

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

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

Penmor Lithographers
Lewiston, Maine
2008

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

Sec. 1. 38 MRSA §480-FF, as enacted by PL 2007, c. 290, §10, is amended to read:

§480-FF. Notification of identification; shorebird nesting, feeding and staging areas

If an area is identified by the Department of Inland Fisheries and Wildlife as the type of area listed in section 480-B, subsection 10, paragraph B, sub-paragraph (3) after the effective date of this section, the department shall notify each municipality in which the significant wildlife habitat is located and members of the Legislature who represent residents of the municipality in which the significant wildlife habitat is located. The department and the Department of Inland Fisheries and Wildlife shall report to the joint standing committees of the Legislature having jurisdiction over natural resources matters and inland fisheries and wildlife matters on any action taken pursuant to this section.

Sec. 2. Rulemaking; Department of Inland Fisheries and Wildlife. The Department of Inland Fisheries and Wildlife shall amend its rules on significant wildlife habitat to update the definition of "vernal pools" to be consistent with the requirements of section 3 where applicable. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, notwithstanding Title 38, section 480-BB.

Sec. 3. Rulemaking; Department of Environmental Protection. The Department of Environmental Protection shall amend its rules on significant wildlife habitat to incorporate the requirements of this section. The requirements specified in this section are not intended to replace existing requirements in rules, except that, if there is a conflict between the requirements specified in this section and the rules, the rules must be revised to reflect the requirements specified in this section.

1. The following requirements apply to the identification of significant vernal pool habitats and must be employed when implementing significant wildlife habitat rules adopted by the Department of Environmental Protection and the Department of Inland Fisheries and Wildlife pursuant to the Maine Revised Statutes, Title 38, section 480-BB.

A. When a vernal pool habitat has not previously been determined to be significant and the Department of Environmental Protection or the Department of Inland Fisheries and Wildlife makes a determination concerning whether the vernal pool habitat is significant, either department may determine that the vernal pool habitat is not significant if:

(1) The vernal pool is located in southern Maine and dries out after spring filling and before July 15th based on winter, spring and early summer precipitation; or

(2) The vernal pool is located in northern Maine and dries out after spring filling and before July 31st based on winter, spring and early summer precipitation.

B. In addition to state threatened and endangered species, for purposes of determining whether a vernal pool habitat is significant, the rare species that must be considered are limited to: Ribbon Snakes, Wood Turtles, Swamp Darner Dragonflies and Comet Darner Dragonflies.

C. In order to be identified as part of a significant vernal pool habitat, the vernal pool may not have a permanent flowing inlet or outlet.

2. The Department of Environmental Protection may delete a note in rule concerning rare indicator species, notwithstanding Resolve 2005, chapter 183, section 1, subsection 10.

Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, notwithstanding Title 38, section 480-BB.

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

Effective March 31, 2008.

CHAPTER 534

H.P. 1456 - L.D. 2072

An Act To Conform the Laws Governing Underground Oil Storage Tanks to the Requirements of the Federal Energy Policy Act

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

Sec. 1. 38 MRSA §563, sub-§9, as amended by PL 2005, c. 491, §1, is further amended to read:

9. Annual compliance inspection. The owner of an underground oil storage facility is responsible for ensuring that each underground oil storage tank and associated piping at the facility are inspected annually for compliance with the requirements of this subchapter and any rules adopted under this subchapter and the requirements for gasoline vapor control in rules adopted under section 585-A. The owner shall correct or arrange for correction of any deficiencies detected

during the inspection as necessary to bring the facility into compliance with these requirements.

A. The owner of an underground oil storage facility shall submit annual inspection results to the department on or before July 1, 2003 and on or before July 1st annually thereafter. The results must be recorded on a form provided by the department and must include a certification statement, signed by an underground oil storage tank inspector or underground oil storage tank installer certified by the Board of Underground Oil Tank Installers under Title 32, chapter 104-A, that each tank and associated piping have been inspected and any deficiencies discovered during the inspection have been corrected. The owner shall submit the completed form to the department no more than 30 days after the date on which the inspection was completed.

~~B. In addition to other enforcement actions allowed under state law, the commissioner may issue an administrative order after providing a notice of violation for failure to comply with the requirement of this subsection and after providing a reasonable opportunity to correct the violation. The administrative order may include, but is not limited to, a requirement that the owner or operator of an underground oil storage facility cease deliveries of oil to, and operation of, the underground oil storage tank and associated piping that are the subject of the violation until the violation has been corrected.~~

~~C. Service of the commissioner's administrative order under paragraph B must be made by hand delivery by an authorized representative of the department or by certified mailing, return receipt requested.~~

~~D. The person to whom the administrative order under paragraph B is directed shall comply immediately or within the time period specified in the order. That person may appeal the order to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.~~

E. Beginning July 1, 2010 and at least once every 3 years thereafter, the annual inspection of each tank must be performed by a certified underground oil storage tank inspector or underground oil storage tank installer who is not the tank owner or operator, an employee of the tank owner or op-

erator or a person having daily on-site responsibility for the operation and maintenance of the tank.

Sec. 2. 38 MRSA §563, sub-§10, ¶D, as enacted by PL 2005, c. 491, §1, is amended to read:

D. The owner of an aboveground oil storage tank used to store motor fuel shall ensure that underground piping associated with the tank is inspected annually for compliance with the requirements of this subchapter and the requirements for gasoline vapor control in rules adopted under section 585-A. The owner shall submit annual inspection results to the department on or before July 1, 2007 and on or before July 1st annually thereafter. The results must be recorded on a form provided by the department and must include a certification statement, signed by an underground oil storage tank inspector or an underground oil storage tank installer certified by the Board of Underground Oil Tank Installers under Title 32, chapter 104-A that the piping has been inspected and any deficiencies discovered during the inspection have been corrected. The owner shall submit the completed form to the department no more than 30 days after the date on which the inspection was completed. The requirements of this paragraph may be enforced in the same manner as is provided for underground oil storage facilities under subsection 9.

Sec. 3. 38 MRSA §565-A is enacted to read:

§565-A. Authority to prohibit product delivery

1. Order to cease deliveries. In addition to the enforcement actions allowed under sections 347-A and 348, the commissioner may, after providing an owner or operator of an underground oil storage tank with a notice of violation for failure to comply with a requirement of this subchapter and after providing a reasonable opportunity for correction of the violation, issue an administrative order requiring the owner or operator of the underground oil storage tank that is the subject of the violation to cease deliveries of oil to the tank and to cease operation of the tank and associated piping until the violation has been corrected. The commissioner shall issue an administrative order to cease deliveries to or operation of an underground oil storage tank subject to section 564 upon determining that:

A. The tank is not equipped with the spill prevention, overfill protection, leak detection or corrosion protection measures required under section 564 and applicable department rules;

B. The tank is not being operated or maintained in compliance with section 564 and applicable department rules and the owner or operator has failed to gain compliance with the requirements within 30 days of being provided with a citation for or written notice of the violation; or

C. There is evidence of an ongoing release of product from the tank or facility at which the tank is located.

The commissioner may defer issuance of an administrative order to cease deliveries pursuant to this subsection if the commissioner determines that a delivery prohibition would jeopardize the availability of, or access to, oil in a remote area of the State. The deferral may not exceed 180 days. Notwithstanding the issuance of an administrative order under this subsection, the commissioner may authorize the owner or operator of the underground oil storage tank to dispense any remaining oil in the tank if, in the commissioner's judgment, doing so will not pose a threat of release of product or will reduce that threat.

2. Service. Service of an administrative order under subsection 1 must be made by hand delivery by an authorized representative of the department or by certified mail, return receipt requested. The person to whom the order is directed shall comply immediately or within the time period specified in the order or may appeal the order as provided in subsection 3.

3. Appeal. An administrative order under subsection 1 may be appealed to the board by filing a written petition within 5 working days after receipt of the order. Within 15 working days after receipt of the petition, the board shall hold a hearing on the matter. All witnesses at the hearing must be sworn. Within 7 working days after the hearing, the board shall make findings of fact and shall continue, revoke or modify the administrative order. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

4. Identification of tanks subject to delivery prohibition. Whenever the commissioner issues an administrative order under subsection 1, department staff shall affix a red tag to the fill pipe of the underground oil storage tank. The owner or operator may not allow the deposit of oil into the tank while a red tag is affixed to the fill pipe.

As used in this section, "red tag" means a tag, device or mechanism devised by the department for use in signifying that an underground oil storage tank is ineligible for product delivery. The tag must be red in color and must bear words clearly conveying that it is unlawful to deposit oil into the tank. The tag must be made of plastic or other durable, damage-resistant material and must be designed to be easily affixed to the tank fill pipe.

5. Prohibition. A person may not deposit oil into an underground oil storage tank that has a red tag affixed to the fill pipe or tamper with the tag except to remove it as authorized by the commissioner under subsection 6.

6. Return to service. A red tag affixed pursuant to this section may not be removed until an under-

ground oil storage tank inspector or underground oil storage tank installer certifies in writing to the commissioner that the applicable violations have been corrected and the commissioner authorizes removal of the tag. The commissioner shall remove or authorize the removal of the tag as soon as practicable upon receipt of the certification. The commissioner may remove or authorize the removal of the tag absent confirmation that the violations have been corrected in emergency situations or when removal is determined to be in the best interest of the public.

Sec. 4. 38 MRSA §568, sub-§3, as amended by PL 2005, c. 330, §22, is further amended to read:

3. Issuance of clean-up orders. The commissioner may investigate and sample sites where an oil discharge has or may have occurred to identify the source and extent of the discharge. During the course of the investigation, the commissioner may require submission of information or documents that relate or may relate to the discharge under investigation from any person who the commissioner has reason to believe may be a responsible party under this subchapter or subchapter 2-A. If the commissioner finds, after investigation, that a discharge of oil has occurred and may create a threat to public health or the environment, including, but not limited to, contamination of a water supply, the commissioner may issue a clean-up order requiring the responsible party to cease the discharge immediately and to take action to prevent further discharge and to mitigate or terminate the threat of human exposure to contamination or to explosive vapors. In addition to other actions, including an action to prohibit product delivery under section 565-A, the commissioner may, as part of any clean-up order, require the responsible party to provide temporary drinking water and water treatment systems approved by the commissioner, to sample and analyze wells and to compensate 3rd-party damages resulting from the discharge. The commissioner may also order that the responsible party take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including a requirement that the responsible party restore or replace water supplies contaminated with oil with water supplies the commissioner finds are cost effective, technologically feasible and reliable and that effectively mitigate or minimize damage to, and provide adequate protection of, the public health, welfare and the environment. Clean-up orders may be issued only in compliance with the following procedures.

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

representative of the department in accordance with the Maine Rules of Civil Procedure.

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

C. Upon completion of the clean-up activity, the commissioner shall issue a letter to the responsible party or parties indicating that the clean-up order has been complied with for one or more parcels.

Sec. 5. Operator training. By August 8, 2009, the Department of Environmental Protection shall develop a program to train owners and operators of federally regulated underground oil storage tanks on how to properly operate and maintain the tank systems. The program must meet the minimum requirements specified by the United States Environmental Protection Agency pursuant to 42 United States Code, Section 6991(i)(2007).

See title page for effective date.

CHAPTER 535

S.P. 788 - L.D. 1994

**An Act To Amend the Laws
Relating to Marks,
Corporations, Limited
Partnerships, Limited Liability
Companies and Registered
Agents**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 6-A, which governs the appointment and maintenance of clerks and registered agents for business and nonprofit corporations, limited liability companies, limited partnerships and limited liability partnerships in this State, becomes effective July 1, 2008, and changes to that law and other entity laws administered by the Secretary of State must be in place by July 1, 2008 in order for the Secretary of State to properly administer these laws; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 10 MRSA §1527, sub-§1, ¶B, as enacted by PL 1979, c. 572, §2, is amended to read:

B. Any registration ~~concerning which~~ on file when the Secretary of State shall receive receives a voluntary request for cancellation ~~thereof~~ from the registrant or the assignee of record. The cancellation must be in writing and recorded with the Secretary of State and accompanied by a filing fee of \$10, payable to the Treasurer of State. The Secretary of State may prescribe a form for this purpose. The Secretary of State, upon the recording of a cancellation under this paragraph, shall issue an attested copy to the remitter of the instrument;

Sec. A-2. 13-B MRSA §1301, sub-§5, as repealed and replaced by PL 1993, c. 680, Pt. A, §23, is amended to read:

5. Certificate of excuse. The Secretary of State, upon application by a corporation and satisfactory proof that it has ceased to carry on activities, shall file a certificate of that fact and shall give a duplicate certificate to the corporation. The corporation is then excused from filing annual reports with the Secretary of State as long as the corporation carries on no activities. The name of a corporation remains in the Secretary of State's record of corporate names and is protected for a period of 5 years following the filing of the certificate under this subsection.

Sec. A-3. 31 MRSA §7, as corrected by RR 2001, c. 2, Pt. B, §48 and affected by §58, is amended to read:

§7. Inapplicable to corporations, limited partnerships or limited liability companies

Sections 1 and 2 do not apply to corporations, limited partnerships or limited liability companies. A