# LAWS

## OF THE

# STATE OF MAINE

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**
**FIRST REGULAR SESSION**
**NON-EMERGENCY LAWS IS**
**SEPTEMBER 12, 2009**

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

**Augusta, Maine**
**2009**

# CHAPTER 121
## S.P. 179 - L.D. 476

## 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. 38 MRSA §341-D, sub-§4,** as amended by PL 2007, c. 661, Pt. B, §§2 to 4, is further amended to read:

**4. Appeal or review.** The board shall review, may hold a hearing at its discretion on and may affirm, amend ~~or,~~ reverse or remand to the commissioner for further proceedings any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

(1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time; or

(2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board;

B. License or permit decisions made by the commissioner that the board votes to review within 30 days of the next regularly scheduled board meeting following written notification to the board of the commissioner's decision. Except as provided in paragraph D, the procedures for review are the same as provided under paragraph A;

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A; and

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4. In reviewing an appeal of a license or permit decision by the commissioner on an application for an expedited wind energy development, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board using the standards contained in subsection 5 for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee shall serve as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.

**Sec. 2. 38 MRSA §343-D, sub-§2,** as enacted by PL 1991, c. 804, Pt. C, §3 and affected by §5, is amended to read:

**2. Terms.** Except for the commissioner, who shall serve a term coincident with that person's appointment as the commissioner, all members are appointed for staggered terms of ~~3~~ 4 years. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2, ~~3-year~~ 4-year terms.

**Sec. 3. 38 MRSA §343-H, sub-§3, ¶B,** as amended by PL 2001, c. 695, §1, is repealed.

**Sec. 4. 38 MRSA §343-H, sub-§4,** as amended by PL 2003, c. 551, §4, is further amended to read:

**4. Reporting.** The directors shall jointly report on the activities of all state agencies and state-supported institutions of higher learning under the initiative to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the joint standing committee of the Legislature having jurisdiction over state government matters. The directors must submit their report no later than January 1, 2006, and biennially thereafter. The report must identify the successes of and the obstacles to implementation of the initiative and may include recommendations for any statutory changes necessary to accomplish the initiative.

**Sec. 5. 38 MRSA §344, sub-§10** is enacted to read:

**10. Voluntary surrender.** Unless otherwise provided in this Title or rules adopted pursuant to this

Title, a license may be voluntarily surrendered by the license holder upon department approval.

**Sec. 6. 38 MRSA §361-A, sub-§1-J,** as amended by PL 2007, c. 292, §16, 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 July 1, ~~2007~~ 2009.

**Sec. 7. 38 MRSA §361-A, sub-§1-K,** as amended by PL 2007, c. 292, §17, 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 July 1, ~~2007~~ 2009.

**Sec. 8. 38 MRSA §552, sub-§2,** as amended by PL 1997, c. 364, §30, is further amended to read:

**2. State need not plead or prove negligence.** 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, any person, vessel, licensee, agent or servant, including a carrier destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place is liable to the State for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D, E, H and I, or other damage incurred by the State, including damage for injury to, destruction of, loss of, or loss of use of natural resources ~~and~~, the reasonable costs of assessing natural resources damage and the costs of preparing and implementing a natural resources restoration plan. In any suit to enforce claims of the State under this section, to establish liability, it is not necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge.

**Sec. 9. 38 MRSA §561,** as amended by PL 1995, c. 399, §5 and affected by §21, is further amended to read:

**§561. Findings; purpose**

The Legislature finds that significant quantities of oil are being stored in aboveground and underground storage facilities; that leaks and unlicensed discharges from these facilities pose a significant threat to the quality of the waters of the State, including the ground water resources; that protection of the quality of these waters is of the highest importance; and that their protection requires proper design and installation of new and replacement underground oil storage facilities and aboveground oil storage facilities, as well as monitoring, maintenance and operating procedures for existing, new and replacement facilities.

The Legislature intends by the enactment of this subchapter to exercise the police power of the State through the department by conferring upon the department the power to deal with the hazards and threats of danger and damage posed by the storage and handling of oil ~~in underground facilities~~ and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from these occurrences may be promptly made whole; to establish a fund to provide for the investigation, mitigation and removal of discharges or threats of discharge of oil from ~~aboveground and underground~~ storage facilities, including the restoration of contaminated water supplies; and to guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds that preservation of the ground water resources and of the public uses referred to in this subchapter is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety and that the State's interest in this preservation outweighs any burdens of absolute liability imposed by the Legislature in this subchapter upon those engaged in the storage of oil, petroleum products and their by-products ~~in underground storage facilities~~.

