

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

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

Augusta, Maine
2010

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	(\$25,000)	(\$25,000)
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$25,000)	(\$25,000)

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

Effective March 22, 2010.

CHAPTER 535

S.P. 681 - L.D. 1775

An Act To Amend Mercury Stack Testing Requirements for Certain Air Emission Sources

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

Sec. 1. 38 MRSA §585-B, sub-§5, as amended by PL 2009, c. 338, §1, is further amended to read:

5. Standards for mercury. Notwithstanding subsection 1, an air emission source may not emit mercury in excess of 45.4 kilograms, or 100 pounds, per year after January 1, 2000; 22.7 kilograms, or 50 pounds, per year after January 1, 2004; 15.9 kilograms, or 35 pounds, after January 1, 2007; and 11.4 kilograms, or 25 pounds, after January 1, 2010. As an alternative to not emitting mercury in excess of 11.4 kilograms, or 25 pounds, after January 1, 2010, an air emission source may reduce mercury emissions by 90 percent by weight after January 1, 2010. Compliance with these limits must be specified in the license of the air emission source. The board shall establish by rule testing protocols and measurement methods for emissions sources for which the board has not established such protocols and methods for determining compliance with the emission standard for mercury. These rules are routine technical rules under Title 5, chapter 375, subchapter 2-A.

An air emission source may apply to the board for an extension or modification of the 11.4-kilogram, or 25-pound, limit as follows.

A. An emission source may submit an application to the board no later than January 1, 2009 for a 6-month extension of the January 1, 2010 deadline to meet the 11.4-kilogram, or 25-pound, limit. The board shall grant the extension if the board determines, based on information presented by the source, that compliance with the limit is not

achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons.

B. An emission source may submit an application to the board no later than January 1, 2009 for a license modification establishing an alternative emission limit for mercury. The board shall grant the license modification if the board finds that the proposed mercury emission limit meets the most stringent emission limitation that is achievable and compatible with that class of source, considering economic feasibility.

Pending a decision on an application for an extension or a license modification under this subsection, the 15.9-kilogram, or 35-pound, limit applies to the emission source.

Notwithstanding the January 1, 2000 compliance date in this subsection, a resource recovery facility that is subject to an emissions limit for mercury adopted by rule by the board before January 1, 2000 shall comply with the 45.4-kilogram, or 100-pound, mercury emissions limit after December 19, 2000.

For determining compliance with this subsection, the results of multiple stack tests may be averaged in accordance with guidance provided by the department.

Sec. 2. 38 MRSA §585-B, sub-§6, as amended by PL 2009, c. 338, §2, is further amended to read:

6. Mercury reduction plans. ~~Any~~ An air emission source emitting mercury in excess of 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. ~~The~~ Except as provided in subsection 7, the mercury reduction plan must be submitted to the department no later than September 1, 2008. The mercury reduction plan must contain:

A. Identification, characterization and accounting of the mercury used or released at the emission source; and

B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the emission source to reduce the amount of mercury used or released by that emission source, including a financial analysis of the costs and benefits of reducing the amount of mercury used or released.

The department may keep information submitted to the department under this subsection confidential as provided under section 1310-B.

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than March 1, 2009 summarizing the mercury emissions and mercury reduction potential from those emission sources sub-

ject to this subsection. In addition, the department shall include an evaluation of the appropriateness of the 25-pound mercury standard established in subsection 5. The evaluation must address, but is not limited to, the technological feasibility, cost and schedule of achieving the standards established in subsection 5. The department shall submit an updated report to the committee by ~~January 1, 2010~~ March 1, 2013. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out to the ~~124th~~ 126th Legislature ~~legislation a bill~~ relating to the evaluation and the updated report.

Sec. 3. 38 MRSA §585-B, sub-§7 is enacted to read:

7. Stack tests for mercury. An air emission source emitting mercury in excess of 10 pounds in calendar year 2010 must:

A. Conduct a stack test for mercury twice in calendar year 2011 and twice in calendar year 2012. The stack tests must be conducted at least 4 months apart; and

B. By January 1, 2013, develop a mercury reduction plan and submit the plan to the department in accordance with subsection 6. The plan must contain the results of the 4 stack tests conducted pursuant to paragraph A.

For determining compliance with subsection 5, the results of multiple stack tests under this subsection may be averaged in accordance with guidance provided by the department.

The department may approve an alternative to the stack testing requirements in this subsection, such as, but not limited to, mercury input data or a continuous mercury emission monitoring system.

See title page for effective date.

CHAPTER 536

H.P. 1211 - L.D. 1710

An Act Concerning Litigation Brought by the Attorney General To Enforce Provisions of the Forest Practices Laws

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

Sec. 1. 12 MRSA §8870, sub-§6 is enacted to read:

6. Costs permitted. In any action or proceeding brought by the Attorney General under this section, the court may award litigation costs, including court costs, reasonable attorney's fees and reasonable expert

witness fees, to be deposited in the General Fund of the State if the State or any of its officers or agencies is a prevailing party in the action or proceeding and the defendant's defense was not substantially justified. For the purposes of this subsection, a defense is "substantially justified" if the defense had a reasonable basis in law or fact at the time it was raised.

Sec. 2. 12 MRSA §9701, as enacted by PL 1979, c. 545, §3, is amended to read by adding at the end a new paragraph to read:

In any action or proceeding brought by the Attorney General under this section, the court may award litigation costs, including court costs, reasonable attorney's fees and reasonable expert witness fees, to be deposited in the General Fund of the State if the State or any of its officers or agencies is a prevailing party in the action or proceeding and the defendant's defense was not substantially justified. For the purposes of this subsection, a defense is "substantially justified" if the defense had a reasonable basis in law or fact at the time it was raised.

See title page for effective date.

CHAPTER 537

H.P. 1082 - L.D. 1538

An Act To Close Loopholes in Environmental Laws

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

Sec. 1. 38 MRSA §414, sub-§8, as enacted by PL 1997, c. 794, Pt. A, §21, is amended to read:

8. Effect of license. Issuance of a license under ~~this chapter~~ section 413 does not convey any property right of any sort, or exclusive privilege. Except for toxic effluent standards and prohibitions imposed under the Federal Water Pollution Control Act, Section 307, as amended, compliance with a license issued under section 413 during its terms constitutes compliance with ~~this chapter~~ sections 413 to 414-C and section 423-D. It is not a defense for a licensee in an enforcement action that it would have been necessary to halt or reduce the licensed activity in order to maintain compliance with the conditions of the license. The licensee shall take all reasonable steps to minimize or prevent any discharge in violation of a license that has a reasonable likelihood of adversely affecting human health or the environment.

Sec. 2. 38 MRSA §420-D, sub-§7, ¶A, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is repealed and the following enacted in its place: