

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

chapter 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 the facility cease operation of the facility that is the subject of the violation until the violation has been corrected.

1. Service. Service of the commissioner's administrative order under this section must be made by hand delivery by an authorized representative of the department or by certified mailing, return receipt requested.

2. Appeal. The person to whom the commissioner's administrative order under this section 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.

§1398. Eligibility for clean-up funds

Clean-up costs and 3rd-party damages resulting from discharges from an aboveground oil storage facility or an underground oil storage facility installed in violation of section 1393 are not eligible for coverage by the Ground Water Oil Clean-up Fund under sections 568-A and 569-A.

§1399. Municipal authority

This chapter may not be construed to prevent a municipality from imposing siting restrictions more stringent than the prohibitions in this chapter or in rules adopted by the board.

Sec. 7. Rules. The Board of Environmental Protection shall adopt rules that restrict the siting of the facilities listed in the Maine Revised Statutes, Title 38, section 1393, subsection 1 within significant sand and gravel aquifers mapped by the Department of Conservation, Bureau of Geology and Natural Areas, Maine Geological Survey. The rules must provide for variance from the restrictions in appropriate instances, including when engineering and monitoring that exceed regulatory requirements are determined to effectively reduce the risk of oil and hazardous waste discharges, and must be otherwise consistent with the rules for siting underground oil storage tanks adopted pursuant to Public Law 2001, chapter 302, section 3. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 8. Aboveground oil storage tank registration; review. The Department of Defense, Vet-

erans and Emergency Management, Maine Emergency Management Agency, in coordination with the Department of Public Safety, Office of the State Fire Marshal and the Department of Environmental Protection, referred to in this section as "the departments," shall review the current framework for registering aboveground oil storage facilities. The departments shall invite the regulated community to participate in the review. The departments shall evaluate and make recommendations on a plan for coordinating among the departments the registration of aboveground oil storage facilities. Where appropriate, the plan must facilitate the use of geographic information system data. By January 15, 2009, the departments shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report detailing their findings and recommendations. The report must include draft legislation necessary to implement the recommendations, and the joint standing committee of the Legislature having jurisdiction over natural resources matters may report out to the First Regular Session of the 124th Legislature a bill relating to the report.

See title page for effective date.

CHAPTER 570

H.P. 1392 - L.D. 1954

An Act To Amend the Potato Cull Pile Law

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

Whereas, enforcement of laws requiring proper disposal of cull potatoes and maintenance of cull potato piles is essential to minimize the threat of disease; and

Whereas, revisions to the laws governing cull potatoes are needed; 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:

Sec. 1. 7 MRSA §1007-A, as amended by PL 2005, c. 512, §43, is further amended to read:

§1007-A. Improperly maintaining cull potato piles; public nuisance

1. Declaration of public nuisance. The Legislature declares that the A2 strain of late blight and other potato diseases constitute a clear and present danger to the potato industry in the State, which is a significant part of the State's economy. Control of the A2 strain of potato blight and other potato diseases requires the proper disposal of ~~potato~~ cull potato piles. The Legislature finds it necessary to exercise the police power of the State to require proper disposal of cull potatoes and ~~potato~~ cull potato piles and to provide procedures for the disposal of these potatoes by the department when the ~~owner~~ responsible party fails to comply with the requirements of this section. In addition to constituting a civil violation as prescribed in this section, ~~potato~~ cull potato piles that are not managed and disposed of in accordance with these requirements are considered a public nuisance and are subject to action under Title 17, chapter 91.

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

A. "Cull potatoes" means:

- (1) Potatoes that are not marketable or usable for human consumption or as seed potatoes;
- (2) Potatoes that are used for animal feed;
- (3) The residue potatoes left in the field from commercial or seed potato production the preceding year; and
- (4) Potatoes that spoil while in storage.

B. "Responsible party" means the owner or lessee of the property on which cull potatoes are found or another person determined to be responsible for the potatoes in accordance with rules adopted under subsection 3.

2. Disposal requirements; maintenance of cull potato piles. ~~The owner or lessee of any real property on which potatoes are grown, or on which potato cull piles are maintained or disposed of, shall properly dispose of potato culls and cull piles in order to destroy the A2 strain of potato blight and other potato diseases. The commissioner shall adopt rules in accordance with subsection 3 to prescribe the proper acceptable methods for disposal of potato culls cull potatoes and potato establish best management practices for maintaining cull potato piles. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II A. Proper disposal must occur on or before June 10th of each year. No cull piles may be maintained between June 10th and October 1st of each year. By emergency or other rule making procedures, the commissioner may vary these dates when the type of disposal method or other circumstances require that cull piles be destroyed~~

~~in order to prevent the spread of significant disease. Except as provided in rules adopted under subsection 3, all cull potatoes must be properly disposed of on or before June 10th of each year. A person who keeps a pile of cull potatoes shall maintain the pile in accordance with best management practices. Upon inspection authorized under subsection 4, the commissioner may determine site-specific best management practices for a pile of cull potatoes and order the responsible party to comply with these practices.~~

3. Rules. ~~The commissioner may shall adopt any rules necessary to implement this section in accordance with the Maine Administrative Procedure Act, except that the commissioner may shorten or suspend the notice and hearing requirements as necessary to respond to any an imminent threat of disease. Prior to adopting any rules under this section, the commissioner shall consult with the Maine Potato Board except in an emergency. In addition, the commissioner may determine best management practices for the handling of cull potatoes and cull piles in accordance with Title 17, section 2805. The commissioner shall adopt a set of best management practices for the maintenance of cull potato piles between June 10th and October 1st and may adopt a different set of best management practices applicable to piles maintained between October 1st of one year and June 10th of the following year. The commissioner may use emergency rulemaking to temporarily vary:~~

A. The dates established in subsection 2 when circumstances require that cull potatoes be disposed of prior to the June 10th date to prevent or minimize the spread of disease;

B. The dates established in subsection 2 when weather or economic circumstances allow an extension of the time period during which cull potato piles may be maintained without significantly increasing the threat of disease; and

C. The best management practices prescribed for maintaining cull potato piles when these practices are found inadequate to protect against an imminent threat.

Except in an emergency, the commissioner shall consult with the Maine Potato Board prior to adopting rules under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Department action. ~~The commissioner may take action to properly dispose of potato culls or manage cull potatoes and cull potato piles that violate the requirements of this section or any rules of the commissioner adopted to implement this section. The commissioner or the commissioner's designee is authorized to enter any property to inspect potato cull potato piles and to take any action required to secure their proper disposal or management. Designated rep-~~

representatives of the commissioner may, without search warrant, enter at reasonable times any real property, other than a building, where potatoes are grown, stored, packed, loaded for shipment or handled, and may enter any building, either with the consent of the owner, lessee, occupant or agent or pursuant to an administrative search warrant. Notwithstanding the Maine Rules of Civil Procedure, Rule 80E, paragraph (b), the commissioner or the commissioner's designee may obtain an administrative search warrant pursuant to this section by describing the premises to be entered and the purpose of the inspection or other authorized action and by demonstrating that the entry is necessary in order to inspect potato cull piles or otherwise carry out the requirements of this section. This demonstration is deemed to be a demonstration of probable cause.

The costs incurred by the department in removing and properly disposing of or managing cull potatoes and cull potato piles must be reimbursed by the ~~owner or lessee of the property on which the potatoes were found or any other person responsible for the potatoes~~ responsible party or parties, each of whom is jointly and severally liable for those costs to the department. The department, its employees and agents and any person acting on behalf of the department are not liable for any action taken pursuant to this section.

5. Potato Cull Removal Fund. The Potato Cull Removal Fund is established to be used by the department to administer and enforce the provisions of this section and to pay any expenses of ~~potato~~ potato management, removal ~~and~~ or disposal. The commissioner may receive funds from any source to be deposited into this fund, which does not lapse. If at any time the balance of the fund falls below \$15,000, any penalties collected under this section must be deposited into the fund. Otherwise, penalties collected must be deposited into the General Fund.

6. Civil penalties. Any person who violates any of the requirements of this section or any rules adopted under this section commits a civil violation for which a fine of not more than \$1,000 for each violation, together with not more than \$1,000 for each succeeding day of a continuing violation, may be adjudged.

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

Effective April 7, 2008.

**CHAPTER 571
H.P. 1454 - L.D. 2070**

**An Act To Improve the
Campaign Finance Laws and
Their Administration**

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

Whereas, legislation enacted during the First Regular Session of the 123rd Legislature created an error in statute regarding qualifying contributions under the Maine Clean Election Act; and

Whereas, proper oversight of the collection of qualifying contributions is necessary to ensure appropriate distribution of taxpayer funds under the Maine Clean Election Act; and

Whereas, the 2008 election cycle for candidates for the 124th Legislature is already underway; 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:

Sec. 1. 1 MRSA §1002, sub-§2, as amended by PL 2005, c. 271, §1, is further amended to read:

2. Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment; or who now holds an elective county, state or federal office; ~~who is an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign.~~ A person may not serve on the commission who is an officer, director, employee or primary decision maker of a party committee, political action committee or candidate committee authorized under Title 21-A, section 1013-A, subsection 1, paragraph B.

Sec. 2. 1 MRSA §1002, sub-§2-A is enacted to read:

2-A. Conflict of interest. This subsection governs conflicts of interest of members of the commission.