**Sec. 10. 38 MRSA §563, sub-§4,** as amended by PL 2007, c. 655, §4, is further amended to read:

**4. Registration fees.** The owner or operator of an underground oil storage facility shall pay a fee to the department of $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. The fee must be paid 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~~ as appropriate.

**Sec. 11. 38 MRSA §566-A, sub-§4,** as amended by PL 1999, c. 334, §2, is further amended to read:

**4. Commissioner role.** If the owner of an underground oil storage facility or tank fails to properly abandon the facility or tank within a reasonable time period, the commissioner may undertake the abandonment. ~~The commissioner shall collect any reimbursement due the Ground Water Oil Clean-up Fund in accordance with section 569-A or 569-B.~~ The commissioner shall seek recovery of costs incurred to undertake the abandonment, whether from state or federal funds, in accordance with the procedures set forth in section 569-A, subsection 10. Costs incurred by the commissioner to undertake the abandonment are a lien against the real estate of the owner as provided under section 569-A, subsection 10-A and section 569-B, subsection 6-A.

**Sec. 12. 38 MRSA §568, sub-§1,** as amended by PL 2007, c. 655, §6, is further amended to read:

**1. Removal.** Any person discharging or suffering a discharge of oil ~~to groundwater~~ from an underground oil storage facility or an aboveground oil storage facility 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 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. 13. 38 MRSA §568, sub-§4, ¶A,** as amended by PL 1991, c. 494, §9, is further amended to read:

A. Any person who causes, or is responsible for, a discharge ~~to ground water~~ from an underground oil storage facility or an aboveground oil storage facility in violation of section 543 is not subject to any fines or penalties for a violation of section 543 for the discharge if that person promptly reports and removes that discharge in accordance with the rules and orders of the commissioner and the board.

**Sec. 14. 38 MRSA §569-A, sub-§2,** as amended by PL 2005, c. 330, §23, is further amended to read:

**2. Third-party damages.** Any person claiming to have suffered property damage or actual economic damages, including, but not limited to, loss of income and medical expenses directly or indirectly as a result of a discharge of oil ~~to ground water prohibited by section 543~~ from an underground oil storage facility or an aboveground oil storage facility, in this subsection called the "claimant," may apply to the commissioner within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, stating the amount of damage alleged to have been suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The commissioner, upon petition and for good cause shown, may waive the 2-year limitation for filing damage claims.

All 3rd-party damage claims for which no determination of award has been made must be processed in accordance with the substantive and procedural provisions of this section.

A. When a responsible party is known, the commissioner shall send by certified mail to the responsible party notice of claim and written notice of the right to join the claims proceeding as an interested party. A responsible party shall provide written notification of intent to join to the department within 10 working days of receipt of this notice. If the responsible party joins as an interested party and formally agrees in writing to the amount of the damage claim, any determination of the amount of the claim and award is binding in any subsequent action for reimbursements to the fund. If a claimant is not compensated for 3rd-party damages by the responsible party or the expenses are above the applicant's deductible and the claimant, the responsible party and the commissioner agree as to the amount of the damage claim, or if the responsible party does not join as an interested party or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner agree as to the amount of the damage claim, the commissioner shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the fund.

B. If the claimant, the responsible party and the commissioner are not able to agree as to the amount of the damage claim, or if the responsible party does not join as an interested party in a timely manner or when the responsible party is not known after the commissioner has exercised reasonable efforts to ascertain the responsible party, and the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 4.

C. A claimant shall take all reasonable measures to prevent and minimize damages suffered by the claimant as a result of a discharge of oil. Reasonable measures include title searches and site assessments for the acquisition of commercial or industrial properties.

D. Third-party damage claims must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are waived unless the damage or injury was not known at the time of the claim.

E. Damage claim awards paid from the fund to a claimant may not include any amount the claimant has recovered on account of the same damage by way of settlement with the responsible party or the responsible party's representative or judgment of a court of competent jurisdiction against the person causing or otherwise responsible for the discharge.

F. It is the intent of the Legislature that the remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive. A court awarding damages to a claimant as a result of a discharge of oil to ground water prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative.

G. Payments from the fund for 3rd-party damage claims may not exceed $200,000 per claimant.

H. A 3rd-party damage claim for damages to real estate may not include the devaluation of the real estate associated with the loss of a water supply if the commissioner finds under section 568, subsection 2 that a public or private water supply is available and best meets the criteria of that subsection and the property owner did not agree to be served by that public or private water supply. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

(1) A 3rd party may not recover damages under this subchapter for the expenses of treatment or replacement of the well if the well is installed in an area delineated as contaminated as provided in section 548, subsection 1; and

(2) A 3rd-party damage claim under this subchapter with regard to treatment or replacement of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in any other area.

For purposes of this paragraph, "viable community public water system" has the same meaning as in section 548.

I. A claimant is not eligible for compensation under this subsection for costs, expenses or damages related to a discharge if the commissioner determines that the claimant is a responsible party as defined under section 562-A, subsection 17.

J. Prior to forwarding a claim to the hearing examiner under subsection 4, the commissioner may require that the amount of the claim be finalized.

K. Third-party damage claims may not include expenditures for the preparation and prosecution of the damage claim such as legal fees or real estate appraisal fees.

L. The commissioner may dismiss a 3rd-party damage claim for untimely filing, for failure by the claimant to provide the information necessary to process the claim within 60 days after the claimant receives written notice that the claim is insufficient for processing or for ineligibility as determined by the commissioner under paragraph I. A dismissal may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7.

**Sec. 15. 38 MRSA §584-A, sub-§1,** as amended by PL 1999, c. 79, §1, is repealed and the following enacted in its place:

**1. Particulate matter.** For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board relating to the control of particulate matter, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard for particulate matter established pursuant to Section 109 of the federal Clean Air Act as amended, 42 United States Code, Section 7409.

**Sec. 16. 38 MRSA §1367, first ¶,** as amended by PL 2007, c. 655, §16, is further amended to read:

Each responsible party is jointly and severally liable for all costs incurred by 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 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, 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~~. Each responsible party also is jointly and severally liable for damages for injury to, destruction of, loss of or loss of use of natural

resources of the State, the reasonable costs of assessing natural resources damages and the costs of preparing and implementing a natural resources restoration plan. The commissioner shall demand reimbursement of costs, including interest, and payment of damages to be recovered under this section ~~and payment~~. The interest rate charged may not exceed the prime rate of interest plus 4%. Interest must be computed beginning 60 days from the date of a payment demand by the commissioner. 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-§5,** as enacted by PL 2007, c. 296, §1, is amended to read:

**5. "Deca" mixture of polybrominated diphenyl ethers in electronics.** Effective January 1, 2010, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State a television or computer that has a plastic housing containing more than 0.1% of the "deca" mixture of polybrominated diphenyl ethers.

**Sec. 18. 38 MRSA §1609, sub-§11,** as enacted by PL 2007, c. 296, §1, is amended to read:

**11. Application.** This section does not apply to the sale of ~~used products.~~:

A. Used products;

B. Products if the presence of polybrominated diphenyl ether is due solely to the use of recycled material; or

C. Replacement parts that contain the "octa" or "penta" mixtures of polybrominated diphenyl ether if the parts are for use in a product manufactured before January 1, 2006.

**Sec. 19. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 38, chapter 3, subchapter 2-B, in the subchapter headnote, the words "underground oil storage facilities and ground water protection" are amended to read "oil storage facilities and ground water protection" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

## CHAPTER 122

## H.P. 796 - L.D. 1152

### An Act To Amend the Laws Governing Certain Reports and Reviews Related to Utilities and Energy and Certain Positions at the Public Utilities Commission

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

**Sec. 1. 2 MRSA §6-A, sub-§3, ¶B,** as amended by PL 1981, c. 582, §1, is further amended to read:

B. Director of ~~finance~~ telephone and water utility industries;

**Sec. 2. 2 MRSA §6-A, sub-§3, ¶D,** as amended by PL 2005, c. 23, §1, is further amended to read:

D. Director of ~~technical analysis~~ electric and gas utility industries;

**Sec. 3. 3 MRSA §959, sub-§1, ¶P,** as amended by PL 2005, c. 605, §2, is further amended to read:

P. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters shall use the following list as a guideline for scheduling reviews:

(1) Public Advocate in 2005;

(2) Board of Directors, Maine Municipal and Rural Electrification Cooperative Agency in 2007;

(3) Public Utilities Commission, including the Emergency Services Communication Bureau, in 2007; and

~~(4) The Emergency Services Communication Bureau within the Public Utilities Commission in 2009; and~~

(5) Telecommunications Relay Services Advisory Council in 2013.

**Sec. 4. 5 MRSA §949, sub-§1, ¶B,** as enacted by PL 1983, c. 729, §4, is amended to read:

B. Director of ~~Finance~~ telephone and water utility industries;