

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

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FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2007

activities listed in Title 38, section 480-CC, subsection 2, paragraphs A and B and an expansion of up to 10% of an existing development area within a feeding area to be authorized pursuant to permit by rule if applicable standards in the protection of natural resources under article 5-A and rules adopted pursuant to that article are met and an individual permit is not otherwise required for activity on the parcel. "Existing development area" is defined in section 20 of the department's rules concerning permit by rule.

The Department of Environmental Protection shall amend its rules to clarify that if significant wildlife habitat is not fully contained within a freshwater wetland, the department does not have adjacency jurisdiction under the Maine Revised Statutes, Title 38, section 480-C.

Sec. 17. Mitigation and compensation standards. The Department of Environmental Protection shall develop a proposal for mitigation and compensation standards for tidal and freshwater significant wildlife habitat. By January 5, 2008, the department shall report to the Joint Standing Committee on Natural Resources on its proposal, including any legislation necessary to implement the proposal. The Joint Standing Committee on Natural Resources may submit legislation related to the proposal to the 123rd Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 14, 2007.

**CHAPTER 291
H.P. 902 - L.D. 1274**

**An Act To Allow the Discharge
of Aquatic Pesticides Approved
by the Department of
Environmental Protection for
the Control of Mosquito-borne
Diseases in the Interest of
Public Health and Safety**

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

Sec. 1. 38 MRSA §464, sub-§4, ¶A, as amended by PL 2005, c. 182, §1, is further amended to read:

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

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that:

(a) Discharges into these waters that were licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist;

(b) Storm water discharges in compliance with state and local requirements are exempt from this subparagraph;

(c) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species are exempt from this subparagraph; ~~and~~

(d) Chemical discharges for the purpose of restoring water quality in GPA waters approved by the department are exempt from this subparagraph; and

(e) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species are exempt from this subparagraph. When the department issues a license for the discharge of aquatic pesticides authorized under this division, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

(2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;

(3) Any discharge into a tributary of GPA waters that by itself or in combination with other activities causes water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters except for aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species in the GPA waters or a tributary to the GPA waters;

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

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

(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 discharges from vessels and 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 takes place as a new discharge of domestic pollutants;

(7) After the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under the Federal Water Pollution Control Act, Section 402(c)(1), any proposed license to which the administrator has formally objected under 40 Code of Federal Regulations, Section 123.44,

as amended, or any license that would not provide for compliance with applicable requirements of that Act or regulations adopted thereunder;

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

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

(10) Discharges that would be inconsistent with a plan or plan amendment approved under the Federal Water Pollution Control Act, Section 208(b); and

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

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

Sec. 2. 38 MRSA §465, sub-§1, ¶C, as amended by PL 2005, c. 182, §2, is further amended to read:

C. Except as provided in this paragraph, there may be no direct discharge of pollutants to Class AA waters.

(1) Storm water discharges that are in compliance with state and local requirements are allowed.

(2) A discharge to Class AA waters that are or once were populated by a distinct population segment of Atlantic salmon as determined pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended, is allowed if, in addition to satisfying all the requirements of this article, the applicant, prior to issuance of a discharge license, objectively demonstrates to the department's satisfaction that the discharge is necessary, that there are no other reasonable alternatives available and that the discharged effluent is for the purpose of and will assist in the restoration of Atlantic

salmon and will return the waters to a state that is closer to historically natural chemical quality.

(a) The department may issue no more than a total of 3 discharge licenses pursuant to this subparagraph and subsection 2, paragraph C, subparagraph (2).

(b) A discharge license issued pursuant to this subparagraph may not be effective for more than 5 years from the date of issuance.

(3) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species are allowed.

(4) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species are allowed. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Sec. 3. 38 MRSA §465, sub-§2, ¶C, as amended by PL 2005, c. 182, §3, is further amended to read:

C. Except as provided in this paragraph, direct discharges to these waters licensed after January 1, 1986 are permitted only if, in addition to satisfying all the requirements of this article, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the department shall require the applicant to objectively demonstrate to the department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist.

(1) This paragraph does not apply to a discharge of storm water that is in compliance with state and local requirements.

(2) This paragraph does not apply to a discharge to Class A waters that are or once were populated by a distinct population segment of Atlantic salmon as determined pursuant to the United States Endangered Species

Act of 1973, Public Law 93-205, as amended, if, in addition to satisfying all the requirements of this article, the applicant, prior to issuance of a discharge license, objectively demonstrates to the department's satisfaction that the discharge is necessary, that there are no other reasonable alternatives available and that the discharged effluent is for the purpose of and will assist in the restoration of Atlantic salmon and will return the waters to a state that is closer to historically natural chemical quality.

(a) The department may issue no more than a total of 3 discharge licenses pursuant to this subparagraph and subsection 1, paragraph C, subparagraph (2).

(b) A discharge license issued pursuant to this subparagraph may not be effective for more than 5 years from the date of issuance.

(3) This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.

(4) For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will be equal to or better than the existing water quality of the receiving waters as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Sec. 4. 38 MRSA §465, sub-§3, ¶C, as amended by PL 2005, c. 182, §4, is further amended to read:

C. Discharges to Class B waters may not cause adverse impact to aquatic life in that the receiving waters must be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community. ~~This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the~~

~~purpose of restoring biological communities affected by an invasive species.~~

(1) This paragraph does not apply to aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species.

(2) For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to aquatic life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Sec. 5. 38 MRSA §465-A, sub-§1, ¶C, as repealed and replaced by PL 2005, c. 182, §6, is amended to read:

C. There may be no new direct discharge of pollutants into Class GPA waters. The following are exempt from this provision:

(1) Chemical discharges for the purpose of restoring water quality approved by the department;

(2) Aquatic pesticide or chemical discharges approved by the department and conducted by the department, the Department of Inland Fisheries and Wildlife or an agent of either agency for the purpose of restoring biological communities affected by an invasive species; ~~and~~

(3) Storm water discharges that are in compliance with state and local requirements; ~~and~~

(4) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Discharges into these waters licensed prior to January 1, 1986 are allowed to continue only until practical alternatives exist. Materials may not be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage may flow or leach into those waters, except as permitted pursuant to section 480-C. A change of land use in the watershed of a Class GPA water body may not, by itself or in combination with other activities, cause water quality degradation that impairs the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters.

Sec. 6. 38 MRSA §465-B, sub-§1, ¶C, as amended by PL 1999, c. 243, §10, is further amended to read:

C. There may be no direct discharge of pollutants to Class SA waters, except ~~storm water discharges that are in compliance with state and local requirements~~ for the following:

(1) Storm water discharges that are in compliance with state and local requirements; and

(2) Discharges of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety using materials and methods that provide for protection of nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this subparagraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

Sec. 7. 38 MRSA §465-B, sub-§2, ¶C, as enacted by PL 1985, c. 698, §15, is amended to read:

C. Discharges to Class SB waters ~~shall~~ may not cause adverse impact to estuarine and marine life in that the receiving waters ~~shall~~ must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There ~~shall~~ may be no new discharge to Class SB waters ~~which~~ that would cause closure of open shellfish areas by the Department of Marine Resources. For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to estuarine and marine life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the dis-

charge of aquatic pesticides authorized under this paragraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website.

See title page for effective date.

CHAPTER 292

S.P. 629 - L.D. 1778

**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. 32 MRSA §10006, as amended by PL 2001, c. 231, §8, is further amended to read:

§10006. Certification

1. Certification required. ~~No A~~ person may not practice, or profess to practice, as an underground oil storage tank installer, or underground oil storage tank inspector ~~or underground gasoline storage tank remover~~ in this State or use the words "underground oil storage tank installer," "~~underground gasoline storage tank remover,~~" "underground oil storage tank inspector" or other words or letters to indicate that the person using the words or letters is a certified underground oil storage tank installer ~~practitioner, or~~ underground oil storage tank inspector ~~practitioner or underground gasoline storage tank remover practitioner~~ unless that person is certified in accordance with this chapter.

2. Individual. Only an individual may be certified under this chapter.

3. Proper underground oil storage tank installer certification class required. ~~No A~~ person may not install or advertise to install underground oil storage tanks or remove, pursuant to Title 38, section 566-A, subsection 5, underground tanks used for the storage of Class 1 liquids unless the person has the appropriate class of certification been certified in accordance with this subsection.

B. ~~A Class 2~~ An underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed underground oil storage tanks and impressed-current cathodically protected tanks.

C. ~~A Class 3 underground storage tank installer may only install or remove underground oil storage tanks for the storage of #2 heating oil. Class 3 installers are not certified to install or remove field constructed underground oil storage tanks,~~

~~heavy oil storage or impressed current cathodically protected tanks.~~

E. ~~Certified underground oil storage tank installers may upgrade their certification by demonstrating to the satisfaction of the board training and experience comparable to completion of the appropriate apprenticeship requirements and passage of the written final examination in that class.~~

~~**4. Proper underground gasoline storage tank remover certification class required.** No person may remove or advertise to remove an underground gasoline storage tank unless the person is certified in accordance with this chapter or for fire fighting personnel, Title 38, section 566-A, subsection 5.~~

Sec. 2. 32 MRSA §10010, first ¶, as amended by PL 2001, c. 231, §10, is further amended to read:

An applicant for certification as an underground oil storage tank installer ~~or an underground gasoline storage tank remover~~ or an underground oil storage tank inspector must file a written application provided by the board, showing to the satisfaction of the board that that person meets the following requirements.

Sec. 3. 32 MRSA §10010, sub-§3, ¶B, as repealed and replaced by PL 1989, c. 312, §8, is amended to read:

B. Successful completion of an apprenticeship in accordance with this section and under the direct supervision of an underground oil storage tank installer ~~certified in the class for which the applicant is applying;~~ and

Sec. 4. 32 MRSA §10010, sub-§3, ¶C, as enacted by PL 1989, c. 312, §9, is amended to read:

C. Passage of a final written or oral examination ~~specific to the class for which the applicant is applying~~ that is based on the laws outlined in and ~~any rules promulgated~~ adopted under Title 38, chapter 3, subchapter ~~H-B 2-B~~, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks.

Sec. 5. 32 MRSA §10010, sub-§3-A, ¶B, as enacted by PL 1989, c. 312, §10, is amended to read:

B. To be eligible to take the final examination for a ~~Class 2~~ certification, the applicant must provide documentation of ~~completion of 6 marketing and distribution or other motor fuel field experience, under the apprenticeship of an underground oil storage tank installations installer, sufficient to demonstrate expertise in the installation and removal of tanks and piping. The board shall specify, in the rules adopted pursuant to paragraph D, the nature and extent of field experience required to demonstrate this expertise.~~