LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

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Penmor Lithographers
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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 ~~II 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.

Sec. 6. 32 MRSA §10010, sub-§3-A, ¶C, as enacted by PL 1989, c. 312, §10, is repealed.

Sec. 7. 32 MRSA §10010, sub-§3-A, ¶D, as enacted by PL 1989, c. 312, §10, is amended to read:

D. The board shall adopt rules to administer this section and to provide a variance to the apprenticeship requirements ~~of this subsection~~ under paragraph B if the applicant can satisfactorily demonstrate training and experience comparable to completion of an apprenticeship.

Sec. 8. 32 MRSA §10010, sub-§5, as amended by PL 1997, c. 364, §10, is repealed.

Sec. 9. 32 MRSA §10010-C, as enacted by PL 1991, c. 817, §6, is repealed.

Sec. 10. 32 MRSA §10011, sub-§1, as amended by PL 2001, c. 231, §12, is further amended to read:

1. Requirements; fees. Only a person satisfying the requirements of section 10010, subsections 1 and 2 may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by section 10012. A person who fails either part of the applicable examination specified in section 10010, subsection 3~~, 5~~ or 6 may apply for reexamination upon payment of the prescribed fee.

Sec. 11. 32 MRSA §10015, sub-§2, as amended by PL 2001, c. 231, §16, is further amended to read:

2. Grounds for disciplinary action. The following are grounds for an action to modify, reclassify, suspend, revoke or refuse to issue or renew a certificate or impose a civil penalty:

A. The practice of any fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered within the scope of the certificate issued;

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil storage tank installation or removal, underground gasoline storage tank removal or underground oil storage tank inspection or violation of any standard of professional behavior established by the board;

C. Subject to the limitation of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or

D. Any violation of this chapter or any rule adopted by the board.

Sec. 12. 38 MRSA §347-A, sub-§5, as enacted by PL 1989, c. 890, Pt. A, §32 and affected by §40, is amended to read:

5. Enforcement. All orders of the department may be enforced by the Attorney General and the department. If any order of the department is not complied with, the commissioner shall immediately notify the Attorney General.

Sec. 13. 38 MRSA §348, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §6, is further amended to read:

1. General. In the event of a violation of any provision of the laws administered by the department or of any order, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, the Attorney General or the department may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the department.

Sec. 14. 38 MRSA §348, sub-§3, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §6, is further amended to read:

3. Injunction proceedings. If the department finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property, the department shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge or the commissioner may authorize pursuit of such an action in District Court. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347-B.

Sec. 15. 38 MRSA §352, sub-§2, ¶G, as enacted by PL 2005, c. 330, §6, is amended to read:

G. The total amount of fees due for acceptance of a 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. 16. 38 MRSA §361-A, sub-§1-J, as amended by PL 2005, c. 330, §7, 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, 2005~~ July 1, 2007.

Sec. 17. 38 MRSA §361-A, sub-§1-K, as amended by PL 2005, c. 330, §8, 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, 2005~~ July 1, 2007.

Sec. 18. 38 MRSA §413, sub-§3, as amended by PL 2003, c. 246, §6 and c. 689, Pt. B, §6, is further amended to read:

3. Transfer of ownership. Application for transfer of a license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. ~~In the event that any~~ If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, ~~provided that~~ except that the parties to the transfer are jointly and severally liable for any violation ~~thereof~~ until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

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

Sec. 19. 38 MRSA §420-D, sub-§14 is enacted to read:

14. Rescission. The commissioner shall rescind a permit upon request and application of the permittee if no outstanding permit violation exists, the project is not continued and the permittee has not constructed or caused to be constructed, or operated or caused to be operated, a project requiring a permit. For purposes of this section, "a project requiring a permit" is a project that requires a permit as defined either at the time of permit issuance or at the time of application for rescission.

Sec. 20. 38 MRSA §437, sub-§4, as amended by PL 1989, c. 403, §6, is further amended to read:

4. Fish River. The Fish River from the former bridge site at the dead end of Mill Street in Fort Kent Mills to the outlet of Eagle Lake in Wallagrass, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding Portage Lake;

Sec. 21. 38 MRSA §439-A, sub-§5, ¶A, as repealed and replaced by PL 1991, c. 66, Pt. A, §10, is amended to read:

A. Selective cutting of no more than 40% of the trees ~~4~~ 4.5 inches or more in diameter, measured at 4 1/2 feet above ground level, in any 10-year period, ~~provided that~~ as long as a well-distributed stand of trees and other natural vegetation remains;

Sec. 22. 38 MRSA §439-A, sub-§6, ¶C, as enacted by PL 1987, c. 815, §§7 and 11, is amended to read:

C. Selective cutting of no more than 40% of the trees ~~4~~ 4.5 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period, ~~provided that~~ as long as a well-distributed stand of trees and other natural vegetation remains.

Sec. 23. 38 MRSA §465-A, sub-§1, ¶B, as enacted by PL 1985, c. 698, §15, is amended to read:

B. Class GPA waters ~~shall~~ must be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters ~~shall~~ must have a stable or decreasing trophic state, subject only to natural fluctuations and ~~shall~~ must be free of culturally induced algal blooms ~~which~~ that impair their use and enjoyment. The number of Escherichia coli bacteria of human and domestic animal origin in these waters may not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

Sec. 24. 38 MRSA §480-P, sub-§6, as enacted by PL 1987, c. 809, §2, is amended to read:

6. Fish River. The Fish River from the former bridge site at the dead end of Mill Street in Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;

Sec. 25. 38 MRSA §480-P, sub-§13, as enacted by PL 1987, c. 809, §2, is amended to read:

13. Piscataquis River. The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line, including its tributaries the East and West Branches of the Piscataquis River from the Blanchard Plantation and Shirley town line to the Shirley and ~~Little Squaw~~ Moosehead Junction Township town line; the Seboeis Stream from its confluence with the Piscataquis River in Howland to the Howland and Mattamiscontis Township town line and from the Mattamiscontis and Maxfield town line to the Maxfield and Seboeis Plantation town line, excluding Shirley Pond and West Shirley Bog;

Sec. 26. 38 MRSA §480-Q, sub-§10, as amended by PL 1991, c. 240, §1, is further amended to read:

10. Aquaculture. Aquaculture activities regulated by the Department of Marine Resources under Title 12, section 6072, 6072-A, 6072-B or 6072-C. Ancillary activities, including, but not limited to, building or altering docks or filling of wetlands, are not exempt from the provisions of this article;

Sec. 27. 38 MRSA §480-Q, sub-§23, ¶B is amended to read:

B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter 1, article 2-B, vegetation within the adjacent area is maintained as follows:

(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be established for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;

(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.

(a) For the purposes of this subparagraph, a "well-distributed stand of trees" is defined as maintaining a rating score of 16 or more points in a 25-foot by 50-foot rectangular area as determined by the following rating system.

(i) A tree with a diameter at 4 1/2 feet above ground level of 2.0 to less than 4.0 inches has a point value of one.

(ii) A tree with a diameter at 4 1/2 feet above ground level of 4.0 inches to less than 8.0 inches has a point value of 2.

(iii) A tree with a diameter at 4 1/2 feet above ground level of 8.0 inches to less than 12.0 inches has a point value of 4.

(iv) A tree with a diameter at 4 1/2 feet above ground level of 12.0 or more inches has a point value of 8.

(b) In applying this point system:

(i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but may not overlap, a previous plot;

(iii) Any plot not containing the required points may have no vegetation removed except as otherwise allowed by this subsection;

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this subsection; and

(v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

(c) For the purposes of this subparagraph, "other natural vegetation" is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4 1/2 feet above ground level for each 25-foot by 50-foot rectangular area. If 5 saplings do not exist, the landowner or lessee may not remove any woody stems less than 2 inches in diameter until 5 saplings have been recruited into the plot;

(3) In addition to the requirements of subparagraph (2), no more than 40% of the total volume of trees ~~4.0~~ 4.5 inches or more in di-

ameter, measured 4 1/2 feet above ground level, is selectively cut in any 10-year period;

(5) Tree branches are not pruned except on the bottom 1/3 of the tree as long as tree vitality will not be adversely affected; and

(6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings are replanted with native tree species unless there is existing new tree growth.

Sec. 28. 38 MRSA §488, sub-§13, as enacted by PL 1993, c. 383, §26 and affected by §42, is amended to read:

13. Research and aquaculture leases. Activities regulated by the Department of Marine Resources under Title 12, section 6072, 6072-A, 6072-B or 6072-C are exempt from the requirements of this article.

