

Maine Revised Statutes

Title 38: WATERS AND NAVIGATION

Chapter 2: DEPARTMENT OF ENVIRONMENTAL PROTECTION

§348. JUDICIAL ENFORCEMENT

1. General. In the event of a violation of any provision of the laws administered by the department or of any order, regulation, license, permit, approval, administrative consent agreement or decision of the board or commissioner or decree of the court, as the case may be, the Attorney General or the department may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the department.

[2011, c. 538, §7 (AMD) .]

2. Restoration. The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the department or of any order, rule, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible. Where the court finds that the violation was wilful, the court shall order restoration under this subsection unless the restoration will:

A. Result in a threat or hazard to public health or safety; [1983, c. 796, §17 (NEW) .]

B. Result in substantial environmental damage; or [1983, c. 796, §17 (NEW) .]

C. Result in a substantial injustice. [1983, c. 796, §17 (NEW) .]

[1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §6 (AMD) .]

3. Injunction proceedings. If the department finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property, the department shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge or the commissioner may authorize pursuit of such an action in District Court. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347-B.

[2007, c. 292, §14 (AMD) .]

4. Settlement. A person who has resolved that person's liability to the State in an administrative or judicially approved settlement and is implementing or has fully implemented that settlement pursuant to its terms is not liable for claims by other potentially liable persons regarding response actions, response costs or damages, including without limitation natural resource damages, addressed in the settlement. The settlement does not discharge any other potentially liable persons unless its terms so provide. The protection afforded by this subsection includes protection against contribution claims and all other types of claims under state law that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another potentially liable person, if those actions, costs or damages are addressed in the settlement, but does not include protection against claims based on contractual indemnification or other express contractual agreements to pay the costs or damages. A potentially liable person who commences an action against a person who is protected from suits under this subsection is liable to the person against whom the claim is

brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees. This section is not intended to create a right to contribution or other cause of action or to make a person liable to pay a portion of another person's response costs, damages or civil penalties.

[1993, c. 732, Pt. A, §1 (NEW) .]

SECTION HISTORY

1977, c. 300, §9 (NEW). 1983, c. 796, §17 (AMD). 1989, c. 890, Pt. A, §40 (AFF). 1989, c. 890, Pt. B, §6 (AMD). 1993, c. 732, Pt. A, §1 (AMD). 2007, c. 292, §§13, 14 (AMD). 2011, c. 538, §7 (AMD).

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