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House of Representatives, March 5, 2021

An Act To Amend the Laws Governing Wastewater Treatment Plant Operator Certification

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Environment and Natural Resources suggested and ordered
printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MARTIN of Eagle Lake.

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

2 **Sec. 1. 5 MRSA §10051, sub-§1**, as amended by PL 2005, c. 65, Pt. C, §3, is further
3 amended to read:

4 **1. Jurisdiction.** Except as provided in section 10004; Title 8, section 279-B; Title 10,
5 section 8003; Title 20-A, sections 10712 and 10713; Title 29-A; ~~and~~ Title 32, chapters 2-B,
6 62, 114 and 135; and Title 38, section 342, the District Court has exclusive jurisdiction
7 upon complaint of any agency or, if the licensing agency fails or refuses to act within a
8 reasonable time, upon complaint of the Attorney General to revoke or suspend licenses
9 issued by the agency and has original jurisdiction upon complaint of an agency to determine
10 whether renewal or reissuance of a license of that agency may be refused.

11 **Sec. 2. 32 MRSA c. 62, headnote** is amended to read:

12 **CHAPTER 62**

13 **SEWAGE TREATMENT WASTEWATER TREATMENT PLANT OPERATORS**

14 **Sec. 3. 32 MRSA §4171**, as amended by PL 2017, c. 137, Pt. A, §1, is further
15 amended to read:

16 **§4171. Definitions**

17 As used in this chapter, unless the context otherwise indicates, the following words
18 shall have the following meanings.

19 **1. Board.** "Board" ~~shall mean~~ means the Board of Environmental Protection.

20 **2. Certificate.** "Certificate" ~~shall mean~~ means a certificate of competency issued by
21 the ~~board~~ department stating that ~~the~~ an applicant has met the requirements for the specified
22 operator classification.

23 **2-A. Commissioner.** "Commissioner" means the Commissioner of Environmental
24 Protection.

25 **2-B. Department.** "Department" means the Department of Environmental Protection.

26 **3. Operator.** "Operator" ~~shall mean the~~ means a person who ~~has direct responsibility~~
27 ~~for the operation of any wastewater treatment plant serving a public purpose. The person~~
28 ~~who shall be certified shall be the person who has management responsibility over the~~
29 ~~plant. Shift operators or other is certified by the department as being competent to~~
30 supervise, manage or operate a wastewater treatment plant and to ensure that a wastewater
31 treatment plant is operated in accordance with state law, rules and licenses. Other
32 employees under the supervision or management of the manager an operator in responsible
33 charge may but need not be certified.

34 **3-A. Operator in responsible charge.** "Operator in responsible charge" means an
35 operator certified by the department, with a certificate in good standing, at or above the
36 classification for the wastewater treatment plant in which the operator is designated by the
37 wastewater treatment plant owner to be the operator responsible for supervising, managing
38 or operating the wastewater treatment plant and ensuring that the wastewater treatment
39 plant is operated in accordance with state law, rules and licenses.

1 **4. Wastewater treatment plant.** "Wastewater treatment plant" ~~shall mean~~ means the
2 facility or group of units provided for the treatment of wastewater, ~~either or both sewage~~
3 ~~and industrial wastes, and for the reduction and handling of sewage removed from such~~
4 ~~wastes to meet the requirements of a state pollutant discharge elimination system permit or~~
5 ~~a waste discharge license under Title 38, section 413.~~

6 **Sec. 4. 32 MRSA §4172, first ¶**, as amended by PL 1989, c. 890, Pt. A, §4 and
7 affected by §40, is further amended to read:

8 The ~~commissioner~~ department shall ~~classify~~ establish the classifications for all
9 wastewater treatment plants ~~actually used or intended for use by the public~~ with due regard
10 to the size, type, character of wastewater to be treated and other physical conditions
11 affecting those treatment plants and shall specify whether each classification requires the
12 employment of an operator and the qualifications the operator in responsible charge must
13 have to successfully manage and supervise ~~successfully~~ the operation of those facilities so
14 as to protect the public health or prevent nuisance conditions or unlawful ~~pollution~~
15 conditions. A wastewater treatment plant required by its classification to employ an
16 operator may employ more than one operator but must designate one operator as the
17 operator in responsible charge for the facility.

18 **Sec. 5. 32 MRSA §4173**, as amended by PL 1989, c. 890, Pt. A, §4 and affected by
19 §40, is further amended to read:

20 **§4173. Certification**

21 The ~~commissioner~~ department shall certify persons as to their competency to
22 successfully manage and supervise ~~successfully~~ the operation of wastewater treatment
23 plants of each classification established pursuant to section 4172. A All operators and
24 operators in responsible charge must be certified, except that a certification is not required
25 of for an operator or operator in responsible charge who is a registered licensed professional
26 engineer in good standing.

