

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FOUR

—
S.P. 971 - L.D. 2253

**An Act to Authorize a Stop-work Order Regarding an Activity That Is
Creating an Immediate and Substantial Adverse Impact to a Protected
Natural Resource**

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

Sec. 1. 12 MRSA §685-C, sub-§8-A is enacted to read:

8-A. Stop-work order. In accordance with the commission's delegated authority under Title 38, sections 480-E-1 and 480-R and notwithstanding any provision of law to the contrary, if the director of the commission finds that an activity located wholly within the jurisdiction of the commission is being performed in a manner that violates a law administered by the commission, a rule adopted by the commission or a term or condition of a permit or order issued by the commission and that the activity is creating an immediate and substantial adverse impact to a protected natural resource, as determined by the director, the director may issue a stop-work order pursuant to this subsection requiring the cessation of the activity in whole or in part. As used in this subsection, "protected natural resource" has the same meaning as in Title 38, section 480-B, subsection 8.

A. A stop-work order under this subsection must be in writing and must identify:

- (1) The portion of the activity that must immediately cease;
- (2) The law, rule or term or condition of the permit or order that the activity violates;
- (3) The protected natural resource that is being substantially adversely impacted by the activity;
- (4) The duration for which the activity must be ceased;
- (5) The conditions under which the activity may resume, which must include, at a minimum, identification of the corrective actions necessary to restore the protected natural resource or remediate or abate the substantial adverse impacts to the protected natural resource from the activity and to prevent any further adverse impacts to the protected natural resource from the activity. Prior to the resumption of the activity subject to the stop-work order, the commission shall conduct a site

inspection to assess compliance with the conditions and requirements of the order; and

(6) The process by which the person to whom the order is directed may respond to the order, or request that the director rescind or modify the order, while the order is in effect.

B. The director shall deliver a stop-work order under this subsection to the person responsible for the activity or, if delivery cannot be made to that person, to that person's employee, contractor or agent or to the owner of the property on which the activity is occurring. The director shall also notify the town, plantation or, in the case of a township, the county commissioners of the county in which the activity is occurring regarding the issuance of the stop-work order.

(1) Upon delivery of the stop-work order, the person to whom the order is directed shall comply with the order and immediately cease the activity subject to the order.

(2) Upon the written request of the person to whom the stop-work order is directed, the director may rescind or modify the order while the order is in effect.

(3) The issuance of a stop-work order or the modification of an order by the director may be appealed by the person to whom the order is directed to the Superior Court pursuant to the Maine Administrative Procedure Act. If the issuance or modification of the stop-work order is appealed to the Superior Court by the person to whom the order is directed, the order remains in effect and enforceable during the pendency of the appeal, except as otherwise provided in the order or by the director or as ordered by the Superior Court.

C. If the activity subject to a stop-work order under this subsection is occurring under a permit or order issued by the commission, the duration of the stop-work order may not exceed 2 weeks from the date of issuance of the stop-work order. If the person to whom the stop-work order is directed does not satisfy the conditions set forth in the stop-work order for the resumption of the activity, as determined by the director, the director may extend the stop-work order for an additional time period, not to exceed 4 weeks, necessary to satisfy those conditions.

D. A person who violates a stop-work order issued under this subsection is subject to a civil penalty of up to \$5,000 per day, per violation of the order, payable to the State and recoverable in a civil action, in addition to any other penalties that may be imposed by the commission by law.

E. Nothing in this subsection limits the commission's authority to pursue other administrative or enforcement actions relating to the activities described in a stop-work order issued under this subsection.

Sec. 2. 38 MRSA §347-A, sub-§3-A is enacted to read:

3-A. Stop-work order. Notwithstanding any provision of law to the contrary, if the commissioner finds that an activity is being performed in a manner that violates this Title, a rule adopted pursuant to this Title or a term or condition of a license, permit or order issued by the board or the department and that the activity is creating an immediate and substantial adverse impact to a protected natural resource, as determined by the department, the commissioner may issue a stop-work order pursuant to this subsection requiring the

cessation of the activity in whole or in part. As used in this subsection, "protected natural resource" has the same meaning as in section 480-B, subsection 8.

A. A stop-work order under this subsection must be in writing and must identify:

- (1) The portion of the activity that must immediately cease;
- (2) The law, rule or term or condition of the license, permit or order that the activity violates;
- (3) The protected natural resource that is being substantially adversely impacted by the activity;
- (4) The duration for which the activity must be ceased;
- (5) The conditions under which the activity may resume, which must include, at a minimum, identification of the corrective actions necessary to restore the protected natural resource or remediate or abate the substantial adverse impacts to the protected natural resource from the activity and to prevent any further adverse impacts to the protected natural resource from the activity. Prior to the resumption of the activity subject to the stop-work order, the department shall conduct a site inspection to assess compliance with the conditions and requirements of the order; and
- (6) The process by which the person to whom the order is directed may respond to the order, or request that the commissioner rescind or modify the order, while the order is in effect.

B. The commissioner shall deliver a stop-work order under this subsection to the person responsible for the activity or, if delivery cannot be made to that person, to that person's employee, contractor or agent or to the owner of the property on which the activity is occurring. The commissioner shall also notify the municipality in which the activity is occurring regarding the issuance of the stop-work order.

- (1) Upon delivery of the stop-work order, the person to whom the order is directed shall comply with the order and immediately cease the activity subject to the order.
- (2) Upon the written request of the person to whom the stop-work order is directed, the commissioner may rescind or modify the order while the order is in effect.
- (3) The issuance of a stop-work order or the modification of an order by the commissioner may be appealed by the person to whom the order is directed to the Superior Court pursuant to the Maine Administrative Procedure Act. If the issuance or modification of the stop-work order is appealed to the Superior Court by the person to whom the order is directed, the order remains in effect and enforceable during the pendency of the appeal, except as otherwise provided in the order or by the commissioner or as ordered by the Superior Court.

C. If the activity subject to a stop-work order under this subsection is occurring under a license, permit or order issued by the board or the department, the duration of the stop-work order may not exceed 2 weeks from the date of issuance of the stop-work order. If the licensee, permittee or person subject to the order does not satisfy the conditions set forth in the stop-work order for the resumption of the activity, as determined by the commissioner, the commissioner may extend the stop-work order

for an additional time period, not to exceed 4 weeks, necessary to satisfy those conditions.

D. A person who violates a stop-work order issued under this subsection is subject to a civil penalty of up to \$5,000 per day, per violation of the order, payable to the State and recoverable in a civil action, in addition to any other penalties that may be imposed under section 349.

E. Nothing in this subsection limits the department's authority to pursue other administrative or enforcement actions relating to the activities described in a stop-work order issued under this subsection.