural provisions of this section.

**Sec. 24. 38 MRSA §579** is enacted to read:

**§579. Regional greenhouse gas initiative**

The department may participate in the regional greenhouse gas initiative as described in the climate action plan required in section 577.

**Sec. 25. 38 MRSA §1296, 2nd and 3rd ¶¶,** as enacted by PL 1997, c. 375, §14, are amended to read:

An order issued under this section must contain findings of fact describing, insofar as possible, the site of the activity and the danger to the public health or safety. Service of a copy of the commissioner's findings and ~~an~~ order must be made ~~pursuant to~~ by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within ~~5~~ 10 working days after receipt of the order by a responsible party. The board shall hold the hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order within ~~5~~ 15 working days after receipt of the application. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person

appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. ~~Within 7 days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the order.~~ The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter ~~VII~~ 7.

**Sec. 26. 38 MRSA §1304, sub-§12, ¶C,** as enacted by PL 1985, c. 746, §29, is amended to read:

C. Service of a copy of the commissioner's findings and ~~an~~ order ~~shall~~ must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department ~~or by certified mailing, return receipt requested,~~ in accordance with the Maine Rules of Civil Procedure.

**Sec. 27. 38 MRSA §1304, sub-§12, ¶D,** as amended by PL 1987, c. 192, §26, is further amended to read:

D. The person to whom the order is directed shall comply immediately or within a specified time period. That person may apply to the board within 10 working days after receipt of the order for a hearing on the order. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and ~~continue, revoke or modify~~ vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses ~~shall~~ must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The decision of the board may be appealed to the Superior Court in accordance with ~~the Maine Administrative Procedure Act,~~ Title 5, chapter 375, subchapter ~~VII~~ 7.

**Sec. 28. 38 MRSA §1306, sub-§4,** as enacted by PL 2003, c. 150, §1, is amended to read:

**4. Cathode ray tube disposal.** ~~After January 1, 2006,~~ Beginning 9 months after the department adopts rules pursuant to section 1610, subsection 5, paragraph D, subparagraph (1), a person may not dispose of a cathode ray tube in a solid waste disposal facility. This subsection may not be construed to affect existing laws, rules or regulations governing disposal of cathode ray tubes in effect prior to ~~January 1, 2006~~ the adoption of rules pursuant to section 1610, subsection 5, paragraph D, subparagraph (1).

**Sec. 29. 38 MRSA §1310, 3rd ¶,** as repealed and replaced by PL 1979, c. 699, §16, is amended to read:

Service of a copy of the commissioner's findings and ~~an~~ order ~~shall~~ must be made ~~pursuant to~~ by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

**Sec. 30. 38 MRSA §1310, 4th ¶,** as amended by PL 1987, c. 192, §27, is further amended to read:

The person to whom the order is directed shall comply immediately. An order may not be appealed to the Superior Court, but a person to whom it is directed may apply to the board for a hearing on the order if the application is made within ~~48 hours~~ 10 working days after receipt of the order by the person to whom the order was directed. Within ~~5~~ 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and ~~continue, revoke or modify~~ vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter ~~VII~~ 7.

**Sec. 31. 38 MRSA §1316-A, 3rd and 4th ¶¶,** as enacted by PL 1995, c. 579, §2, are amended to read:

Service of a copy of the commissioner's findings and ~~an administrative~~ order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department ~~or by certified mail, return receipt requested~~ in accordance with the Maine Rules of Civil Procedure.

The person to whom the ~~administrative~~ order is directed shall comply immediately. That person may apply to the board for a hearing within ~~5~~ 10 working days after receipt of the ~~administrative~~ order. ~~The hearing must be held by the board at the next regularly scheduled meeting following receipt of the application, but in no event later than 30 days after receipt of the application.~~ Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the

hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses ~~shall~~ must be sworn, and the department shall first establish the basis for the administrative order and for naming the person to whom the administrative order was directed. ~~Within 7 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~~ 7.

**Sec. 32. 38 MRSA §1317-A,** as amended by PL 1991, c. 499, §22, is further amended to read:

**§1317-A. Discharge prohibited**

The discharge of hazardous matter into or upon any waters of the State, or into or upon any land within the State's territorial boundaries or into the ambient air is prohibited unless licensed or authorized under state or federal law. For purposes of this section, the discharge of gaseous hazardous matter into the ambient air includes discharges within buildings or structures from sources that are not encapsulated within secondary containment. The discharge must be reported and removed as provided under section ~~1318, subsection 2~~ 1318-B, subsections 1 and 3.