Sec. 29. 38 MRSA §551, sub-§6, as amended by PL 1993, c. 355, §13, is further amended to read:

6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund. For the use of the fund, the commissioner shall seek recovery of all disbursements from the fund for the following purposes, including overdrafts and interest computed at 15% a year from the date of expenditure, unless the department finds the amount involved too small, the likelihood of success too uncertain or that recovery of costs is unlikely due to the inability of the responsible party to pay those costs, provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 must be apportioned between the Maine Coastal and Inland Surface Oil Clean-up Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of the disaster:

A. All disbursements made by the fund pursuant to subsection 5, paragraphs B, D, E, H and I in connection with a prohibited discharge; and

B. In the case of a licensee promptly reporting a discharge as required by this subchapter, disbursements made by the fund pursuant to subsection 5, paragraphs B, D and E in connection with any single prohibited discharge including 3rd-party claims in excess of $15,000, except to the extent that the costs are covered by payments received under any federal program.

Requests for reimbursement to the fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General in conformance with Title 5, section 191, or the department may file suit in District Court. The commissioner may file claims with appropriate federal agencies to recover for the use of the fund all disbursements from the fund in connection with a prohibited discharge.

Requests for reimbursement to the fund for disbursements pursuant to subsection 5, paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed twice the total amount of reimbursement requested. This penalty is in addition to the reimbursement requested and any other fines or civil penalties authorized by this Title.

Sec. 30. 38 MRSA §551-A, sub-§1, as enacted by PL 1991, c. 698, §12, is amended to read:

1. Membership. The Governor shall appoint the chair of the committee. The committee consists of the following ~~14~~ 9 members:

A. ~~Three~~ Two members representing the marine fisheries interest~~, including the lobster industry, aquaculture industry and sardine industry, 2~~ one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

B. ~~Three~~ Two members representing the general public, one appointed by the President of the Senate and ~~2~~ one appointed by the Speaker of the House of Representatives;

C. Two members representing the petroleum industry appointed by the Governor;

D. One member familiar with oil spill technology appointed by the Governor;

~~E. One naval architect appointed by the Governor;~~

~~F. One member with expertise in coastal geology appointed by the Governor;~~

~~G. One member with expertise in fisheries biology appointed by the Governor;~~

H. One member with expertise in coastal geology, fisheries biology or coastal wildlife habitat appointed by the Governor; and

I. One member who is a licensed state pilot or a licensed merchant marine officer appointed by the Governor.

Sec. 31. 38 MRSA §551-A, sub-§2, as enacted by PL 1991, c. 698, §12, is amended to read:

2. Terms. All members are appointed for staggered terms of 3 years except that a member may be appointed for an initial term of one or 2 years as necessary to ensure that the terms of the committee members are staggered. ~~The Governor shall appoint 2 members for initial one year terms, 3 members for initial 2 year terms and 3 members for initial 3 year~~

~~terms. The President of the Senate shall appoint one member for an initial one-year term, one member for an initial 2-year term and one member for an initial 3-year term. The Speaker of the House of Representatives shall appoint one member for an initial one-year term, one member for an initial 2-year term and one member for an initial 3-year term.~~ A vacancy must be filled by the same appointing authority that made the original appointment. ~~No~~ A member may not serve more than 2 consecutive 3-year terms.

Sec. 32. 38 MRSA §551-A, sub-§4, as enacted by PL 1991, c. 698, §12, is amended to read:

4. Quorum. A quorum is ~~8~~ 5 members of the committee. An affirmative vote of the majority of the members present is required for any action. Action may not be considered unless a quorum is present.

Sec. 33. 38 MRSA §566-A, sub-§5, as amended by PL 2001, c. 626, §14, is further amended to read:

5. Qualified personnel. All abandoned facilities and tanks used for the storage of Class 1 liquids that require removal must be removed under the direct, on-site supervision of an underground oil storage tank installer certified pursuant to Title 32, chapter 104-A~~, or of certified fire-fighting personnel, except for underground gasoline storage tanks removed pursuant to subsection 6. The Board of Underground Oil Storage Tank Installers may examine and the commissioner may certify fire-fighting personnel to supervise the removal of Class 1 underground oil storage facilities upon passage of the examination for an underground gasoline storage tank remover. Fire-fighting personnel may only supervise the removal of an underground facility or tank:~~.

~~A. Within the municipality with which they are affiliated or within the jurisdiction that the municipality with which they are affiliated has a compact; and~~

~~B. If the fire-fighting personnel have written authorization from the municipality with which they are affiliated.~~

Sec. 34. 38 MRSA §566-A, sub-§6, as amended by PL 1991, c. 88, §3, is repealed.

Sec. 35. 38 MRSA §570, first ¶, as amended by PL 1999, c. 278, §4 and affected by PL 2003, c. 245, §21, is further amended to read:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-A, subsection 8, paragraphs B, D, E, H and J, or other damage incurred by the State, except for costs found by the commissioner to be eligible for coverage under the fund. The term "other damages," as used in this paragraph, includes interest computed at 15% a year from the date of expenditure and damage for injury to, destruction of, loss of or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and damages paid by the department from state or federal funds except for amounts that are eligible for coverage by the fund under this subchapter. Payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court or the department may file suit in District Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 36. 38 MRSA §570, first ¶, as amended by PL 1999, c. 278, §5 and affected by PL 2003, c. 245, §20, is further amended to read:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-B, subsection 5, paragraphs B, D, E and G or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and payment of damages paid by the department from state or federal funds to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court or the department may file suit in District Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 37. 38 MRSA §570-H, as amended by PL 2001, c. 356, §9, is repealed and the following enacted in its place:

§570-H. Report; adequacy of fund

On or before February 15th of each year, the Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature having jurisdiction over natu-

ral resources matters on the department's and the board's experience administering the fund, clean-up activities and 3rd-party damage claims. The report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report also must include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this section, the board may order an independent audit of disbursements from the Groundwater Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund.

Sec. 38. 38 MRSA §1319-Q, as amended by PL 1993, c. 355, §§55 to 57, is further amended to read:

§1319-Q. Data collection; report

1. Data collection and monitoring. The commissioner shall have data on the generation, transportation and handling of hazardous waste collected and monitored in a coordinated manner. ~~The commissioner shall use that data to review the need for adequate waste facilities for generators in this State, and shall develop appropriate policies and recommendations to ensure that suitable waste facilities are available~~.

2. Report. The commissioner shall biennially, prior to ~~May~~ November 1st, prepare a report to the ~~board covering~~ joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must cover the prior 2 calendar years ~~that~~ and must include the following data:

A. The amount of hazardous waste by type that is generated, handled or transported within the State;

B. The amount of hazardous waste by type that is handled at commercial hazardous waste facilities within the State;

C. The number of hazardous waste facility permits by type currently active and the number granted and revoked in the year;

D. The amount of hazardous waste by type generated outside the State that was handled at permitted facilities within the State, and the amount of hazardous waste generated within the State that was handled at facilities located outside the State;

E. A list of hazardous waste facilities located within the State and those located outside the State which are available for use by generators in the State; and

F. A list of known firms that provide testing, consulting, brokerage, waste exchange, transport or other services to hazardous waste generators.

~~**4. Legislative recommendations.** The commissioner shall make a biennial status report to the Legislature concerning hazardous waste management, including any recommendations of the board for legislative action to develop and establish needed hazardous waste facilities. These recommendations may include tax and other financial incentives or recommendations to directly, or through an instrumentality, acquire suitable sites for hazardous waste facilities, or to construct and operate hazardous waste facilities. Recommendations in the biennial status report must be based solely on the information and plans prepared pursuant to this section and information obtained at public hearings.~~

~~**5. Procedural requirements.** All policies, plans and recommendations prepared by the commissioner under this section are subject to the notice and hearing requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.~~

Sec. 39. 38 MRSA §1610, sub-§1, as reallocated by RR 2003, c. 2, §119, is amended to read:

1. Findings; purpose. The Legislature finds that the establishment of a system to provide for the collection and recycling of electronic devices in this State is consistent with its duty to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent air, water and land pollution. The Legislature further finds that such a system is consistent with the overall state solid waste management policy including its intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of waste management.

The Legislature finds that the purpose of this section is to establish a comprehensive electronics recycling system that ensures the safe and environmentally sound handling, recycling and disposal of electronic products and components and encourages the design of electronic products and components that are less toxic and more recyclable.

The Legislature further finds that it is the purpose of this section to establish an electronics recycling system that is convenient and minimizes cost to the consumer of electronic products and components. It is the intent of the Legislature that manufacturers of electronic products and components will be responsible for ensuring proper handling, recycling and disposal of discarded products and that costs associated with consolidation, handling and recycling be internalized by the manufacturers of electronic products and components before the point of purchase.

The Legislature further finds that the manufacturers of electronic products and components should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in these products.

The Legislature further finds that a system of shared responsibility for the collection and recycling of covered electronic devices among manufacturers, ~~consolidation facilities~~ consolidators, municipalities and other parties is the most effective and equitable means of achieving the purposes of this section. Manufacturers of electronic devices and components, in working to achieve the goals and objectives of this section, should have the flexibility to act in partnership with each other, with state, municipal and regional governments and with businesses that provide collection and handling services to develop, implement and promote a safe and effective electronics recycling system for the State.

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

B. "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, treatment or disposal facility. "Consolidation facility" includes a transport vehicle owned or leased by a ~~recycling and dismantling facility with a minimum 40-foot trailer~~ consolidator and used to collect covered electronic devices at municipal collection sites in this State at a cost no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to the rules governing reasonable operational costs adopted under subsection 5, paragraph D, subparagraph 1.

Sec. 41. 38 MRSA §1610, sub-§2, ¶B-1 is enacted to read:

B-1. "Consolidator" means a person that provides consolidation and handling services for electronic wastes and that operates at least one consolidation facility.

Sec. 42. 38 MRSA §1610, sub-§2, ¶D, as amended by PL 2005, c. 330, §37, is further 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.~~ :

(1) Manufactures or has manufactured a covered electronic device under its own brand or label;

(2) Sells or has sold under its own brand or label a covered electronic device produced by other suppliers;

(3) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States; or

(4) Owns a brand that it licenses or licensed to another person for use on a covered electronic device.

Sec. 43. 38 MRSA §1610, sub-§5, as amended by PL 2005, c. 330, §38, is further amended to read:

5. Responsibility for recycling. Municipalities, ~~consolidation facilities~~ consolidators, manufacturers and the State share responsibility for the disposal of covered electronic devices as provided in this subsection.

A. Each municipality that chooses to participate in the state collection and recycling system shall ensure that computer monitors and televisions generated as waste from households within that municipality's jurisdiction are delivered to a consolidation facility in this State. A municipality may meet this requirement through collection at and transportation from a local or regional solid waste transfer station or recycling facility, by contracting with a disposal facility to accept waste directly from the municipality's residents or through curbside pickup or other convenient collection and transportation system.

B. A ~~consolidation facility~~ consolidator is subject to the requirements of this paragraph.

(1) Beginning January 1, 2006, a ~~consolidation facility~~ consolidator shall identify the manufacturer of each waste computer monitor and waste television delivered to ~~the~~ a consolidation facility and identified as generated by a household in this State and shall maintain an accounting of the number of waste household computer monitors and waste household televisions by manufacturer. By March 1st each year beginning in 2007, a ~~consolidation facility~~ consolidator shall provide this accounting by manufacturer to the department.

(2) A ~~consolidation facility~~ consolidator may perform the manufacturer identification required by subparagraph (1) at the consolidation facility or may contract for this identification and accounting service with the recycling and dismantling facility to which the waste is shipped.

(3) A ~~consolidation facility~~ consolidator shall work cooperatively with manufacturers to ensure implementation of a practical and feasible financing system. At a minimum, a ~~consolidation facility~~ consolidator shall invoice

the manufacturers for the handling, transportation and recycling costs for which they are responsible under the provisions of this subsection.

(4) A ~~consolidation facility~~ consolidator shall transport waste computer monitors and waste televisions to a recycling and dismantling facility that provides a sworn certification pursuant to paragraph C. A ~~consolidation facility~~ consolidator shall maintain for a minimum of 3 years a copy of the sworn certification from each recycling and dismantling facility that receives covered electronic devices from the ~~consolidation facility~~ consolidator and shall provide the department with a copy of these records within 24 hours of request by the department.

C. A recycling and dismantling facility shall provide to a ~~consolidation facility~~ consolidator a sworn certification that its handling, processing, refurbishment and recycling of covered electronic devices meet guidelines for environmentally sound management published by the department.

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

(1) 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~~ consolidator 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. 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~~ consolidators 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~~ consolidators 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~~ consolidator for allowable costs incurred by that ~~consolidation facility~~ consolidator.

E. Annually, beginning January 1, 2006, the department shall provide manufacturers and ~~consolidation facilities~~ consolidators 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. 44. 38 MRSA §1610, sub-§6, ¶A, as amended by PL 2005, c. 561, §8, is further 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 only if 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) Ninety days after the department adopts rules under subsection 5, paragraph D, subparagraph (1), a manufacturer of computer monitors and a manufacturer of televisions shall implement and finance the implementation of this plan for the collection and recy-

cling 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~~ consolidators for the costs of handling and recycling the household computer monitors and televisions;

(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; 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. The department may keep information submitted pursuant to this division confidential as provided under section 1310-B.

