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Legislative Document

No. 1738

H.P. 1283

House of Representatives, January 4, 2012

An Act To Make Minor Adjustments to Laws Administered by the Department of Environmental Protection

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 "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative HAMPER of Oxford.

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

2 **Sec. 1. 38 MRSA §341-H, sub-§1**, as enacted by PL 2011, c. 304, Pt. H, §14, is
3 amended to read:

4 **1. Rule-making authority of the board.** Notwithstanding any other provision of
5 this Title, and except as provided in this subsection, the board shall adopt, amend or
6 repeal only those rules of the department designated as major substantive rules pursuant
7 to Title 5, chapter 375, subchapter 2-A. The board shall also adopt, amend and repeal
8 routine technical rules as necessary for the conduct of the ~~department's~~ board's business,
9 including the processing of applications, the conduct of hearings and other administrative
10 matters.

11 **Sec. 2. 38 MRSA §342, sub-§11-B**, as enacted by PL 2011, c. 304, Pt. H, §17, is
12 amended to read:

13 **11-B. Revoke or suspend licenses and permits.** After written notice and
14 opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the commissioner
15 may act to revoke or suspend a license ~~or recommend that the board modify or take~~
16 ~~corrective action on a license~~ whenever the commissioner finds that:

- 17 A. The licensee has violated any condition of the license;
- 18 B. The licensee has obtained a license by misrepresenting or failing to disclose fully
19 all relevant facts;
- 20 C. The licensed discharge or activity poses a threat to human health or the
21 environment;
- 22 D. The license fails to include any standard or limitation legally required on the date
23 of issuance;
- 24 E. There has been a change in any condition or circumstance that requires revocation
25 or suspension of a license;
- 26 F. There has been a change in any condition or circumstance that requires a
27 corrective action or a temporary or permanent modification of the terms of the
28 license;
- 29 G. The licensee has violated any law administered by the department; or
- 30 H. The license fails to include any standard or limitation required pursuant to the
31 federal Clean Air Act Amendments of 1990.

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

34 **Sec. 3. 38 MRSA §342, sub-§11-C** is enacted to read:

35 **11-C. Modification or corrective action.** The commissioner may recommend that
36 the board modify or take corrective action on a license in accordance with section 341-D,
37 subsection 3.

1 **Sec. 4. 38 MRSA §344, sub-§9**, as enacted by PL 1989, c. 890, Pt. A, §27 and
2 affected by §40, is amended to read:

3 **9. License or permit renewals, amendments, revisions, surrenders and transfers.**
4 For purposes of this section, a request for a license or permit renewal, amendment,
5 revision, surrender or transfer is considered an application that, unless specifically
6 exempted by law, is subject to a decision by the department.

7 **Sec. 5. 38 MRSA §347-A, sub-§5**, as amended by PL 2007, c. 292, §12, is
8 further amended to read:

9 **5. Enforcement.** All orders of the department and administrative consent
10 agreements entered into by the department may be enforced by the Attorney General ~~and~~
11 or the department. If any order of the department is not complied with, the commissioner
12 shall immediately notify the Attorney General.

13 **Sec. 6. 38 MRSA §347-A, sub-§6, ¶A**, as enacted by PL 1997, c. 794, Pt. A, §5,
14 is amended to read:

15 A. In the case of an administrative consent ~~agreements~~ agreement, notice of the
16 proposed agreement must be filed with the board and notice of the filing must be
17 placed on the board's agenda ~~posted on the department's publicly accessible website~~
18 at least 30 days before the board commissioner takes any action on the agreement.
19 The Attorney General and the department shall receive and consider,~~and the~~
20 department shall provide the board with summaries of, any written comments relating
21 to the proposed agreement.

22 **Sec. 7. 38 MRSA §348, sub-§1**, as amended by PL 2007, c. 292, §13, is further
23 amended to read:

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

31 **Sec. 8. 38 MRSA §480-Q, sub-§31**, as reallocated by RR 2011, c. 1, §61, is
32 amended to read:

33 **31. Minor expansions of structures in a coastal sand dune system.** Expansion of
34 an existing residential or commercial building structure in a coastal sand dune system if:

- 35 A. The footprint of the expansion is contained within an existing impervious area;
- 36 B. The footprint of the expansion is no further seaward than the existing building
37 structure;
- 38 C. The height of the expansion is within the height restriction of any applicable law
39 or ordinance; and

1 D. The expansion conforms to the standards for expansion of a building structure
2 contained in the municipal shoreland zoning ordinance adopted pursuant to article
3 2-B.

4 **Sec. 9. 38 MRSA §480-Y, sub-§3, ¶¶A and C**, as enacted by PL 1995, c. 659,
5 §1, are amended to read:

6 A. The pond, dams, inlets and outlets must be designed by a professional engineer to
7 United States Natural Resources Conservation Service standards.

8 C. ~~The~~ For a pond that is constructed in a river, stream or brook, the pond outlet
9 must be designed to passively discharge a minimum flow equal to inflow or the
10 site-specific aquatic base flow, whichever is less, at all times. For a pond that is
11 constructed adjacent to a river, stream or brook and that uses an inlet pipe or trench
12 from the river, stream or brook, the inlet must be constructed to maintain the
13 site-specific aquatic base flow. The site-specific aquatic base flow must be that
14 specified by the department following consultation with the Department of Inland
15 Fisheries and Wildlife, the United States Natural Resources Conservation Service and
16 other qualified advisors during the site assessment.

17 **Sec. 10. 38 MRSA §480-Y, sub-§4, ¶A**, as enacted by PL 1995, c. 659, §1, is
18 amended to read:

- 19 A. An application must be filed with the department and must include the following:
- 20 (1) The application cover sheet, as provided by the department;
 - 21 (2) The United States Geological Survey topographical map with the boundaries
22 of the farm and the pond site clearly marked;
 - 23 (3) A photograph of the stream at the proposed dam site;
 - 24 (4) A copy of the irrigation plan for the farm;
 - 25 (5) Site plans showing existing and proposed topography, stream channel
26 location, existing wetland boundaries, maximum and normal pool ~~elevation,~~
27 ~~normal pool elevation~~ elevations for a pond in a river, stream or brook, dam
28 footprints, pond inlet and outlet location ~~locations~~, emergency spillway location,
29 access roads, stockpile locations and buffer strips;
 - 30 (6) Cross sections through the dam and outlet structure, including proposed
31 maximum pool elevation and normal pool elevation;
 - 32 (7) A plan to maintain minimum flow downstream, including any calculations
33 used to create the plan;
 - 34 (8) A complete erosion control plan using practices contained in the "Maine
35 Erosion and Sediment Control Handbook for Construction: Best Management
36 Practices" (1991) unless otherwise approved or required by the department. The
37 erosion control plan must include a narrative with a sequence for implementing
38 the plan, provisions to inspect and maintain erosion controls and a site plan
39 showing locations of control measures. The plan must include provisions for
40 maintaining a dry construction site. These provisions may consist of construction
41 during a no-flow period, a temporary cofferdam or a stream diversion. The

1 erosion control plan must also include provisions for dewatering and disposal of
2 dredged and excavated soil material. The disposal of soil material dredged from
3 the stream must comply with the requirements of the State's solid waste
4 management rules;

5 (9) Test pit logs and test results from a minimum of 2 test pits dug in the
6 footprint of the dam and results of tests done under the direction of a professional
7 engineer on the dam fill material; and

8 (10) A copy of the property deed, lease, purchase and sale agreement or other
9 legal document establishing that the applicant has title or right to or interest in the
10 property proposed for pond development.

11 All design materials used to show that the dam design meets the standards of the
12 general permit must be signed and stamped by a professional engineer.

13 **Sec. 11. 38 MRSA §570-E**, as amended by PL 1999, c. 334, §7, is repealed.

14 **Sec. 12. 38 MRSA §590-A, first ¶**, as enacted by PL 1987, c. 279, is amended to
15 read:

16 The term of air emission licenses is 5 10 years, except that the term of licenses for air
17 contaminant sources subject to the state permitting provisions of 40 Code of Federal
18 Regulations, Part 70 is 5 years and licenses issued pursuant to rules adopted pursuant to
19 section 580-B, subsection 4, paragraph D have no term. The board may establish, by
20 rule, shorter license terms for the following source categories as it ~~deems~~ considers
21 necessary to protect the public health, safety and welfare:

22 **Sec. 13. 38 MRSA §1400** is enacted to read:

23 **§1400. Rules**

24 Subject to Title 5, chapter 375, the department may adopt rules as it determines
25 necessary to implement this chapter. Rules adopted pursuant to this section are major
26 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

27 **Sec. 14. Transition.** An air emission license issued for a term of 5 years pursuant
28 to the Maine Revised Statutes, Title 38, section 590-A that is in effect on the effective
29 date of this Act is effective for 10 years upon renewal of that license.

30 **SUMMARY**

31 This bill makes minor changes to the laws administered by the Department of
32 Environmental Protection to remove inconsistencies and inefficiencies and make
33 grammatical changes.

34 The bill makes 2 substantive changes. The term of an air emission license is changed
35 from 5 years to 10 years, with certain exceptions, including a term of 5 years for a license
36 for an air contaminant source subject to the provisions of 40 Code of Federal Regulations,
37 Part 70 and no term for a license issued pursuant to the carbon dioxide cap-and-trade

1 program under the Maine Revised Statutes, Title 38, section 580-B. The bill clarifies that
2 the Commissioner of Environmental Protection need not provide notice and opportunity
3 for hearing before recommending that the board modify or take corrective action. The
4 board's process, in Title 38, section 341-D, subsection 3, provides opportunity for
5 hearing.