**Sec. 33. 38 MRSA §1318-B, sub-§1,** as amended by PL 1997, c. 364, §39, is further amended to read:

**1. Reporting.** Except as provided in this subsection, the responsible party or person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Commissioner of Environmental Protection and the public safety agency of the municipality in which the discharge takes place. Upon submission to the commissioner of a written spill prevention control and clean-up plan that meets the criteria of section 1318-C, subsection 1, a discharge containing a hazardous matter that is covered by the plan must be reported only if the discharge equals or exceeds the applicable reportable quantity for that particular hazardous matter as specified in Code of Federal Regulations, Title 40, Parts 302.4, 302.5 and 302.6 (b)(1), revised as of July 1, ~~1996~~ 2002, or when the discharge extends or spreads beyond the area on the site covered by the spill prevention control and clean-up plan.

**Sec. 34. 38 MRSA §1365, sub-§1,** as enacted by PL 1983, c. 569, §1, is repealed and the following enacted in its place:

**1. Investigation.** Upon finding, after investigation, that a location at which hazardous substances are or were handled or otherwise came to be located may create a danger to the public health, to the safety of any person or to the environment, the commissioner may:

A. Designate that location as an uncontrolled hazardous substance site;

B. Order any responsible party dealing with the hazardous substances to cease immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger; and

C. Order any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

**Sec. 35. 38 MRSA §1365, sub-§3,** as enacted by PL 1983, c. 569, §1, is amended to read:

**3. Service.** Service of a copy of the commissioner's findings and ~~an~~ order ~~shall~~ must be made ~~pursuant to~~ by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

**Sec. 36. 38 MRSA §1365, sub-§4,** as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §268, is further amended to read:

**4. Compliance; appeal.** The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within ~~5~~ 10 working days after receipt of the order by a responsible party. ~~The hearing must be held by the board within 5 days after receipt of application.~~ Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses ~~shall~~ must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. ~~Within 7 days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the order.~~ The decision of the board may be appealed to the Superior Court in accordance with ~~the Maine Administrative Procedure Act,~~ Title 5, chapter 375, subchapter ~~VII~~ 7.

**Sec. 37. 38 MRSA §1610, sub-§2, ¶D,** as reallocated by RR 2003, c. 2, §119, is amended to read:

D. "Manufacturer" means a person who manufactures and sells, or has sold, by any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, a covered electronic device under its own brand or sells, or has sold, a covered electronic device produced by other suppliers under its own brand and label.

**Sec. 38. 38 MRSA §1610, sub-§5, ¶¶D and E,** as reallocated by RR 2003, c. 2, §119, are amended to read:

D. Computer monitor manufacturers and television manufacturers are subject to the requirements of this paragraph.

(1) ~~Beginning January 1, 2006,~~ Ninety days after the department adopts rules as provided for in this subparagraph, each computer monitor manufacturer and each television manufacturer is individually responsible for handling and recycling all computer monitors and televisions that are produced by that manufacturer or by any business for which the manufacturer has assumed legal responsibility, that are generated as waste by households in this State and that are received at consolidation facilities in this State. In addition, each computer manufacturer is responsible for a pro rata share of orphan waste computer monitors and each television manufacturer is responsible for a pro rata share of orphan waste televisions generated as waste by households in this State and received at consolidation facilities in this State. The manufacturers shall pay the reasonable operational costs of the consolidation facility attributable to the handling of all computer monitors and televisions generated as waste by households in this State, the transportation costs from the consolidation facility to a licensed recycling and dismantling facility and the costs of recycling. The manufacturers shall ensure that consolidation facilities are geographically located to conveniently serve all areas of the State as determined by the department. ~~The~~ By November 1, 2005, the department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A that identify the criteria that consolidation facilities must use to determine reasonable operational costs attributable to the handling of computer monitors and televisions.

(2) Each computer monitor manufacturer and television manufacturer shall work cooperatively with consolidation facilities to ensure implementation of a practical and feasible financing system. Within 90 days of receipt of an invoice, a manufacturer shall reimburse a consolidation facility for allowable costs incurred by that consolidation facility.

E. Annually, beginning January 1, ~~2007~~ 2006, the department shall provide manufacturers and consolidation facilities with a listing of each manufacturer's pro rata share of orphan waste computer monitors and televisions. The department shall determine each manufacturer's pro rata share based on the best available information, including but not limited to data provided by manufacturers and consolidators and data from electronic waste collection programs in other jurisdictions within the United States.

**Sec. 39. 38 MRSA §1610, sub-§6, ¶A,** as reallocated by RR 2003, c. 2, §119, is amended to read:

A. A manufacturer shall develop a plan for the collection and recycling or reuse of computer monitors and televisions as follows.

(1) By March 1, 2005, a manufacturer of computer monitors and a manufacturer of televisions shall develop and submit to the department a plan for the collection and recycling or reuse of computer monitors and televisions produced by the manufacturer and generated as waste by households in this State. This plan must be based on the manufacturer's taking responsibility for its products upon receipt at consolidation facilities in the State. Following submission of the original plan, manufacturers may revise their plans at any time as they may consider appropriate in response to changing circumstances or needs provided that these revisions conform to the provisions of this section and rules adopted pursuant to this section, and are submitted to the department in a timely fashion.

(2) By January 1, 2006, a manufacturer of computer monitors and a manufacturer of televisions shall implement and finance the implementation of this plan for the collection and recycling or reuse of computer monitors and televisions produced by the manufacturer and generated as waste by households in this State.

(3) Notwithstanding subparagraphs (1) and (2), a manufacturer may satisfy the plan requirements of this paragraph by agreeing to participate in a collective recovery plan

with other manufacturers. The collective recovery plan must meet the same standards and requirements of the plans submitted by individual manufacturers.

(4) The plan developed by the manufacturer must include, at a minimum:

(a) A description of the collection system, including the methods of convenient collection;

(b) A public education element to inform the public about the collection system, including details about meeting all consumer notification and labeling requirements;

(c) Details for implementing and financing the handling of computer monitors and televisions produced by the manufacturer and orphan waste computer monitors and televisions that are generated as waste by households in this State and received by consolidation facilities in this State;

(d) Details for the method of reimbursing consolidation facilities for the costs of handling and recycling the household computer monitors and televisions;

(e) Documentation of the willingness of all necessary parties to implement the plan, including the parties that will participate in the consolidation, treatment, recovery, reuse and recycling of the computer monitors and televisions;

(f) Assurances that the plan and all necessary parties will operate in compliance with local, state and federal waste management laws, rules and regulations;

(g) Descriptions of the performance measures that will be used and reported by the manufacturer to report recovery and recycling rates for computer monitors and televisions at the end of life of those computer monitors and televisions;

(h) Descriptions of additional or alternative actions that will be taken to improve recovery and recycling rates, if needed; and

(i) Annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the 5 years preceding the filing of the plan.

(5) A manufacturer is responsible for all costs associated with the development and implementation of the plan. If the costs are passed on to consumers, the costs must be imposed at the time of purchase and not with a fee imposed at the end of life of the computer monitor or television.

**Sec. 40. 38 MRSA §1610, sub-§7,** as reallocated by RR 2003, c. 2, §119, is amended to read:

**7. Enforcement; cost recovery.** The department must enforce this section in accordance with the provisions of sections 347-A and 349. If a manufacturer fails to pay for the costs allocated to it pursuant to section 1610, subsection 5, paragraph D, subparagraph (1), including its pro rata share of costs attributable to orphan waste, the department may pay a consolidator its legitimate costs from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying manufacturer. Any nonpaying manufacturer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of such failure to comply.

The Attorney General is authorized to commence a civil action against any manufacturer to recover the costs described in this subsection, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine Solid Waste Management Fund established in section 2201.

**Sec. 41. Resolve 2003, c. 130, §1** is amended to read:

**Sec. 1. Adoption. Resolved:** That final adoption of Chapter 355: Sand Dune Rules, a provisionally adopted major substantive rule of the Department of Environmental Protection that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if Chapter 355 is amended in that section relating to new construction in frontal dunes and designated as section 6, paragraph B, subparagraph ~~(1)~~ (3) to provide that elevators, in addition to ramps, that are required for compliance with the requirements of the federal Americans with Disabilities Act are exempt from the requirement that a new structure or addition to an existing structure may not be constructed on or seaward of a frontal dune. The rule must also be amended to provide that

elevators or ramps serving buildings required to comply with the federal Americans with Disabilities Act must be designed and constructed so as to minimize intrusion on the frontal dune, including locating the structures to the rear of buildings or within areas of a lot already developed, such as a parking area. The Department of Environmental Protection is not required to hold hearings or conduct other formal proceedings prior to finally adopting this rule in accordance with this resolve; and be it further

**Sec. 42. Rules regarding water use standards.** Rules adopted by the Department of Environmental Protection pursuant to the Maine Revised Statutes, Title 38, section 470-H must be provisionally adopted by January 1, 2006 and submitted for consideration to the Joint Standing Committee on Natural Resources in the Second Regular Session of the 122nd Legislature. This section is repealed 90 days after adjournment of the Second Regular Session of the 122nd Legislature.

**Sec. 43. Legislation.** The Department of Environmental Protection may submit legislation to the Second Regular Session of the 122nd Legislature prior to March 1, 2006 to implement measures necessary to meet the goals of the climate action plan required in the Maine Revised Statutes, Title 38, section 577.

**Sec. 44. Application.** That section of this Act that amends the Maine Revised Statutes, Title 36, section 5219-X applies to tax years beginning on or after January 1, 2004.

See title page for effective date.

## CHAPTER 331

**H.P. 945 - L.D. 1362**

### An Act Regarding the Maine Criminal Justice Academy

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

**Sec. 1. 25 MRSA §2801, first ¶,** as amended by PL 1997, c. 577, §1, is further amended to read:

There is created within the Department of Public Safety a ~~law enforcement and~~ criminal justice training facility to be known as the "Maine Criminal Justice Academy," as authorized by Title 5, section 12004-C, subsection 5, which ~~shall be~~ is established in the State.

**Sec. 2. 25 MRSA §2801-A, sub-§2, ¶B,** as enacted by PL 1989, c. 521, §§2 and 17, is amended to read:

B. For county, municipal and other agencies subject to this chapter, a person ~~who is defined as a corrections officer as defined by the Maine Criminal Justice Academy~~ responsible for the custody of persons confined in a penal institution pursuant to an order of a court or as a result of an arrest. As used in this paragraph, "penal institution" has the same meaning as in Title 15, section 1461, subsection 1.

**Sec. 3. 25 MRSA §2801-A, sub-§§3 and 4,** as amended by PL 2003, c. 19, §1, are further amended to read:

**3. Full-time corrections officer.** "Full-time corrections officer" means a person who is employed as a corrections officer with a reasonable expectation of working ~~at least~~ more than 1,040 hours in any one calendar ~~or fiscal~~ year for performing corrections officer duties.

**4. Full-time law enforcement officer.** "Full-time law enforcement officer" means a person who is employed as a law enforcement officer with a reasonable expectation of working ~~at least~~ more than 1,040 hours in any one calendar ~~or fiscal~~ year for performing law enforcement officer duties.

**Sec. 4. 25 MRSA §2801-A, sub-§5,** as enacted by PL 1989, c. 521, §§2 and 17, is amended to read:

**5. Law enforcement officer.** "Law enforcement officer" means any person who by virtue of public employment is vested by law with ~~a duty to maintain public order, to prosecute offenders,~~ the power to make arrests for crimes or serve criminal process, whether that ~~duty~~ power extends to all crimes or is limited to specific crimes~~, to perform probation functions or to perform intensive supervision functions~~. As used in this chapter, the term does not include federal law enforcement officers or attorneys prosecuting for the State.

**Sec. 5. 25 MRSA §2801-A, sub-§§6 to 8** are enacted to read:

**6. Part-time corrections officer.** "Part-time corrections officer" means a person who is employed as a corrections officer with a reasonable expectation of working no more than 1,040 hours in any one calendar year for performing corrections officer duties.

**7. Part-time law enforcement officer.** "Part-time law enforcement officer" means a person who is employed as a law enforcement officer with a reasonable expectation of working no more than 1,040 hours in any one calendar year for performing law enforcement officer duties.