27 **Sec. 6. 32 MRSA §4173-A**, as amended by PL 1987, c. 510, is further amended by
28 amending the section headnote to read:

29 **§4173-A. Continuing education Educational program**

30 **Sec. 7. 32 MRSA §4173-A, sub-§1**, as enacted by PL 1983, c. 832, §1, is amended
31 to read:

32 **1. Training.** The ~~Department of Environmental Protection~~ department shall
33 administer ~~a continuing~~ an educational program for people engaged in water pollution
34 control activities. This program shall must provide advanced training in the technical and
35 legal aspects of water pollution control, ~~and coordinate~~ and distribute information about ~~all~~
36 water pollution control training programs available in the State.

37 **Sec. 8. 32 MRSA §4173-A, sub-§3**, as amended by PL 1987, c. 510, is further
38 amended to read:

39 **3. Self supporting.** This program shall must be self-supporting from fees, grants or
40 other sources of revenue.

41 **Sec. 9. 32 MRSA §4174**, as amended by PL 2019, c. 315, §1, is further amended to
42 read:

1 **§4174. Examination; criteria; standards**

2 The ~~commissioner~~ department shall ~~hold~~ provide for at least one examination each year
3 for the purpose of examining candidates for certification pursuant to section 4173 at a time
4 and place designated by the ~~commissioner~~ department.

5 The ~~Department of Environmental Protection~~ department shall establish the criteria
6 and conditions for the classification of wastewater treatment plants ~~or systems, using as a~~
7 ~~basis the standards established by the New England Water Pollution Control Association.~~

8 The ~~Department of Environmental Protection~~ department shall establish by ~~rule~~ the
9 qualifications, conditions and licensing standards and procedures for the certification of
10 individuals to act as operators or operators in responsible charge.

11 The ~~Department of Environmental Protection~~ may allow an operator to review with
12 department staff an operator certification test that the operator has completed in order to
13 identify subject areas for which questions were answered incorrectly and further study is
14 advisable.

15 **Sec. 10. 32 MRSA §4175**, as amended by PL 1999, c. 547, Pt. B, §§69 and 78 and
16 affected by §80, is further amended to read:

17 **§4175. Certificates**

18 The ~~commissioner~~ department shall issue certificates attesting to the competency of
19 individuals to act as operators or operators in responsible charge. The certificate shall ~~must~~
20 indicate the classification level of the ~~systems or~~ wastewater treatment plants for the
21 operation of which the individual is qualified to act as an operator or an operator in
22 responsible charge.

23 Certificates ~~shall continue in effect unless revoked by the District Court~~ expire after a
24 term established by the department. The department shall establish the qualifications,
25 conditions and licensing standards and procedures for renewal of certificates.

26 The District Court may revoke the certificate of an operator, in accordance with Title
27 4, chapter 5, when it is found that the operator has practiced fraud or deception; that
28 reasonable care, judgment or the application of the operator's knowledge or ability was not
29 used in the performance of the operator's duties; or that the operator is incompetent or
30 unable properly to perform the operator's duties.

31 Operators whose certificates are invalidated under this section may be issued new
32 certificates of a like classification provided appropriate proof of competency is presented
33 to the commissioner.

34 This chapter shall may not be construed to affect or prevent the practice of any other
35 legally recognized profession.

36 **Sec. 11. 32 MRSA §4175-A** is enacted to read:

37 **§4175-A. Compliance and enforcement**

38 Notwithstanding Title 5, section 10051, after written notice and opportunity for a
39 hearing pursuant to Title 5, chapter 375, subchapter 4, the department may revoke or
40 suspend the certificate of an operator or operator in responsible charge when it finds that
41 the person has:

- 1 **1. Practiced fraud or deception.** Practiced fraud or deception;
- 2 **2. Failed to use reasonable care or judgment or properly apply knowledge.** Failed
- 3 to use reasonable care or judgment or to apply the requisite knowledge, ability or ethical
- 4 standards in the performance of the person's required duties;
- 5 **3. Failed to operate in compliance.** Failed to manage or supervise a wastewater
- 6 treatment plant in a manner that ensures that the wastewater treatment plant is operated in
- 7 compliance with state law, rules and licenses;
- 8 **4. Violated law, rules, licenses or standards.** Violated state law, rules or licenses or
- 9 ethical standards as set forth in department rules;
- 10 **5. Lost or did not possess competency.** Lost the competency required for
- 11 certification or did not possess the competency required at the time of certification; or
- 12 **6. Unable to properly perform.** Demonstrated that the person is unable to properly
- 13 perform the person's required duties.

14 An operator or operator in responsible charge whose certificate is revoked under this

15 section may apply for reinstatement of a certification of a like classification if appropriate

16 proof of competency is presented to the department. The department may establish a more

17 stringent proof of competency and procedures for the reinstatement of certification for an

18 operator or operator in responsible charge whose certificate has been revoked.

19 **Sec. 12. 32 MRSA §4175-B** is enacted to read:

20 **§4175-B. Department contracting**

21 The department may contract for or otherwise employ or retain services to fulfill the

22 department's duties under this chapter, including for the administration of an educational

23 program pursuant to section 4173-A, the provision of examinations pursuant to section

24 4174 and the issuance of certificates pursuant to section 4175.

25 **Sec. 13. 32 MRSA §4176, first ¶**, as amended by PL 1989, c. 890, Pt. A, §6 and

26 affected by §40, is further amended to read:

27 ~~The commissioner~~ department, upon application therefor, may issue a certificate,

28 without examination, in a comparable classification, to any person who holds a certificate

29 in any state, territory or possession of the United States or any country, ~~providing if~~ the

30 requirements for certification of operators under which the person's certificate was issued

31 do not conflict with this chapter and are of a standard not lower than that specified by rules

32 adopted under this chapter. The issuance of a certificate without examination does not

33 exempt a person from any other requirement of an operator or an operator in responsible

34 charge aside from the examination requirement. A person so certified is subject to

35 disciplinary action under section 4175-A.

36 **Sec. 14. 32 MRSA §4177**, as amended by PL 1973, c. 625, §223, is repealed.

37 **Sec. 15. 32 MRSA §4178, first ¶**, as enacted by PL 1969, c. 237, is amended to

38 read:

39 ~~This chapter shall apply only to conventional wastewater treatment plants which are~~

40 separate and apart from other facilities applies to all operators and operators in responsible

41 charge and any wastewater treatment plant that is used to meet the requirements of a state

1 pollutant discharge elimination system permit or waste discharge license under Title 38,
2 section 413.

3 **Sec. 16. 32 MRSA §4179, first ¶**, as amended by PL 2019, c. 315, §2, is further
4 amended to read:

5 ~~The Department of Environmental Protection~~ department shall adopt rules to
6 administer this chapter that include, but are not limited to, provisions establishing the basis
7 for classification of wastewater treatment plants in accordance with section 4172 and
8 provisions establishing requirements for examinations, qualifications and ethical standards
9 required of candidates to obtain certification and procedures for examination of candidates.
10 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
11 chapter 375, subchapter 2-A.

12 **Sec. 17. 32 MRSA §4181, first ¶**, as amended by PL 1989, c. 890, Pt. A, §8 and
13 affected by §40, is further amended to read:

14 It is unlawful for any person, firm or corporation, ~~both either municipal and or private,~~
15 to operate a wastewater treatment plant unless the competency of the operator or operator
16 in responsible charge is certified to by the ~~commissioner~~ department under this chapter. It
17 is unlawful for any person to perform the duties of an operator, ~~as defined,~~ or operator in
18 responsible charge without being duly certified under this chapter. The ~~commissioner~~
19 department may further grant a waiver for a period not exceeding one year for the operation
20 of a wastewater treatment plant serving not more than 500 services in the event the
21 wastewater treatment plant can demonstrate, to the department's satisfaction, that the
22 certification requirements cannot be met.

23 **Sec. 18. 32 MRSA §4182, first ¶**, as enacted by PL 1969, c. 237, is amended to
24 read:

25 Any person, firm or corporation, ~~both either municipal and or private,~~ violating any
26 provision of this chapter or the rules ~~and regulations~~ adopted ~~thereunder~~ pursuant to this
27 chapter is guilty of a misdemeanor and may also be subject to civil enforcement actions
28 under Title 38, section 347-A and civil monetary penalties as established under Title 38,
29 section 349. Each day of operation in violation of this chapter or any rules ~~and regulations~~
30 ~~adopted thereunder shall constitute pursuant to this chapter~~ constitutes a separate offense.

31 SUMMARY

32 This bill modifies the laws governing the wastewater treatment plant operator
33 certification program administered by the Department of Environmental Protection. It
34 changes the procedure for revocation of a wastewater treatment plant operator certification,
35 provides authority for suspension of a wastewater treatment plant operator certification,
36 clarifies how the department may administer the program, updates outdated terminology
37 and eliminates outdated provisions. It also clarifies the department's existing authority with
38 respect to licenses and its authority with respect to wastewater treatment plant operator
39 certificates.