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.

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Lewiston, Maine
2008

2. Exceptions allowing compelled disclosure. A court may compel disclosure of the identity of a source or information described in subsection 1 if the court finds, after the journalist has been provided notice and the opportunity to be heard, that the party seeking the identity of the source or the information has established by a preponderance of the evidence:

A. In all matters, whether criminal or civil, that:

(1) The identity of the source or the information is material and relevant;

(2) The identity of the source or the information is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material to the claim or defense;

(3) The identity of the source or the information is not obtainable from any alternative source or cannot be obtained by alternative means or remedies less destructive of First Amendment rights; and

(4) There is an overriding public interest in the disclosure; and

B. Based on information obtained from a source other than the journalist that:

(1) In a criminal investigation or prosecution, there are reasonable grounds to believe that a crime has occurred; or

(2) In a civil action or proceeding, there is a prima facie cause of action.

3. Compelled disclosure from 3rd parties. The protection from compelled disclosure contained in subsection 1 also applies with respect to any subpoena issued to, or other compulsory process against, a 3rd party that seeks records, information or other communications relating to business transactions between the 3rd party and the journalist for the purpose of discovering the identity of the source or obtaining information described in subsection 1. Whenever a subpoena is issued to, or other compulsory process is issued against, a 3rd party that seeks records, information or other communications on business transactions with the journalist, the affected journalist must be given reasonable and timely notice of the subpoena or compulsory process before it is executed or initiated and an opportunity to be heard. In the event that the subpoena issued to, or other compulsory process against, the 3rd party is in connection with a criminal investigation in which the journalist is the express target and advance notice as provided in this section would pose a clear and substantial threat to the integrity of the investigation, the governmental authority shall so certify to such a threat in court and notification of the subpoena or compulsory process must be given to the affected journalist as soon as it is determined that the notification will no longer pose a clear and substantial threat to the integrity of the investigation.

4. Waiver. A journalist waives the protection provided by this section if the journalist voluntarily discloses or consents to disclosure of the protected information described in subsection 1, paragraphs A and B.

See title page for effective date.

CHAPTER 655

S.P. 809 - L.D. 2119

An Act To Amend Certain Laws Related to Environmental Protection

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

Sec. 1. 38 MRSA §353, sub-§9, as enacted by PL 2007, c. 187, §1, is amended to read:

9. Finance charges. In addition to other remedies specifically authorized in this Title, the department shall charge interest at a rate of 15% per annum, unless the commissioner finds the amount too small or the likelihood of recovery too uncertain, and may pursue enforcement, including, but not limited to, penalties pursuant to section 349 and suspension or revocation pursuant to section 341-D, subsection 3 for the failure of a licensee to pay any portion of licensing fees owed by the date due.

Sec. 2. 38 MRSA §480-I, sub-§3, as enacted by PL 1997, c. 230, §1, is repealed.

Sec. 3. 38 MRSA §562-A, sub-§17, ¶E, as enacted by PL 1993, c. 363, §7 and affected by §21, is amended to read:

E. With regard to sections 568, 568-A, 569-A and 570, persons described in paragraphs A to D with regard to aboveground oil storage facilities.

Sec. 4. 38 MRSA §563, sub-§4, as repealed and replaced by PL 1989, c. 865, §5, is amended to read:

4. Registration fees. The owner or operator of an underground oil storage facility shall pay ~~an annual~~ a fee to the department of ~~$35~~ $100 for each tank registered under this section located at the facility, except that single family homeowners are not required to pay a fee for a tank at their personal residence. ~~Annual payments~~ The fee must be paid ~~on or before January 1st of each calendar year~~ at the time the tank is first registered and every 3 years thereafter upon receipt of a bill from the department. The department may prorate the fee for new installations to put all tank owners and operators on the same billing cycle.

Sec. 5. 38 MRSA §566-A, sub-§1-A, as enacted by PL 1991, c. 763, §6, is amended to read:

1-A. Abandoned tanks brought back into service. Underground oil storage tanks and facilities that have been out of service for a period of more than 12 months may not be brought back into service without the written approval of the commissioner. The commissioner may approve the return to service if the owner ~~can demonstrate~~ demonstrates to the commissioner's satisfaction that:

A. The facility is in compliance with this subchapter and rules adopted pursuant to this subchapter;

B. The underground oil storage tank and piping have successfully passed ~~precision~~ testing as directed by the commissoner; ~~and~~

C. The underground oil storage tank and piping are constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the commissioner~~.~~;

D. The facility has conforming suction or double-walled pressurized piping; and

E. The return of the facility to service does not pose an unacceptable risk to groundwater resources. In determining if the facility poses an unacceptable risk to groundwater resources, the commissioner may consider the age and maintenance history of the storage tanks and piping, the number and consequences of past oil discharges from the tanks and piping, the proximity of the facility to drinking water supplies and the proximity of the facility to sensitive geologic areas.

Sec. 6. 38 MRSA §568, sub-§1, as amended by PL 1991, c. 817, §22, is further amended to read:

1. Removal. Any person discharging or suffering a discharge of oil to ~~ground water~~ groundwater in the manner prohibited by section 543 and any other responsible party shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding this requirement, the commissioner may order the removal of that discharge pursuant to subsection 3~~,~~ or may undertake the removal of that discharge and retain agents and contractors for that purpose, who shall operate under the direction of the commissioner. Any unexplained discharge of oil to ~~ground water~~ groundwater within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting the discharge, the commissioner or the commissioner's agents or contractors, may be paid in the first instance from the Ground Water Oil Clean-up Fund, including any expenses incurred by the State under subsection 3, and any reimbursements due that fund must be collected in accordance with section 569-A or 569-B.

Sec. 7. 38 MRSA §1310-E1, sub-§4, as amended by PL 2001, c. 626, §18, is further amended to read:

4. Subsequent landfill closure activity. Any municipality that closes a landfill pursuant to subsection 1, 2 or 3 and that inspects, monitors and maintains the closure measures as required ~~pursuant to those subsections as necessary to ensure the closure measures remain effective~~ under subsection 6 is entitled to an assurance from the department that the municipality has met its closure obligations and that no further closure action other than inspection, monitoring and maintenance is required of the municipality by the department with regard to that landfill unless one or more of the following circumstances arises:

A. The commissioner finds that the landfill, although closed, is nonetheless a high-risk landfill and orders further closure or remediation activities;

B. Additional closure or remediation activities are needed and the department's cost share of the additionally required activity is immediately available; or

C. Additional closure or remediation activities are required as a result of an existing or pending formal department enforcement action with respect to the violation of the license conditions under which a landfill was operated.

Nothing with regard to this assurance ~~is~~ may be construed to limit the department's authority to act using its own resources as that activity may be otherwise authorized by law.

Sec. 8. 38 MRSA §1310-E1, sub-§6 is enacted to read:

6. Post-closure maintenance. A municipality that closes a landfill pursuant to subsection 1, 2 or 3 shall inspect, monitor and maintain the closure measures required under those subsections as necessary to ensure that the closure remains effective.

Sec. 9. 38 MRSA §1310-F, sub-§1-A, as enacted by PL 1993, c. 732, Pt. C, §14, is amended to read:

1-A. Remediation cost-share fraction. ~~Subject~~ Except as provided under subsection 2 and subject to the availability of funds, the commissioner shall issue grants or payments to eligible municipalities for 90% of the planning and implementation costs of remediation.

Sec. 10. 38 MRSA §1310-AA, sub-§3, ¶D, as enacted by PL 2007, c. 338, §3 and affected by §5, is amended to read:

D. For a determination of public benefit under subsection 1-A only, facilitates the operation of a solid waste disposal facility ~~that provides a sub-~~

~~stantial public benefit~~ and the operation of that solid waste disposal facility would be precluded or significantly impaired if the waste is not accepted.

Sec. 11. 38 MRSA §1316-C, first ¶, as enacted by PL 1991, c. 517, Pt. A, §2, is amended to read:

Each responsible party is jointly and severally liable for all costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of the threat or hazard posed by an uncontrolled tire stockpile and for damages for injury to, destruction of ~~or~~, loss of or loss of use of natural resources of the State resulting from the uncontrolled tire stockpile, including the reasonable costs of assessing natural resources damages. The commissioner shall demand prompt reimbursement of all costs incurred under sections 1316-A and 1316-B. If payment is not received by the State within 30 days of demand, the Attorney General may file suit in the Superior Court and may seek reimbursement of other costs and any other relief provided by law. Notwithstanding the time limits stated in this section, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 12. 38 MRSA §1316-G, sub-§1, ¶H, as enacted by PL 1995, c. 578, §1, is amended to read:

H. Educate the public and encourage use of tires based on consideration of environmental and public health impacts as well as market conditions; and

Sec. 13. 38 MRSA §1316-G, sub-§1, ¶I, as enacted by PL 1995, c. 578, §1, is amended to read:

I. Contract for services to reduce tire stockpiles and abate significant risk to the environment and public health at tire stockpile sites~~; and~~.

