

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

H.P. 1283 - L.D. 1738

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

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

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

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

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

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

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- C. The licensed discharge or activity poses a threat to human health or the environment;
- D. The license fails to include any standard or limitation legally required on the date of issuance;
- E. There has been a change in any condition or circumstance that requires revocation or suspension of a license;

F. There has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license;

G. The licensee has violated any law administered by the department; or

H. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

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

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

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

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

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

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

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

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

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

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

1. General. In the event of a violation of any provision of the laws administered by the department or of any order, regulation, license, permit, approval, administrative consent agreement or decision of the board or commissioner or decree of the court, as the

case may be, the Attorney General or the department may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the department.

Sec. 8. 38 MRSA §480-B, sub-§2-E, as enacted by PL 2011, c. 64, §1, is amended to read:

2-E. Footprint. "Footprint" means the outline of a structure on the ground, except that for a building "footprint" means the outline that would be created on the ground by extending the exterior walls of a building to the ground surface.

Sec. 9. 38 MRSA §480-Q, sub-§31, as reallocated by RR 2011, c. 1, §61, is amended to read:

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

- A. The footprint of the expansion is contained within an existing impervious area;
- B. The footprint of the expansion is no further seaward than the existing ~~building~~ structure;
- C. The height of the expansion is within the height restriction of any applicable law or ordinance; and
- D. The expansion conforms to the standards for expansion of a ~~building~~ structure contained in the municipal shoreland zoning ordinance adopted pursuant to article 2-B.

For purposes of this subsection, "structure" does not include a seawall, retaining wall, closed fence or other structure used to stabilize the shoreline or to prevent the movement of sand or water. For purposes of this subsection, expansion of an existing structure does not include a change from one type of structure to another.

Sec. 10. 38 MRSA §480-Y, sub-§3, ¶¶A and C, as enacted by PL 1995, c. 659, §1, are amended to read:

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

Sec. 11. 38 MRSA §480-Y, sub-§4, ¶A, as enacted by PL 1995, c. 659, §1, is amended to read:

- A. An application must be filed with the department and must include the following:
- (1) The application cover sheet, as provided by the department;
 - (2) The United States Geological Survey topographical map with the boundaries of the farm and the pond site clearly marked;
 - (3) A photograph of the stream at the proposed dam site;
 - (4) A copy of the irrigation plan for the farm;
 - (5) Site plans showing existing and proposed topography, stream channel location, existing wetland boundaries, maximum and normal pool elevation, ~~normal pool elevation~~ elevations for a pond in a river, stream or brook, dam footprints, pond inlet and outlet location locations, emergency spillway location, access roads, stockpile locations and buffer strips;
 - (6) Cross sections through the dam and outlet structure, including proposed maximum pool elevation and normal pool elevation;
 - (7) A plan to maintain minimum flow downstream, including any calculations used to create the plan;
 - (8) A complete erosion control plan using practices contained in the "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" (1991) unless otherwise approved or required by the department. The erosion control plan must include a narrative with a sequence for implementing the plan, provisions to inspect and maintain erosion controls and a site plan showing locations of control measures. The plan must include provisions for maintaining a dry construction site. These provisions may consist of construction during a no-flow period, a temporary cofferdam or a stream diversion. The erosion control plan must also include provisions for dewatering and disposal of dredged and excavated soil material. The disposal of soil material dredged from the stream must comply with the requirements of the State's solid waste management rules;
 - (9) Test pit logs and test results from a minimum of 2 test pits dug in the footprint of the dam and results of tests done under the direction of a professional engineer on the dam fill material; and
 - (10) A copy of the property deed, lease, purchase and sale agreement or other legal document establishing that the applicant has title or right to or interest in the property proposed for pond development.

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

Sec. 12. 38 MRSA §570-E, as amended by PL 1999, c. 334, §7, is repealed.

Sec. 13. 38 MRSA §590-A, first ¶, as enacted by PL 1987, c. 279, is amended to read:

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

Sec. 14. 38 MRS §1400 is enacted to read:

§1400. Rules

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

Sec. 15. Coastal sand dune rulemaking. The Department of Environmental Protection may adopt rules allowing for the reconstruction of an existing structure in a frontal dune if:

1. The frontal dune is protected by a seawall;
2. The structure to be reconstructed existed prior to June 8, 2006;
3. The reconstructed structure is elevated on posts as provided for in rules adopted by the department;
4. Any relocation of the reconstructed structure into the frontal dune is minimized to the extent practicable; and
5. The project meets the standards for all projects contained in the department's rules relating to coastal sand dunes.

Notwithstanding the Maine Revised Statutes, Title 38, section 480-AA, the initial rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A and may be adopted by the Commissioner of Environmental Protection in accordance with Title 38, section 341-H, subsection 2. Any amendments to the rules adopted pursuant to this section are major substantive rules and may be adopted by the Board of Environmental Protection in accordance with Title 38, section 341-H, subsection 1.

Sec. 16. Transition. An air emission license issued for a term of 5 years pursuant to the Maine Revised Statutes, Title 38, section 590-A that is in effect on the effective date of this Act is effective for 10 years upon renewal of that license.

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor