

# 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.**

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**Augusta, Maine**  
**2010**

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: