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Legislative Document

No. 1128

S.P. 397

In Senate, March 31, 2015

**An Act To Make Minor Changes and Corrections to Statutes
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
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Representative WELSH of Rockport.

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

2 **Sec. 1. 38 MRSA §343-H, sub-§4**, as amended by PL 2009, c. 121, §4, is
3 repealed.

4 **Sec. 2. 38 MRSA §353, sub-§9**, as amended by PL 2007, c. 655, §1, is further
5 amended to read:

6 **9. Finance charges.** In addition to other remedies specifically authorized in this
7 Title, the department shall charge interest at a rate of 15% per annum, unless the
8 commissioner finds the amount too small or the likelihood of recovery too uncertain, and
9 may pursue enforcement, including, but not limited to, penalties pursuant to section 349
10 and suspension or revocation pursuant to section ~~341-D~~ 342, subsection ~~3~~ 11-B for the
11 failure of a licensee to pay any portion of licensing fees owed by the date due.

12 **Sec. 3. 38 MRSA §353-A, sub-§8**, as amended by PL 2007, c. 589, §3 and
13 affected by §9, is further amended to read:

14 **8. Nonpayment of fee.** Failure to pay the annual fee within 60 days of the
15 anniversary date of a license is sufficient grounds for revocation of the license under
16 section ~~341-D~~ 342, subsection ~~3~~ 11-B.

17 **Sec. 4. 38 MRSA §353-B, sub-§5**, as enacted by PL 1997, c. 794, Pt. B, §7, is
18 amended to read:

19 **5. Nonpayment of fees.** Failure to pay an annual fee within 30 days of the
20 anniversary date of a license is sufficient grounds for revocation of the license, permit or
21 privilege under section ~~341-D~~ 342, subsection ~~3~~ 11-B.

22 **Sec. 5. 38 MRSA §420-B, sub-§4**, as amended by PL 2007, c. 565, §5, is further
23 amended to read:

24 **4. Executive summary.** No later than ~~March 31st of each year~~ April 30th in the first
25 regular legislative session, the commissioner shall ~~report~~ provide an executive summary
26 on the monitoring program to the joint standing committees of the Legislature having
27 jurisdiction over natural resources matters and marine resources matters. This ~~report~~
28 executive summary must contain:

- 29 ~~A. At the start of each 5-year period, the 5-year monitoring plan;~~
30 ~~B. The annual work program for the past year and the current year;~~
31 C. The commissioner's conclusions as to the levels of toxic contamination in the
32 State's waters and fisheries; and
33 D. Any trends of increasing or decreasing levels of contaminants found; and
34 ~~E. The results of the dioxin monitoring program required under subsection 1-A.~~

35 **Sec. 6. 38 MRSA §464, sub-§3, ¶C**, as affected by PL 1989, c. 890, Pt. A, §40
36 and amended by Pt. B, §55, is repealed.

1 **Sec. 7. 38 MRSA §570-K, sub-§5**, as amended by PL 2005, c. 212, §1, is further
2 amended to read:

3 **5. Spill prevention and control.** An aboveground oil storage facility used in the
4 marketing and distribution of oil to others must be operated in compliance with the
5 federal requirements for the preparation and implementation of spill prevention control
6 and countermeasure plans under 40 Code of Federal Regulations, 112 in effect on April
7 17, 2003. Failure to comply with those federal requirements in accordance with the
8 deadlines set by the United States Environmental Protection Agency constitutes a
9 violation of this Title. If the department believes that a facility's plan does not satisfy
10 those federal requirements, the department shall request an opinion from the United
11 States Environmental Protection Agency as to the legal adequacy of the plan and any
12 amendment necessary to bring the facility into compliance with those federal
13 requirements. The department shall prepare educational and technical materials for use
14 by facilities affected by this subsection. ~~The commissioner shall report to the joint
15 standing committee of the Legislature having jurisdiction over natural resources matters
16 by January 15, 2006 and on that date every 2 years thereafter on activities undertaken by
17 the department under this subsection.~~

18 **Sec. 8. 38 MRSA §1310-N, sub-§6-D**, as amended by PL 2001, c. 212, §5, is
19 further amended to read:

20 **6-D. Solid waste facilities licensed under rules valid on or after May 24, 1989.** A
21 solid waste facility license issued under applicable solid waste management rules valid on
22 or after May 24, 1989 remains in effect unless modified; under section 341-D, subsection
23 3 or revoked or suspended under section ~~341-D~~ 342, subsection ~~3~~ 11-B. These licensees
24 must:

- 25 A. Comply with applicable operating rules adopted by the board;
- 26 B. Comply with annual facility reporting rules adopted by the board; and
- 27 C. Beginning 5 years after the date of issuance of the license, pay an annual facility
28 reporting fee established by the commissioner. The annual fee established in this
29 paragraph must be an amount equal to 20% of the relicensing fee that would have
30 applied to that facility.

31 Notwithstanding the terms of this subsection, a license issued to a solid waste facility that
32 is not a solid waste landfill may be voluntarily surrendered by the license holder upon
33 department approval.

34 **Sec. 9. 38 MRSA §1319-O**, as amended by PL 2005, c. 549, §6, is further
35 amended to read:

36 **§1319-O. Rule-making authority; hazardous waste, waste oil and biomedical waste**

37 **1. Hazardous waste.** ~~Rulemaking~~ This subsection governs rulemaking for
38 hazardous waste ~~shall be as follows.~~

- 39 A. The ~~board~~ commissioner may adopt and amend rules identifying hazardous waste.
40 It is the intent of the Legislature that the ~~board~~ commissioner shall identify as

1 hazardous waste those substances that are identified by the United States
2 Environmental Protection Agency in proposed or final regulations. The Legislature
3 also intends that the ~~board~~ commissioner may identify as hazardous waste, in
4 accordance with ~~paragraph B~~ subparagraph (2), other substances in addition to those
5 identified by the United States Environmental Protection Agency. Further, the
6 Legislature intends that a substance that has been identified as a hazardous waste by
7 the ~~board~~ must commissioner may be removed from identification only by further
8 rulemaking by the ~~board~~ commissioner.

9 Hazardous waste may be identified as follows.

10 (1) The ~~board~~ commissioner may identify any substance as a hazardous waste if
11 that substance is identified as hazardous by particular substance, by
12 characteristic, by chemical class or as a waste product of a specific industrial
13 activity in proposed or final rules of the United States Environmental Protection
14 Agency.

15 (2) The ~~board~~ commissioner may identify any substance as a hazardous waste if
16 the ~~board~~ commissioner, after evaluation based on existing data or data
17 reasonably extrapolated from previously conducted studies using similar classes
18 of substances or compounds under similar circumstances, has determined that the
19 substance is an acute or chronic toxin causing significant potential adverse public
20 health or environmental effects. An acute or chronic toxin may include the
21 characteristics of:

- 22 (a) Carcinogenicity;
- 23 (b) Mutagenicity;
- 24 (c) Teratogenicity; or
- 25 (d) Infectiousness.

26 Rules adopted under this subparagraph must be submitted to the joint standing
27 committee of the Legislature having jurisdiction over natural resources for
28 review. ~~These rules remain in effect until 90 days after adjournment of the next~~
29 ~~regular session of the Legislature unless adopted by legislative enactment.~~

30 (3) Whenever the ~~board~~ commissioner proposes to adopt or amend rules
31 identifying hazardous waste or removing hazardous waste from identification, ~~it~~
32 the commissioner shall hold a public hearing.

33 (4) In addition to hazardous waste identified under subparagraphs (1) and (2), the
34 Legislature identifies the following chemicals, materials, substances or waste as
35 being hazardous waste:

- 36 (a) Polychlorinated biphenyls and any substance containing polychlorinated
37 biphenyls.

38 B. The ~~board~~ commissioner may adopt rules relating to the handling of hazardous
39 waste, including, but not limited to:

40 (1) Containerization and labeling of hazardous waste, consistent with applicable
41 rules of other federal and state agencies;

- 1 (2) Reporting of handling of hazardous waste; and
- 2 (3) Waste ~~which~~ that is not compatible.

3 C. The ~~board~~ commissioner may adopt rules relating to transportation of hazardous
4 waste, including, but not limited to:

- 5 (1) Licensing of transporters of hazardous waste, conveyances used for the
6 transportation of hazardous waste and the operators of these conveyances; and
7 licensing fees ~~shall~~ must be paid to the Maine Hazardous Waste Fund; and
- 8 (2) A manifest system for hazardous waste ~~which~~ that takes into consideration
9 the requirements of the United States Resources Conservation and Recovery Act
10 of 1976, Public Law 94-580, as amended, and this subchapter.

11 D. The ~~board~~ commissioner may adopt rules relating to the interim and final
12 licensing and operation of waste facilities for hazardous waste, including, but not
13 limited to:

- 14 (1) Standards for the safe operation and maintenance of the waste facilities,
15 including, but not limited to, record keeping, monitoring before and during
16 operation of the facility and after its termination of use or closure, inspections
17 and contingency plans to minimize potential damage from hazardous waste;
- 18 (2) The training of personnel and the certification of supervisory personnel
19 involved in the operation of the waste facilities;
- 20 (3) The termination, closing and potential future uses of the waste facilities;
- 21 (4) Rules equivalent to regulations of the United States Environmental
22 Protection Agency that provide for licensing or permitting by rule; and
- 23 (5) Corrective action for all releases of hazardous waste or constituents from any
24 solid waste management unit at a treatment, storage or disposal facility seeking a
25 permit under this subchapter, regardless of the time waste was placed in the unit.
26 For purposes of this paragraph, "solid waste management unit" includes any
27 waste pile, landfill, surface impoundment or land treatment facility from which
28 hazardous constituents might migrate, regardless of whether the unit was
29 intended for the management of solid or hazardous wastes.

30 E. The ~~board~~ commissioner may adopt rules relating to evidence of financial
31 capacity of hazardous waste facilities' owners or operators, and of those who
32 transport hazardous waste, to protect public health, safety and welfare and the
33 environment, including, but not limited to:

- 34 (1) Liability insurance;
- 35 (2) Bonding; and
- 36 (3) Financial ability to comply with statutory and regulatory requirements or
37 conditions.

38 Evidence of financial capacity required by the ~~board~~ commissioner may include one,
39 or any combination, of the following: insurance, guarantee, surety bond, letter of
40 credit or qualification as a self-insurer. In establishing the required evidence of

1 financial capacity to further the purposes of this subchapter, the ~~board~~ commissioner
2 may specify policy or other contractual terms, conditions or defenses that are
3 necessary or that are unacceptable.

4 F. By January 1, 2000, the board shall adopt, at a minimum, the universal waste
5 rules, excluding pesticides, promulgated by the United States Environmental
6 Protection Agency as defined in 40 Code of Federal Regulations, Parts 9, 260, 261,
7 262, 264, 265, 266, 268, 270 and 273.

8 **2. Waste oil. Rulemaking** This subsection governs rulemaking for waste oil shall be
9 as follows:

10 A. The ~~board~~ commissioner may adopt rules relating to the transportation, collection
11 and storage of waste oil to protect public health, safety and welfare and the
12 environment. The rules may include, without limitation, rules requiring licenses for
13 waste oil dealers and the location of waste oil storage sites that are operated by waste
14 oil dealers, evidence of financial capability and manifest systems for waste oil. A
15 person licensed by the department to transport or handle hazardous waste is not
16 required to obtain a waste oil dealer's license, but the hazardous waste license must
17 include any terms or conditions determined necessary by the department relating to
18 the transportation or handling of waste oil; ~~and.~~

19 B. The ~~board~~ commissioner may adopt rules relating to the registration, design and
20 operation of used oil collection centers for the purposes of section 1319-Y. Rules
21 adopted pursuant to this paragraph are major substantive rules as defined in ~~the~~
22 ~~Maine Administrative Procedure Act~~, Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

23 **3. Handling and disposal of biomedical waste.** The ~~board~~ commissioner shall
24 adopt rules relating to the packaging, labeling, handling, storage, collection,
25 transportation, treatment and disposal of biomedical waste, including infectious and
26 pathogenic waste, to protect public health, safety and welfare and the environment.

27 A. The rules must include, without limitation:

28 (1) Registration of biomedical waste generators;

29 (2) Handling of biomedical waste by generators;

30 (3) Licensing of biomedical waste transporters and the conveyances used for the
31 transportation of biomedical waste;

32 (4) Implementation of a biomedical waste tracking or manifest system;

33 (5) Establishment of treatment and disposal standards; and

34 (6) Categories of biomedical waste subject to regulation under this subsection,
35 consistent with the provisions of section 1303-C, subsection 1-A.

36 B. The ~~board~~ commissioner shall adopt rules governing the siting, licensing,
37 operational and record-keeping requirements for biomedical waste treatment, storage
38 and disposal facilities.

39 C. The ~~board~~ commissioner shall require evidence of financial capacity.

1 D. The ~~board~~ commissioner may assess licensing and registration fees sufficient to
2 pay for the department's administrative costs in regulating biomedical waste.

3 E. The rules must provide transportation and disposal options for persons who
4 generate fewer than 50 pounds of sharps per month that allow:

5 (1) The generator or an employee of the generator to transport properly packaged
6 sharps to a licensed biomedical waste disposal facility or another medical facility
7 that has volunteered to serve as a collection point for sharps if no more than 50
8 pounds of sharps are transported in one trip; and

9 (2) The generator to mail properly packaged sharps to a licensed biomedical
10 waste disposal facility in this State or a facility in another state if the carrier
11 accepts those items and no more than 50 pounds are transported in any single
12 package.

13 For purposes of this paragraph, "sharps" means items that may cause puncture
14 wounds or cuts, including hypodermic needles, syringes, scalpel blades, capillary
15 tubes and lancets, and "properly packaged" means packaged in accordance with
16 department rules and rules or requirements imposed by the mail carrier.

17 **SUMMARY**

18 This bill makes changes to various reporting requirements in the environmental
19 protection laws. It eliminates a biennial report to the Legislature by the directors of the
20 Clean Government Initiative and regular reports by the Commissioner of Environmental
21 Protection on the status of licensed discharges and oil spill prevention and control.
22 Instead of requiring the commissioner to report annually to the Legislature on the surface
23 water ambient toxic monitoring program, this bill requires a limited biennial executive
24 summary. It changes a cross-reference to correct the citation. It changes rule-making
25 authority regarding hazardous waste, waste oil and biomedical waste by moving
26 authority from the Board of Environmental Protection to the Commissioner of
27 Environmental Protection.