



129th MAINE LEGISLATURE

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Legislative Document

No. 1802

H.P. 1283

House of Representatives, May 30, 2019

**An Act To Make Minor Changes and Corrections to Statutes
Administered by or Concerning 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 "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CAMPBELL of Orrington.

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

2 **Sec. 1. 22 MRSA §567, sub-§1**, as amended by PL 2017, c. 407, Pt. A, §68, is
3 further amended to read:

4 **1. Acceptable data.** Except as provided in this subsection, 6 months after the
5 adoption of rules specified in subsection 2, certification is required of any commercial,
6 industrial, municipal, state or federal laboratory that analyzes water, soil, air, solid or
7 hazardous waste, or radiological samples for the use of programs of the department or the
8 Department of Environmental Protection, except as provided under chapter 411, the
9 Maine Medical Laboratory Act; Title 26, chapter 7, subchapter 3-A, Substance Use
10 Testing; and Title 29-A, section 2524, administration of tests to determine an alcohol
11 level or drug concentration.

12 A laboratory operated by a waste discharge facility licensed pursuant to Title 38, section
13 413 may analyze waste discharges for total suspended solids, settleable solids, biological
14 or biochemical oxygen demand, chemical oxygen demand, pH, chlorine residual, fecal
15 coliform, E. coli, Enterococcus, conductivity, color, temperature and dissolved oxygen
16 without being certified under this section. The exception provided under this paragraph
17 applies to a laboratory testing its own samples for pollutants listed in its permit or license;
18 pretreatment samples; and samples from other wastewater treatment plants for up to 60
19 days per year. The time period provided in this paragraph, which is a maximum period
20 for each treatment plant for which analysis is provided, may be extended by
21 memorandum of agreement between the Department of Environmental Protection and the
22 Health and Environmental Testing Laboratory.

23 **Sec. 2. 38 MRSA §464, sub-§5**, as enacted by PL 1985, c. 698, §15, is amended
24 to read:

25 **5. Rulemaking.** In accordance with the Maine Administrative Procedure Act, the
26 ~~board~~ commissioner shall ~~promulgate~~ adopt rules necessary to implement the water
27 quality classification system established by this article. In ~~promulgating~~ adopting rules,
28 the ~~board~~ commissioner shall solicit and consider, in addition to any other materials,
29 information on the economic and environmental impact of those rules.

30 Rules ~~shall~~ must be ~~promulgated~~ adopted by January 1, 1987, and as necessary thereafter,
31 and ~~shall~~ must include, but are not limited to, sampling and analytical methods, protocols
32 and procedures for satisfying the water quality criteria, including evaluation of the impact
33 of any discharge on the resident biological community.

34 Rules adopted pursuant to this subsection ~~shall~~ become effective upon adoption. Rules
35 adopted pursuant to this subsection ~~shall~~ must be submitted to the joint standing
36 committee of the Legislature having jurisdiction over natural resources matters for review
37 during the next regular session of the Legislature following adoption. This committee
38 may submit legislation ~~if~~ deems ~~the committee considers~~ necessary to clarify legislative
39 intent regarding rules adopted pursuant to this subsection. If the committee takes no
40 action, the rules ~~shall~~ continue in effect.

1 **Sec. 3. 38 MRSA §1304, sub-§1**, as amended by PL 1989, c. 585, Pt. E, §5, is
2 further amended to read:

3 **1. Rules; waste management.** Subject to the Maine Administrative Procedure Act,
4 Title 5, chapter 375 and except as otherwise provided in this section, the ~~board~~
5 commissioner may adopt, amend and enforce rules as ~~it deems~~ the commissioner
6 determines necessary to govern waste management, including the location, establishment,
7 construction and alteration of waste facilities as the facility affects the public health and
8 welfare or the natural resources of the State. The rules ~~shall~~ must be designed to minimize
9 pollution of the State's air, land and surface and ground water resources, prevent the
10 spread of disease or other health hazards, prevent contamination of drinking water
11 supplies and protect public health and safety. In adopting these rules, the ~~board~~
12 commissioner shall also consider economic impact, technical feasibility and such
13 differences as are created by population, hazardous or solid waste, sludge or septage
14 volume and geographic location.

15 **Sec. 4. 38 MRSA §1304, sub-§1-A**, as amended by PL 1999, c. 385, §3, is
16 further amended to read:

17 **1-A. Rules; transportation.** The ~~board~~ commissioner shall adopt rules relating to
18 the transportation of solid waste, including, without limitation:

19 A. Licensing categories of transporters of septage, used motor vehicle tires and
20 construction or demolition debris, conveyances used for the transportation of septage,
21 used motor vehicle tires and construction or demolition debris and the operators of
22 these conveyances as the ~~board~~ commissioner finds necessary to effect sound waste
23 management;

24 B. Establishment of transporter licensing and conveyance registration fees that are
25 sufficient to recover all costs of administering, monitoring compliance with and
26 enforcing the provisions of this subsection and which fees must be paid to the Maine
27 Environmental Protection Fund;

28 C. A manifest system for categories of solid waste that must provide a means to
29 account for septage, used motor vehicle tires and construction or demolition debris
30 handled, transported and disposed of in the State; and

31 D. Evidence of financial capacity of transporters to protect public health, safety and
32 welfare and the environment, including, without limitation:

33 (1) Liability insurance;

34 (2) Performance bonding; and

35 (3) Financial ability to comply with statutory and regulatory requirements or
36 conditions.

37 **Sec. 5. 38 MRSA §1304, sub-§1-B**, as enacted by PL 1987, c. 517, §9, is
38 amended to read:

39 **1-B. Handling of special waste.** The ~~board~~ commissioner may adopt rules relating
40 to the handling of special waste, including, without limitation:

- 1 A. Containerization and labeling of special waste;
- 2 B. Reporting on handling of special waste;
- 3 C. Waste ~~which~~ that is not compatible; and
- 4 D. A marking system, by categories of waste, to clearly identify vehicles
- 5 transporting solid waste.

6 **Sec. 6. 38 MRSA §1304, sub-§10**, as amended by PL 1987, c. 517, §11, is
7 further amended to read:

8 **10. Legislative review.** Rules adopted by the commissioner or board under this
9 section and section 1319-O, subsection 1 ~~which that~~ impose standards or requirements
10 more stringent than final regulations of the United States Environmental Protection
11 Agency ~~shall~~ must be submitted to the legislative joint standing committee of the
12 Legislature having jurisdiction over energy environment and natural resources matters for
13 review. Any rules adopted by the commissioner or board under this section ~~shall~~ must be
14 submitted to the legislative joint standing committee of the Legislature having
15 jurisdiction over energy environment and natural resources matters for review pursuant to
16 Title 5, section 8053-A.

17 **Sec. 7. 38 MRSA §1304, sub-§13**, as amended by PL 2011, c. 655, Pt. GG, §11
18 and affected by §70, is further amended to read:

19 **13. Innovative disposal and utilization.** Recognizing that environmentally suitable
20 sites for waste disposal are in limited supply and represent a critical natural resource, the
21 commissioner may investigate and implement ~~with the approval of the board~~ innovative
22 programs for managing, utilizing and disposing of solid waste. Innovative programs may
23 include agricultural and forest land spreading of wood-derived ash, utilization of ash
24 resulting from combustion of municipal solid waste, paper mill sludges, municipal waste
25 water treatment plant sludges and the composting of yard wastes. The commissioner
26 shall first determine that the proposed innovative disposal and waste management
27 programs are consistent with the state plan. The commissioner shall review proposed
28 innovative programs for each waste category and shall apply all controls necessary to
29 ensure the protection of the environment and public health consistent with this chapter.
30 The ~~board~~ commissioner may adopt application review procedures designed to review
31 individual applications and their individual waste sources with prior approval of classes
32 of disposal or utilization sites. The ~~board~~ commissioner shall adopt provisions for
33 municipal notification prior to use of individual utilization sites.

34 **Sec. 8. 38 MRSA §1365, sub-§4**, as amended by PL 2005, c. 330, §36, is further
35 amended to read:

36 **4. Compliance; appeal.** The person to whom the order is directed shall comply
37 immediately and may apply to the board for a hearing on the order if the application is
38 made within ~~40 working~~ 15 days after receipt of the order by a responsible party. Within
39 ~~15 working~~ 30 days after receipt of the application, the board shall hold a hearing, make
40 findings of fact and vote on a decision that continues, revokes or modifies the order. That
41 decision must be in writing and signed by the board chair using any means for signature

1 authorized in the department's rules and published within 2 14 working days after the
2 hearing and vote. The nature of the hearing before the board is an appeal. At the
3 hearing, all witnesses must be sworn and the commissioner shall first establish the basis
4 for the order and for naming the person to whom the order is directed. The burden of
5 going forward then shifts to the person appealing to demonstrate, based upon a
6 preponderance of the evidence, that the order should be modified or rescinded. The
7 decision of the board may be appealed to the Superior Court in accordance with Title 5,
8 chapter 375, subchapter 7.

9

SUMMARY

10 This bill makes minor adjustments to laws administered by or that affect the
11 Department of Environmental Protection. The bill authorizes laboratories operated by a
12 waste discharge facility to analyze waste discharges for Enterococcus without being
13 certified under a state laboratory certification or accreditation program. It changes the
14 timelines regarding appeals under the laws governing uncontrolled hazardous substance
15 sites. It changes the rule-making authority from the Board of Environmental Protection
16 to the Commissioner of Environmental Protection for certain rules regarding waste
17 management.