(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. 45. 38 MRSA §1665-A, sub-§9, as amended by PL 2003, c. 6, §1, is further amended to read:

9. Reporting. Before January 1, 2003 and annually thereafter, motor vehicle manufacturers doing business in the State shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on any fee or other charge collected on the sale of new motor vehicles for the purpose of paying the cost of carrying out the manufacturer responsibilities under subsection 5. The report must specify the amount of the fee or charge collected and how the amount of the fee or charge was determined. Before July 1, 2004 and annually thereafter, motor vehicle manufacturers shall report in writing to the department on the results of the source separation required under this section. The report must include, at a minimum, the number of mercury switches removed and recycled from motor vehicles during the previous calendar year; the estimated total amount of mercury contained in the components; and any recommendations to improve the future collection and recycling of motor vehicle components. Before January 1, 2004 and annually thereafter, the department shall report to the ~~Mercury Products Advisory Committee~~ joint standing committee of the Legislature having jurisdiction over natural resources matters on the effectiveness of the source separation required under this section, whether the partial reimbursement payment under subsection 5, paragraph B should be adjusted to increase the number of switches brought to consolidation facilities, whether other motor vehicle components should be added to the source separation efforts and whether the program should be terminated and, if so, when.

Sec. 46. PL 2005, c. 549, §7 is amended to read:

Sec. 7. Report. The Department of Environmental Protection shall prepare a report on funding for cleanup of sites contaminated by hazardous waste, biomedical waste and waste oil. The report must include an assessment of the adequacy of the Maine Hazardous Waste Fund and must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than February ~~1~~ 15, ~~2007~~ 2008. The committee may ~~report out~~ submit legislation dealing with the fees for the transport and disposal of hazardous waste to the ~~First Regular Session of the~~ 123rd Legislature.

Sec. 47. Applicability. Notwithstanding the Maine Revised Statutes, Title 32, Section 10010, any person certified as a Class 3 underground oil storage tank installer by the Board of Underground Oil Storage Tank Installers prior to the effective date of this Act may continue to install or remove underground oil

storage tanks in accordance with the conditions and limitations of the certification until the certification expires by its terms.

Sec. 48. Retroactivity. That section of this Act that amends Public Law 2005, chapter 549, section 7 is retroactive to February 1, 2007.

See title page for effective date.

CHAPTER 293

H.P. 224 - L.D. 268

An Act Regarding the Long-term Contracting Authority of the Public Utilities Commission

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

Sec. 1. 35-A MRSA §3210-C, sub-§1, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or ~~new~~ interruptible, demand response or energy efficiency capacity resource.

B. "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the commission.

C. "New" as applied to any capacity resource means a capacity resource that:

(1) Has an in-service date after September 1, 2005;

(2) Was added to an existing facility after September 1, 2005;

(3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource; or

(4) Was refurbished after September 1, 2005 and is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process.

D. "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource.

E. "Renewable capacity resource" means a renewable resource, as defined in section 3210, subsection 2, paragraph C, except the maximum total power production capacity limit of 100 megawatts under section 3210, subsection 2, paragraph C does not apply and "renewable capacity resource" does not include:

(1) A generator fueled by municipal solid waste in conjunction with recycling; or

(2) A hydroelectric generator unless it meets all state and federal fish passage requirements applicable to the generator.

Sec. 2. 35-A MRSA §3210-C, sub-§3, as enacted by PL 2005, c. 677, Pt. C, §1, is amended to read:

3. Commission authority. The commission may direct large investor-owned transmission and distribution utilities to enter into long-term contracts for:

A. Capacity resources; and

B. Any available energy associated with capacity resources contracted under paragraph A:

(1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or

(2) If the commission determines appropriate for purposes of supplying or lowering the cost of standard-offer service ~~pursuant to section 3212~~. ~~If contracts are entered into~~ Available energy contracted pursuant to this subparagraph~~, the contracts must be treated as standard offer service contracts pursuant to section 3212~~ may be sold into the wholesale electricity market in conjunction with solicitations for standard-offer supply bids.

The commission may direct large investor-owned transmission and distribution utilities to enter into contracts under this subsection only as agents for their customers and only in accordance with this section. To the greatest extent possible, the commission shall develop procedures having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for large investor-owned transmission and distribution utilities.

The commission may enter into contracts for interruptible, demand response or energy efficiency capacity resources. These contracts are not subject to the rules of the State Purchasing Agent.

Capacity resources contracted under this subsection may not exceed the amount necessary to ensure the reliability of the electric grid of this State or to lower customer costs as determined by the commission pursuant to rules adopted under subsection 10.

Unless the commission determines the public interest requires otherwise, a capacity resource may not be