Sec. 14. 38 MRSA §1316-G, sub-§1, ¶J, as enacted by PL 1995, c. 578, §1, is repealed.

Sec. 15. 38 MRSA §1319-G, sub-§1, as amended by PL 1991, c. 817, §34, is further amended to read:

1. Recovery. The commissioner shall seek recovery to the use of the Maine Hazardous Waste Fund of all sums expended from the fund, including overdrafts, for disbursements made from the fund under section 1319-E, subsection 1, paragraphs A, B and C, including interest computed at ~~10%~~ 15% a year from the date of expenditure, unless the commissioner finds the amount too small or the likelihood of recovery too uncertain. Requests by the department for reimbursement to the Maine Hazardous Waste 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 pursuant to Title 5, section 191.

The commissioner may file a claim with or otherwise seek money from federal agencies to recover to the use of the fund all disbursements from the fund.

Sec. 16. 38 MRSA §1367, first ¶, as amended by PL 1991, c. 312, §3, is further amended to read:

Each responsible party is jointly and severally liable for all costs incurred by the State for the abatement, cleanup or mitigation of the threats or hazards posed or potentially posed by an uncontrolled site, including, without limitation, all costs of acquiring property, and for damages for injury to, destruction of ~~or~~, loss of or loss of use of natural resources of the State resulting from hazardous substances at the site or from the acts or omissions of a responsible party with respect to those hazardous substances and for the reasonable costs of assessing natural resources damages. The commissioner shall demand reimbursement of costs and payment of damages to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. Requests for reimbursement to the Uncontrolled Sites 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 pursuant to Title 5, section 191. The Attorney General or an attorney retained by the department may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages. 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. 17. 38 MRSA §1609, sub-§4, as enacted by PL 2007, c. 296, §1, is amended to read:

4. "Deca" mixture of polybrominated diphenyl ethers in home furniture. Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that ~~have plastic fibers containing~~ contain the "deca" mixture of polybrominated diphenyl ethers:

A. A mattress or mattress pad; ~~or~~ and

B. Upholstered furniture intended for indoor use in a home or other residential occupancy.

Sec. 18. 38 MRSA §1609, sub-§13, ¶A, as enacted by PL 2007, c. 296, §1, is amended to read:

A. A mattress, a mattress pad or upholstered furniture intended for indoor use in a home or other residential occupancy that ~~has plastic fibers containing~~ contains that flame retardant; or

Sec. 19. 38 MRSA §1665-A, sub-§9, as amended by PL 2007, c. 292, §45, 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 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.~~ When the commissioner determines that the number of mercury switches available for collection is too small to warrant continuation of the program, the department shall recommend to the joint standing committee of the Legislature having jurisdiction over natural resources matters that the mercury switch removal, collection and recycling requirements of this section be repealed. The committee may report out a bill repealing this section.

Sec. 20. Report on special fees. By February 1, 2009, the Department of Environmental Protection shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report on special fees assessed pursuant to the Maine Revised Statutes, Title 38, section 352, subsection 3. The joint standing committee of the Legislature having jurisdiction over natural resources matters has authority to submit legislation relating to the report.

See title page for effective date.

CHAPTER 656

S.P. 885 - L.D. 2255

An Act To Protect Maine's Energy Sovereignty through the Designation of Energy Infrastructure Corridors and Energy Plan Development

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

PART A

Sec. A-1. 12 MRSA §685-A, sub-§11, as amended by PL 1999, c. 657, §5, is further amended to read:

11. Exemptions. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, or a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 may be wholly or partially exempted from regulation to the extent that the commission may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition ~~to the Public Utilities Commission and after a~~, notice and public hearing, the Public Utilities Commission determines that such exemption is necessary or desirable for the public welfare or convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-2. 30-A MRSA §4352, sub-§4, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

4. Exemptions. Real estate used or to be used by a public ~~service corporation~~ utility, as defined in Title 35-A, section 102, subsection 13, or a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 is wholly or partially exempt from an ordinance only when on petition, notice and public hearing the Public Utilities Commission determines that the exemption is reasonably necessary for public welfare and convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-3. 35-A MRSA §122 is enacted to read:

§122. Energy infrastructure corridors

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