

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**June 19, 2018 to September 13, 2018**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**DECEMBER 13, 2018**

**ONE HUNDRED AND TWENTY-NINTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 5, 2018 to June 20, 2019**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 2019**

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

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**Augusta, Maine**  
**2019**

paragraph must be removed within 18 months from the date a permit is issued by the department; or

B. Make permanent repairs, to the extent necessary to alleviate the threat, to strengthen the seawall, bulkhead, retaining wall or other structure, to widen the footings or to secure the structure to the sand with tie-back anchors. A ~~state-certified~~ state-licensed geologist, state-licensed professional engineer or other qualified professional must make the determination that the actions taken by the property owner in accordance with this section are only those actions necessary to alleviate the imminent threat and do not include increasing the height or length of the structure.

If a local code enforcement officer, state-licensed professional engineer or ~~state-certified~~ state-licensed geologist fails to determine within 6 hours of initial contact by the property owner whether the integrity of a structure is destroyed or threatened, the property owner may proceed as if the local code enforcement officer, state-licensed professional engineer or ~~state-certified~~ state-licensed geologist had determined that the integrity of the structure was destroyed or threatened.

**Sec. 17. 38 MRSA §563-B, sub-§1, ¶B**, as enacted by PL 1991, c. 763, §2, is amended to read:

B. Upon abandonment or replacement of an underground tank or facility, must require site assessment to be conducted or supervised by a ~~state-certified~~ state-licensed geologist or registered professional engineer only when that tank or facility is located in a sensitive geologic area; and

See title page for effective date.

**CHAPTER 286**

**H.P. 1194 - L.D. 1668**

**An Act To Implement  
Recommendations of the  
Department of Environmental  
Protection Regarding the  
State's Mercury-added Lamp  
Law**

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

**Sec. 1. 38 MRSA §1672, sub-§1, ¶A-1** is enacted to read:

A-1. "Covered entity" means a person who at any one time presents for drop off at a collection location participating in a department-approved program for the recycling of mercury-added lamps under this subsection:

(1) Any number of compact fluorescent mercury-added lamps; or

(2) Ten or fewer mercury-added lamps that are not compact fluorescent mercury-added lamps.

**Sec. 2. 38 MRSA §1672, sub-§1, ¶C**, as enacted by PL 2009, c. 272, §1, is amended to read:

C. "Municipal collection ~~site location~~" means a solid waste disposal facility, transfer station, storage facility or recycling facility at which mercury-added lamps from ~~households~~ a covered entity are collected for recycling that is municipally owned or operated or operated by a regional association.

**Sec. 3. 38 MRSA §1672, sub-§1, ¶¶E and F** are enacted to read:

E. "Population center" means an urbanized area or urban cluster, as defined by the United States Department of Commerce, Bureau of the Census to identify areas of high population density and urban land use with a population of 2,500 or greater.

F. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and which is not otherwise publicly available.

**Sec. 4. 38 MRSA §1672, sub-§4**, as amended by PL 2013, c. 315, §2, is further amended to read:

**4. Manufacturer recycling programs for mercury-added lamps.** ~~Effective January 1, 2011, each~~ Each manufacturer of mercury-added lamps sold or distributed ~~for household use in the State for use by~~ a covered entity on or after January 1, 2001 shall individually or collectively implement a department-approved program for the recycling of mercury-added lamps from ~~households~~ a covered entity.

A. The recycling program required under this subsection must include, but is not limited to:

(1) Convenient collection locations ~~located~~ adequate to serve the needs of covered entities in rural and urban areas throughout the State where residents a covered entity can drop off their household mercury-added lamps without cost, including but not limited to municipal collection sites locations and participating retail establishments. The program must include a method of determining the adequate number and geographic distribution of collection locations based on geographic information system modeling.

No later than January 1, 2020, the collection system implemented under the program must provide at least 90% of the residents of the

State with a permanent collection location or a nonpermanent collection location available on a periodic basis within 15 miles of their residence unless the commissioner determines that this requirement is not practicable due to geographic constraints, in which case the commissioner may approve an alternative collection system that includes a geographic distribution of collection locations but that does not otherwise meet this requirement.

