

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**SECOND SPECIAL SESSION**  
**July 29, 2005**

**SECOND REGULAR SESSION**  
**January 4, 2006 to May 24, 2006**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 23, 2006**

**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**  
**2006**

and biennial budget bills for the ~~1998-1999~~ 2008-2009 biennium and thereafter.

See title page for effective date.

**CHAPTER 602**

**H.P. 1435 - L.D. 2035**

**An Act Regarding Storm Water Program Administration**

**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 2003, c. 246, §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
Fish rearing facility	annual fee	\$230	\$1,400
Noncontact cooling water	annual fee	\$90	\$7,000
Industrial or commercial sources, miscellaneous or incidental nonprocess wastewater	annual fee	\$115	\$2,100
Municipal combined sewer overflow	annual fee	\$115	\$1,400
Sanitary wastewater, excluding overboard discharge	annual fee	\$60	\$1,200

Sanitary overboard discharge, commercial sources	annual fee	\$210	\$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	\$175	---	Formation of sanitary district	flat fee*	\$300	---
Sanitary overboard discharge, residential sources more than 600 gallons per day	annual fee	\$200	\$600	Transfer of license for residential or commercial sanitary wastewater	flat fee*	\$100	---
Sanitary overboard discharge, public sources	annual fee	\$210	\$500	*Discharge or license quantity fees do not apply to these categories. 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.			
Aquatic pesticide application	annual fee*	\$200	---	<b>Sec. 2. 38 MRSA §420-D, sub§-5,</b> as amended by PL 2001, c. 232, §14, is further amended to read:			
Snow dumps	annual fee*	\$125	---	<b>5. Relationship to other laws.</b> 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; 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.			
Salt and sand storage pile	annual fee*	\$150	---	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 <del>and are in effect at the time of review as determined by the department or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.</del>			
Log storage permit	annual fee*	\$200	---	<b>Sec. 3. 38 MRSA §420-D, sub-§7, ¶C,</b> as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is amended to read:			
<u>General permit coverage for industrial storm water discharges (except construction)</u>	<u>annual fee*</u>	<u>\$300</u>	---				
General permit coverage <u>(other)</u>	annual fee*	\$100	---				
Experimental discharge license	license fee*	\$500	---				

C. If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall maintain a list of municipalities meeting these criteria and update this list at least every 2 years. The commissioner shall immediately notify municipalities on the list of municipalities meeting these criteria of new or amended rules adopted by the department pursuant to this article. If a municipality on the list no longer meets these criteria, it must be removed from the list. ~~A project constructed after a municipality is removed from the list must obtain approval pursuant to this section, except that if the municipality no longer meets these criteria due to new or amended department rules, then the municipality remains on the list if:~~

- (1) The municipality adopts amendments to its ordinances within one calendar year of the effective date of the new or amended department rules;
- (2) The municipality submits the amended ordinances to the commissioner within 45 calendar days of adoption for review; and
- (3) The commissioner determines that the amended ordinances meet or exceed the provisions of this section.

A project constructed after a municipality is removed from the list must obtain approval pursuant to this section.

**Sec. 4. 38 MRSA §420-D, sub-§9,** as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is amended to read:

**9. Rules.** Rules adopted pursuant to this section are ~~major substantive~~ routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A 2-A,~~ except that those rules that qualify as state mandates pursuant to the Constitution of Maine, Article IX, Section 21 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 5. 38 MRSA §485-A, sub-§1-C,** as enacted by PL 1995, c. 704, Pt. A, §12 and affected by Pt. C, §2, is amended to read:

**1-C. Approval of future development sites.** The department shall adopt rules allowing the option of, and identifying requirements for, a planning permit that allows approval of development within a specified area and within specified parameters such as maximum area, groundwater usage and traffic generation, although the specific nature and extent of the development or timing of construction may not be known at

the time the permit is issued. The location and parameters of the development must meet the standards of this article. This alternative is not available for metallic mineral mining or advanced exploration activities. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter ~~H-A 2-A.~~

If the department determines that full compliance with new or amended rules enacted after a planning permit was issued will significantly alter the plan for the development, the department may require the permittee to comply with the rules in effect at the time of issuance of the planning permit and, to the extent practicable, to comply with additional requirements or standards in the new or amended rules for any remaining portion of the development for which final submissions have not been provided. The department may not require significant alteration of constructed or permitted infrastructure authorized by the planning permit, or subsequent approvals designed to serve future development phases in existence at the time of the new or amended rules in assessing practicability.

For purposes of this subsection, "practicable" means available and feasible considering cost, existing technology and logistics based on the overall purpose of the project as authorized in the planning permit.

**Sec. 6. 38 MRSA §490-E, 2nd ¶,** as enacted by PL 1995, c. 700, §25, is amended to read:

The department shall adopt rules that set forth the standards for granting a variance from the performance standards in this article. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter ~~H-A 2-A.~~ Those rules must be provisionally adopted and submitted to the Legislature for review not later than January 1, 1997. Notwithstanding Title 5, section 8072, subsection 3, the Executive Director of the Legislative Council shall immediately assign those provisionally adopted rules to the joint standing committee of the Legislature having jurisdiction over natural resources matters.

**Sec. 7. 38 MRSA §490-CC, first ¶,** as enacted by PL 1995, c. 700, §35, is amended to read:

An owner or operator must comply with the performance standards in section 490-Z unless a variance from those performance standards is approved by the department. Except when prohibited by section 490-Z, the department may grant a variance from the performance standards in this article if the owner or operator affirmatively demonstrates to the department that the variance does not adversely affect natural resources or existing uses and does not adversely affect the health, safety and general welfare of the public. The department may adopt rules that set forth the standards for granting a variance from the

performance standards in this article. Such rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. A variance application must include any fee applicable under section 490-EE. The department shall process the variance application according to chapter 2 and the rules adopted by the department for processing an application. An applicant for a variance under this article shall hold a public informational meeting as described in those rules.

**Sec. 8. General permit for industrial facilities and report.** By January 1, 2009, the Department of Environmental Protection shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on what, if any, standard industrial codes or activities not covered by a standard industrial code should be added to the industrial storm water program. The report must include the projected revenue from fees and the projected operating costs of extending the storm water program to address these activities through the multisector general permit in 2010.

**Sec. 9. Rules regarding storage of petroleum products and externally drained pits.** Notwithstanding the Maine Revised Statutes, Title 38, sections 490-E and 490-CC, amendments to rules regarding performance and design standards for the storage of petroleum products and variance requirements for externally drained pits are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A until March 1, 2007.

**Sec. 10. Authority to report out legislation.** The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out legislation relating to the report required pursuant to section 7 of this Act to the First Regular Session of the 124th Legislature.

**Sec. 11. Application.** The provisions of this Act that amend the Maine Revised Statutes, Title 38, section 420-D, subsection 5 and subsection 7, paragraph C do not apply to rules regarding storm water management and amendments to rules regarding storm water management that are adopted prior to the effective date of this Act.

See title page for effective date.

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## CHAPTER 603

H.P. 1463 - L.D. 2068

### An Act Regarding the Maine Insurance Guaranty Association

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

**Sec. 1. 24-A MRSA §4438, sub-§1, ¶A,** as amended by PL 2001, c. 478, §8 and affected by §11, is further amended to read:

A. Be obligated to pay covered claims existing prior to the determination of the insolvency or arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination of insolvency, or before the insured replaces the policy or causes its cancellation, if within 30 days of the determination. The obligation must be satisfied by paying to the claimant:

- (1) Except as provided in this paragraph, the full amount of a covered claim for benefits, including interest and penalties, or unearned premium under workers' compensation insurance coverage;
- (2) An amount not exceeding \$25,000 per policy for a covered claim for the return of an unearned premium; or
- (3) An amount not exceeding \$300,000 per claim for all other covered claims.

In no event is the association obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. The association shall pay only that amount of unearned premium in excess of \$50. Notwithstanding any other provisions of this subchapter, a covered claim does not include any claim filed with the association after the earlier of 24 months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. The association, in its discretion, may accept a late filed claim as a covered claim when the claimant demonstrates good cause. The demonstration of good cause by a claimant includes showing that the existence of the claim was not known to the claimant prior to the bar date and that the claimant filed the claim within 60 days of learning of the claim;

**Sec. 2. 24-A MRSA §4445,** as amended by PL 1973, c. 585, §12, is further amended by adding at the end a new paragraph to read:

The association is also subject to audit, enforcement and monitoring by the Workers' Compensation Board with respect to workers' compensation claims as provided for in the Maine Workers' Compensation Act of 1992. Notwithstanding any other provision of law, the association is liable for the payment of any compensation, interest, penalty or other obligation determined to be due by the Workers' Compensation Board as provided for in the Maine Workers' Comp-