



125th MAINE LEGISLATURE

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Legislative Document

No. 379

H.P. 305

House of Representatives, February 8, 2011

An Act To Stop Unfunded Mandates Concerning Waste Discharge Licenses

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative CLARK of Millinocket.

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

2 **Sec. 1. 38 MRSA §341-D, sub-§3**, as amended by PL 1995, c. 642, §§1 and 2, is
3 further amended to read:

4 **3. Modification, revocation or suspension.** ~~After~~ Except as provided in section
5 414-A, subsection 7, after written notice and opportunity for a hearing pursuant to the
6 Maine Administrative Procedure Act, Title 5, chapter 375, subchapter ~~IV~~ 4, the board
7 may modify in whole or in part any license, or may issue an order prescribing necessary
8 corrective action, or may act in accordance with the Maine Administrative Procedure Act
9 to revoke or suspend a license, whenever the board finds that:

- 10 A. The licensee has violated any condition of the license;
- 11 B. The licensee has obtained a license by misrepresenting or failing to disclose fully
12 all relevant facts;
- 13 C. The licensed discharge or activity poses a threat to human health or the
14 environment;
- 15 D. The license fails to include any standard or limitation legally required on the
16 date of issuance;
- 17 E. There has been a change in any condition or circumstance that requires
18 revocation, suspension or a temporary or permanent modification of the terms of the
19 license;
- 20 F. The licensee has violated any law administered by the department; or
- 21 G. The license fails to include any standard or limitation required pursuant to the
22 federal Clean Air Act Amendments of 1990.

23 For the purposes of this subsection, the term "license" includes any license, permit, order,
24 approval or certification issued by the department and the term "licensee" means the
25 holder of the license.

26 **Sec. 2. 38 MRSA §414-A, sub-§5**, as enacted by PL 1997, c. 794, Pt. A, §25, is
27 amended to read:

28 **5. Modification, reopening and revocation.** ~~The~~ Except as provided in subsection
29 7, the following actions may be taken to reopen, modify or revoke and reissue waste
30 discharge licenses. All actions taken under this subsection must be with notice to the
31 licensee and all other interested parties of record and with opportunity for hearing.
32 Actions may be appealed as set forth in sections 341-D and 346.

- 33 A. The department may reopen a license to add or change conditions or effluent
34 limitations for toxic compounds identified in 40 Code of Federal Regulations, Section
35 401 or to include schedules of compliance to implement industrial pretreatment rules
36 adopted by the board. Additionally, at the time of license issuance, the department
37 may include as a condition of a license a provision for reopening the license for
38 inclusion or change of specific limitations when facts available upon issuance
39 indicate that changed circumstances or new information may be anticipated.

1 B. A request for modification of a license may be made by the licensee for any
2 valid cause or changed circumstance. The department may initiate a license
3 modification:

- 4 (1) When necessary to correct legal, technical or procedural mistakes or errors;
- 5 (2) When there has been or will be a substantial change in the activity or means
6 of treatment that occurred after the time the license was issued;
- 7 (3) When new information other than revised rules, guidance or test methods
8 becomes available that would have justified different conditions at the time the
9 license was issued;
- 10 (4) When a pollutant not included in the license may be present in the discharge
11 in quantities sufficient to require treatment, such as when the pollutant exceeds
12 the level that can be achieved by the technology-based treatment standards
13 appropriate to the licensee, or contribute to water quality violations;
- 14 (5) When necessary to remove net limits based on pollutant concentration in
15 intake water when the licensee is no longer eligible for them, consistent with
16 federal law;
- 17 (6) When necessary to make changes as a result of the failure of one state to
18 notify another state whose waters may be affected by a discharge; or
- 19 (7) When necessary to include pretreatment compliance schedules required
20 pursuant to federal law.

21 C. Notwithstanding Title 5, section 10051, the board may modify, revoke or suspend
22 a license when the board finds that any of the conditions specified in section 341-D,
23 subsection 3 exist or upon an application for transfer of a license.

24 **Sec. 3. 38 MRSA §414-A, sub-§7** is enacted to read:

25 **7. Unfunded mandates.** The department may not impose by rule any requirements
26 on a waste discharge licensee that qualify as an unfunded state mandate pursuant to the
27 Constitution of Maine, Article IX, Section 21 unless the requirement is necessary to
28 comply with a federal regulation.

29 **SUMMARY**

30 This bill prohibits the Department of Environmental Protection from imposing by
31 rule any requirements that qualify as an unfunded mandate on a waste discharge licensee
32 unless the requirement is necessary to comply with a federal regulation.