Unless otherwise approved by the commissioner, the collection system implemented under the program:

- (a) Must provide at least 2 collection locations within a population center of at least 30,000 residents and an additional collection location for each additional 30,000 residents within the population center; and
- (b) Must ensure that the collection locations required under division (a) are located in a manner that provides residents of the population center with convenient and reasonably equitable access to the collection locations;
- (2) Handling and recycling equipment and practices in compliance with the universal waste rules adopted pursuant to section 1319-O, subsection 1, paragraph F, with subsection 6 if a crushing device is used and with all other applicable requirements;
- (3) Effective Provision of education and outreach efforts by a manufacturer to promote the program, which must include, but are not limited to, strategies for education of and outreach to covered entities in all areas of the State and ensuring understanding of collection options by covered entities. The education and outreach, including, but not limited to ~~to~~ must, at a minimum, include posters, window clings and point-of-purchase signs and other materials provided that are made available to retail establishments collection locations without cost, that can be prominently displayed and that will be easily visible to covered entities; and outreach to the general public, including annual Internet-based media campaigns and print and radio media campaigns conducted in rural and urban areas in the State; and
- (4) An annual report to the department on the number of mercury-added lamps recycled under the manufacturer's program, the estimated percentage of mercury-added lamps available for recycling that were recycled under the program and the methodology for estimating

the number of mercury-added lamps available for recycling, an evaluation of the effectiveness of the recycling program, recommendations for increasing the number of lamps recycled under the recycling program and an accounting of the costs associated with administering and implementing the recycling program.

- (5) A goal of annually increasing the percentage of the residents of the State that are aware of the requirement to recycle mercury-added lamps and the availability of mercury-added lamp recycling at collection locations implemented under the program;
- (6) Provisions for routinely evaluating the effectiveness of the education and outreach under subparagraph (3);
- (7) Procedures for improving the education and outreach under subparagraph (3) if the goal under subparagraph (5) is not achieved; and
- (8) An annual report to the department, which must include, at a minimum:
  - (a) The number of mercury-added lamps recycled under the program;
  - (b) The estimated percentage of mercury-added lamps available for recycling that were recycled under the program and, if the percentage of lamps recycled in the prior calendar year did not represent an increase from the percentage of lamps recycled in the calendar year prior to the prior calendar year, recommendations for program modifications to increase the percentage of lamps recycled under the program;
  - (c) The methodology for estimating the number of mercury-added lamps available for recycling, which must include an assumption of the average lifespan of a lamp by type of lamp and number of lamps sold by type in the years on which the percentage under division (b) is calculated. Proprietary information submitted to the department pursuant to this division that is identified by the manufacturer as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B;
  - (d) A description of the education and outreach under subparagraph (3) and an evaluation of the effectiveness of that education and outreach, including a de-

scription of the methods used to measure consumer awareness of the requirement to recycle mercury-added lamps and, beginning with the annual report for 2020, the results of an assessment of consumer awareness of the program as completed by an independent 3rd-party assessor;

(e) The location of and contact information for each collection location established under the program and an assessment of the convenience of the collection system established under the program;

(f) An accounting of the costs associated with implementing and administering the program; and

(g) Any recommendations for changes to the program to improve the convenience of the collection system, consumer education or program evaluation.

B. A manufacturer required to implement a recycling program under this subsection shall submit its proposed recycling program for department review and approval. The department shall solicit public comment on the proposed program before approving or denying the program.

C. Beginning April 1, 2011, a manufacturer not in compliance with this section is prohibited from offering any mercury-added lamp for final sale in the State or distributing any mercury-added lamp in the State. A manufacturer not in compliance with this section shall provide support to retailers to ensure the manufacturer's mercury-added lamps are not offered for sale, sold at final sale or distributed in the State.

D. Beginning April 1, 2011, a retailer may not offer for final sale a mercury-added lamp produced by a manufacturer not in compliance with this section. The department shall notify retailers of the manufacturers of mercury-added lamps not in compliance with this section.

E. Beginning in 2013, and biennially thereafter, the department shall calculate the percentage of mercury-added lamps recycled from households covered entities and report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on any modifications to the manufacturer recycling programs it intends to make to improve mercury-added lamp recycling rates and any recommendations for statutory changes needed to facilitate mercury-added lamp collection and recycling. The report may be included in the report required pursuant to section 1772, subsection 1.

F. The department may determine that a manufacturer's recycling program is in compliance with

paragraph A, subparagraphs (1), (2) and (4) for the collection of compact fluorescent lamps from households if the manufacturer provides adequate financial support for the collection and recycling of such lamps to municipalities and a conservation program established pursuant to Title 35-A, section 10110 and implemented by the Efficiency Maine Trust.

G. A department-approved recycling program under this subsection that is collectively implemented by manufacturers of mercury-added lamps must require the payment of a flat program participation fee, in lieu of payment of any other fees or costs associated with the program's operation, by a manufacturer participating in the program that previously offered for sale or distributed in the State any type of mercury-added lamps but that no longer offers for final sale or distributes in the State any type of mercury-added lamps; except that a manufacturer that previously offered for sale or distributed in the State only compact fluorescent mercury-added lamps but that no longer offers for final sale or distributes in the State compact fluorescent mercury-added lamps may be required to pay the flat program participation fee only for a period beginning on the date the manufacturer stops offering for final sale or distributing in the State compact fluorescent mercury-added lamps and ending 5 years after that date, after which time the manufacturer must be allowed to continue to participate in the program without being required to pay any fees or other costs associated with the program's operation.

H. If, based on the information annually reported to the department under paragraph A, subparagraph (8), the department determines that fewer than 25,000 total mercury-added lamps were collected in the prior calendar year in the State under all recycling programs implemented under this subsection and that the combined mercury-added lamp recycling rate in the prior calendar year under all recycling programs implemented under this subsection was 10% or greater, the department shall develop a process for reducing the scope of the manufacturer recycling program required under this subsection and for terminating all program requirements within the 3-year period subsequent to that determination.

(1) In developing the program reduction and termination process under this paragraph, the department shall invite the participation of manufacturers that have implemented a recycling program under this section.

(2) The program reduction and termination process developed under this paragraph must be based on the best available data regarding

the collection of mercury-added lamps in the State, including, but not limited to:

(a) The collection activity at each collection location;

(b) The estimated number of mercury-added lamps in the State still available for collection; and

(c) The total number of mercury-added lamps collected in the prior program years.

(3) Following completion of the development of the program reduction and termination process under this paragraph, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters regarding its findings and recommendations for implementing that process, including any proposed legislation. The report under this subparagraph may be included in the report required under section 1772, subsection 1. After reviewing the report the committee may report out a bill to implement the recommendations contained in the report or to otherwise facilitate a reduction and termination of the manufacturer recycling program required under this subsection.

See title page for effective date.

## CHAPTER 287

### H.P. 1227 - L.D. 1716

#### An Act To Update the Licensing Laws for Occupational Therapy Practice

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

**Sec. 1. 32 MRSA §2271**, as amended by PL 1997, c. 294, §1, is repealed.

**Sec. 2. 32 MRSA §2272, sub-§4**, as repealed and replaced by PL 1997, c. 294, §2, is amended to read:

**4. Certification examination.** "Certification examination" means the certification examination for a ~~registered~~ an occupational therapist or the certification examination for ~~certified~~ an occupational therapy assistant, both of which are administered by NBCOT.

**Sec. 3. 32 MRSA §2272, sub-§5**, as repealed and replaced by PL 1997, c. 294, §2, is repealed.

**Sec. 4. 32 MRSA §2272, sub-§8**, as repealed and replaced by PL 1997, c. 294, §2, is repealed.

**Sec. 5. 32 MRSA §2272, sub-§8-A** is enacted to read:

**8-A. Director.** "Director" means the Director of the Office of Professional and Occupational Regulation within the department.

**Sec. 6. 32 MRSA §2272, sub-§9**, as amended by PL 1997, c. 294, §2, is amended to read:

**9. Level II fieldwork.** "Level II fieldwork" means the experience required to prepare occupational therapy and ~~occupation~~ occupational therapy assistant students to carry out professional responsibilities under appropriate supervision and professional role modeling.

~~A minimum of 6 months, or 940 hours, of level II fieldwork is required for occupational therapy educational programs.~~

~~A minimum of 12 weeks, or 440 hours, of level II fieldwork is required for occupational therapy assistant educational programs.~~

**Sec. 7. 32 MRSA §2272, sub-§12-A**, as amended by PL 1999, c. 386, Pt. I, §1, is repealed.

**Sec. 8. 32 MRSA §2272, sub-§§12-B and 12-C** are enacted to read:

**12-B. Occupational therapy assistant.** "Occupational therapy assistant" means an individual who has passed the certification examination of the NBCOT for an occupational therapy assistant or who was certified as an occupational therapy assistant prior to June 1977 and who is licensed to practice occupational therapy under this chapter in the State under the supervision of a licensed occupational therapist.

**12-C. Occupational therapy practitioner.** "Occupational therapy practitioner" means an individual who is licensed as an occupational therapist or an occupational therapy assistant.

**Sec. 9. 32 MRSA §2272, sub-§14**, as amended by PL 1997, c. 294, §2, is amended to read:

**14. Supervision of OTA.** "Supervision of ~~COTA~~ OTA" means initial directions and periodic inspection of the service delivery and provision of relevant in-service training. The supervising licensed occupational therapist shall determine the frequency and nature of the supervision to be provided based on the clients' required level of care and the ~~COTA's~~ OTA's caseload, experience and competency.

**Sec. 10. 32 MRSA §2276, sub-§1-A**, as amended by PL 1999, c. 386, Pt. I, §2, is further amended to read:

**1-A. License required.** A person may not practice, or profess to be authorized to practice occupational therapy, as an occupational therapist or ~~certified~~ occupational therapy assistant in this State or use the words "occupational therapist," "~~registered~~ licensed