# An Act To Amend Certain Laws Related to Environmental Protection

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

**Sec. 1. 5 MRSA §12004-D, sub-§1,** as enacted by PL 1987, c. 786, §5, is amended to read:

**1.**

| | 12 MRSA §683 |
|---|---|
| Maine Land Use Regulation Commission | ~~Legislative Per Diem~~ $100 per day plus expenses |

**Sec. 2. 5 MRSA §12004-D, sub-§2,** as amended by PL 1989, c. 503, Pt. A, §8 and c. 890, Pt. A, §§3 and 40, is further amended to read:

**2.**

| | 38 MRSA §341-A |
|---|---|
| Board of Environmental Protection | ~~Legislative Per Diem~~ $100 per day plus expenses |

**Sec. 3. 38 MRSA §352, sub-§3,** as amended by PL 2001, c. 212, §2, is further amended to read:

**3. Special fee.** The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. ~~A special fee may not exceed $75,000.~~ Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the cost of any appeals. The processing fee for that application must be the actual cost to the department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit.

**Sec. 4. 38 MRSA §480-I, sub-§3,** as enacted by PL 1997, c. 230, §1, is repealed.

**Sec. 5. 38 MRSA §562-A, sub-§17, ¶E,** as enacted by PL 1993, c. 363, §7 and affected by §21, is amended to read:



E. With regard to sections 568, 568-A, 569-A and 570, persons described in paragraphs A to D with regard to aboveground oil storage facilities.

**Sec. 6. 38 MRSA §563, sub-§4,** as repealed and replaced by PL 1989, c. 865, §5, is amended to read:

**4. Registration fees.** The owner or operator of an underground oil storage facility shall pay ~~an annual~~a fee to the department of ~~$35~~$100 for each tank registered under this section located at the facility, except that single family homeowners are not required to pay a fee for a tank at their personal residence. ~~Annual payments~~The fee must be paid ~~on or before January 1st of each calendar year~~at the time the tank is first registered and every 3 years thereafter upon receipt of a bill from the department. The department may prorate the fee for new installations to put all tank owners and operators on the same billing cycle.

**Sec. 7. 38 MRSA §566-A, sub-§1-A,** as enacted by PL 1991, c. 763, §6, is amended to read:

**1-A. Abandoned tanks brought back into service.** Underground oil storage tanks and facilities that have been out of service for a period of more than 12 months may not be brought back into service without the written approval of the commissioner. The commissioner may approve the return to service if the owner ~~can demonstrate~~demonstrates to the commissioner's satisfaction that:

A. The facility is in compliance with this subchapter and rules adopted pursuant to this subchapter;

B. The underground oil storage tank and piping have successfully passed ~~precision~~ testing as directed by the commissioner; ~~and~~

C. The underground oil storage tank and piping are constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the commissioner~~.~~;

D. The tank to be brought back into service has secondary containment;

E. The facility has suction piping; and

F. The return of the facility to service does not pose an unacceptable risk to groundwater resources. In determining if the facility poses an unacceptable risk to groundwater resources, the commissioner may consider the age and maintenance history of the storage tanks and piping, the number and consequences of past oil discharges from the tanks and piping, the proximity of the facility to drinking water supplies and the proximity of the facility to sensitive geologic areas.

**Sec. 8. 38 MRSA §568, sub-§1,** as amended by PL 1991, c. 817, §22, is further amended to read:

**1. Removal.** Any person discharging or suffering a discharge of oil to ~~ground water~~groundwater in the manner prohibited by section 543 and any other responsible party shall immediately undertake to remove that discharge to the commissioner's satisfaction. Notwithstanding this requirement, the commissioner may order the removal of that discharge pursuant to subsection 3~~,~~ or may undertake the removal of that discharge and retain agents and contractors for that purpose, who shall operate under the direction of the commissioner. Any unexplained discharge of oil to ~~ground water~~groundwater within state jurisdiction must be removed by or under the direction of the commissioner. Any expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting the discharge,

the commissioner or the commissioner's agents or contractors, may be paid in the first instance from the Ground Water Oil Clean-up Fund, including any expenses incurred by the State under subsection 3, and any reimbursements due that fund must be collected in accordance with section 569-A or 569-B.

**Sec. 9. 38 MRSA §1310-E1, sub-§4,** as amended by PL 2001, c. 626, §18, is further amended to read:

**4. Subsequent landfill closure activity.** Any municipality that closes a landfill pursuant to subsection 1, 2 or 3 and that inspects, monitors and maintains the closure measures as required ~~pursuant to those subsections as necessary to ensure the closure measures remain effective~~under subsection 6 is entitled to an assurance from the department that the municipality has met its closure obligations and that no further closure action other than inspection, monitoring and maintenance is required of the municipality by the department with regard to that landfill unless one or more of the following circumstances arises:

A. The commissioner finds that the landfill, although closed, is nonetheless a high-risk landfill and orders further closure or remediation activities;

B. Additional closure or remediation activities are needed and the department's cost share of the additionally required activity is immediately available; or

C. Additional closure or remediation activities are required as a result of an existing or pending formal department enforcement action with respect to the violation of the license conditions under which a landfill was operated.

Nothing with regard to this assurance ~~is~~may be construed to limit the department's authority to act using its own resources as that activity may be otherwise authorized by law.

**Sec. 10. 38 MRSA §1310-E1, sub-§6** is enacted to read:

**6. Post-closure maintenance.** A municipality that closes a landfill pursuant to subsection 1, 2 or 3 shall inspect, monitor and maintain the closure measures required under those subsections as necessary to ensure that the closure remains effective.

**Sec. 11. 38 MRSA §1310-F, sub-§1-A,** as enacted by PL 1993, c. 732, Pt. C, §14, is amended to read:

**1-A. Remediation cost-share fraction.** ~~Subject~~Except as provided under subsection 2 and subject to the availability of funds, the commissioner shall issue grants or payments to eligible municipalities for 90% of the planning and implementation costs of remediation.

**Sec. 12. 38 MRSA §1316-C, first ¶,** as enacted by PL 1991, c. 517, Pt. A, §2, is amended to read:

Each responsible party is jointly and severally liable for all costs incurred by the State, including court costs and attorney's fees, for the abatement, cleanup or mitigation of the threat or hazard posed by an uncontrolled tire stockpile and for damages for injury to, destruction of ~~or~~, loss of or loss of use of natural resources of the State resulting from the uncontrolled tire stockpile, including the reasonable costs

of assessing natural resources damages. The commissioner shall demand prompt reimbursement of all costs incurred under sections 1316-A and 1316-B. If payment is not received by the State within 30 days of demand, the Attorney General may file suit in the Superior Court and may seek reimbursement of other costs and any other relief provided by law. Notwithstanding the time limits stated in this section, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

**Sec. 13. 38 MRSA §1316-G, sub-§1, ¶H,** as enacted by PL 1995, c. 578, §1, is amended to read:

H. Educate the public and encourage use of tires based on consideration of environmental and public health impacts as well as market conditions; and

**Sec. 14. 38 MRSA §1316-G, sub-§1, ¶I,** as enacted by PL 1995, c. 578, §1, is amended to read:

I. Contract for services to reduce tire stockpiles and abate significant risk to the environment and public health at tire stockpile sites~~; and~~.

**Sec. 15. 38 MRSA §1316-G, sub-§1, ¶J,** as enacted by PL 1995, c. 578, §1, is repealed.

**Sec. 16. 38 MRSA §1319-G, sub-§1,** as amended by PL 1991, c. 817, §34, is further amended to read:

**1. Recovery.** The commissioner shall seek recovery to the use of the Maine Hazardous Waste Fund of all sums expended from the fund, including overdrafts, for disbursements made from the fund under section 1319-E, subsection 1, paragraphs A, B and C, including interest computed at ~~10%~~15% a year from the date of expenditure, unless the commissioner finds the amount too small or the likelihood of recovery too uncertain. Requests by the department for reimbursement to the Maine Hazardous Waste Fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191.

The commissioner may file a claim with or otherwise seek money from federal agencies to recover to the use of the fund all disbursements from the fund.

**Sec. 17. 38 MRSA §1367, first ¶,** as amended by PL 1991, c. 312, §3, is further amended to read:

Each responsible party is jointly and severally liable for all costs incurred by the State for the abatement, cleanup or mitigation of the threats or hazards posed or potentially posed by an uncontrolled site, including, without limitation, all costs of acquiring property, and for damages for injury to, destruction of ~~or~~, loss of or loss of use of natural resources of the State resulting from hazardous substances at the site or from the acts or omissions of a responsible party with respect to those hazardous substances and for the reasonable costs of assessing natural resources damages. The commissioner shall demand reimbursement of costs and payment of damages to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. Requests for

reimbursement to the Uncontrolled Sites Fund, if not paid within 30 days of demand, may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or an attorney retained by the department with the approval of the Attorney General pursuant to Title 5, section 191. The Attorney General or an attorney retained by the department may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

**Sec. 18. 38 MRSA §1609, sub-§4,** as enacted by PL 2007, c. 296, §1, is amended to read:

**4. "Deca" mixture of polybrominated diphenyl ethers in home furniture.** Effective January 1, 2008, a person may not manufacture, sell or offer for sale or distribute for sale or use in the State any of the following products that ~~have plastic fibers containing~~contain the "deca" mixture of polybrominated diphenyl ethers:

A. A mattress or mattress pad; ~~or~~and

B. Upholstered furniture intended for indoor use in a home or other residential occupancy.

**Sec. 19. 38 MRSA §1665-A, sub-§9,** as amended by PL 2007, c. 292, §45, is further amended to read:

**9. Reporting.** Before January 1, 2003 and annually thereafter, motor vehicle manufacturers doing business in the State shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on any fee or other charge collected on the sale of new motor vehicles for the purpose of paying the cost of carrying out the manufacturer responsibilities under subsection 5. The report must specify the amount of the fee or charge collected and how the amount of the fee or charge was determined. ~~Before July 1, 2004 and annually thereafter, motor vehicle manufacturers shall report in writing to the department on the results of the source separation required under this section. The report must include, at a minimum, the number of mercury switches removed and recycled from motor vehicles during the previous calendar year; the estimated total amount of mercury contained in the components; and any recommendations to improve the future collection and recycling of motor vehicle components. Before January 1, 2004 and annually thereafter, the department shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the effectiveness of the source separation required under this section, whether the partial reimbursement payment under subsection 5, paragraph B should be adjusted to increase the number of switches brought to consolidation facilities, whether other motor vehicle components should be added to the source separation efforts and whether the program should be terminated and, if so, when.~~When the commissioner determines that the number of mercury switches available for collection is too small to warrant continuation of the program, the department shall recommend to the joint standing committee of the Legislature having jurisdiction over natural resources matters that the mercury switch removal, collection and recycling requirements of this section be repealed. The committee may report out a bill repealing this section.

## SUMMARY

This bill:

1. Increases the per diem for members of the Maine Land Use Regulation Commission and the Board of Environmental Protection to $100 per day when in attendance at meetings and hearings;

2. Amends the law that provides for special fees by eliminating the cap and including the costs of any appeals;

3. Repeals a requirement that the Commissioner of Environmental Protection and the Commissioner of Inland Fisheries and Wildlife jointly report by January 1, 1998 and on or before January 1st of every odd-numbered year thereafter to the joint standing committees of the Legislature having jurisdiction over natural resource matters and inland fisheries and wildlife matters on the progress of the mapping of significant wildlife habitats;

4. Amends the oil storage laws to clarify that the term "responsible party" as used in those laws includes the owner or operator of an oil storage tank and any person who causes a discharge from the tank;

5. Amends the law requiring payment of registration fees on oil storage tanks to reduce the frequency of payment;

6. Clarifies the circumstances under which abandoned underground oil storage tanks may be returned to service;

7. Amends the law governing closure of municipal landfills to make it clear that municipalities must inspect, monitor and maintain their closed landfills as necessary to ensure that the landfill caps and other closure measures remain effective;

8. Amends the law requiring the Department of Environmental Protection to pay 90% of municipal landfill remediation costs to incorporate a cross-reference to other provisions of law that reduce the department share to 50% and zero in certain circumstances;

9. Eliminates the requirement that the Department of Environmental Protection report to the Legislature regarding the progress, adequacy of funding and any legislation needed to achieve reduction of tire stockpiles and beneficial reuse of tires since this report is no longer required;

10. Changes the interest rate on reimbursements to the Maine Hazardous Waste Fund to 15% to be consistent with all the other interest provisions administered by the Department of Environmental Protection;

11. Amends the laws governing tire stockpile abatement and uncontrolled hazardous substance sites to make the language regarding recovery of natural resources damages consistent with corresponding language under the oil spill cleanup laws;

12. Amends the law banning the sale of mattresses, mattress pads and residential upholstered furniture that contain the flame retardant decabromodiphenyl ether to make it clear that these products may not be sold in Maine after January 1, 2008 regardless of how the chemical is applied to or incorporated into the product; and

13. Repeals the requirement to report annually on the removal, collection and recycling of mercury switches in motor vehicles and directs the Department of Environmental Protection to recommend repeal

of the switch removal and recycling requirements when the commissioner determines that the number of mercury switches available for collection is too small to warrant continuation of the program.