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An Act To Stop Unfunded Mandates Concerning Waste Discharge Licenses

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

Sec. 1. 38 MRSA §341-D, sub-§3, as amended by PL 1995, c. 642, §§1 and 2, is further amended to read:

3. Modification, revocation or suspension. ~~After~~Except as provided in section 414A, subsection 7, after written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter ~~IV~~4, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board 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, suspension or a temporary or permanent modification of the terms of the license;
- F. The licensee has violated any law administered by the department; or
- G. 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, the term "license" includes any license, permit, order, approval or certification issued by the department and the term "licensee" means the holder of the license.

Sec. 2. 38 MRSA §414-A, sub-§5, as enacted by PL 1997, c. 794, Pt. A, §25, is amended to read:

5. Modification, reopening and revocation. ~~The~~Except as provided in subsection 7, the following actions may be taken to reopen, modify or revoke and reissue waste discharge licenses. All actions taken under this subsection must be with notice to the licensee and all other interested parties of record and with opportunity for hearing. Actions may be appealed as set forth in sections 341D and 346.

- A. The department may reopen a license to add or change conditions or effluent limitations for toxic compounds identified in 40 Code of Federal Regulations, Section 401 or to include schedules of compliance to implement industrial pretreatment rules adopted by the board. Additionally, at

the time of license issuance, the department may include as a condition of a license a provision for reopening the license for inclusion or change of specific limitations when facts available upon issuance indicate that changed circumstances or new information may be anticipated.

B. A request for modification of a license may be made by the licensee for any valid cause or changed circumstance. The department may initiate a license modification:

- (1) When necessary to correct legal, technical or procedural mistakes or errors;
- (2) When there has been or will be a substantial change in the activity or means of treatment that occurred after the time the license was issued;
- (3) When new information other than revised rules, guidance or test methods becomes available that would have justified different conditions at the time the license was issued;
- (4) When a pollutant not included in the license may be present in the discharge in quantities sufficient to require treatment, such as when the pollutant exceeds the level that can be achieved by the technology-based treatment standards appropriate to the licensee, or contribute to water quality violations;
- (5) When necessary to remove net limits based on pollutant concentration in intake water when the licensee is no longer eligible for them, consistent with federal law;
- (6) When necessary to make changes as a result of the failure of one state to notify another state whose waters may be affected by a discharge; or
- (7) When necessary to include pretreatment compliance schedules required pursuant to federal law.

C. Notwithstanding Title 5, section 10051, the board may modify, revoke or suspend a license when the board finds that any of the conditions specified in section 341D, subsection 3 exist or upon an application for transfer of a license.

Sec. 3. 38 MRSA §414-A, sub-§7 is enacted to read:

7. Unfunded mandates. The department may not impose by rule any requirements on a waste discharge licensee that qualify as an unfunded state mandate pursuant to the Constitution of Maine, Article IX, Section 21 unless the requirement is necessary to comply with a federal regulation.

SUMMARY

This bill prohibits the Department of Environmental Protection from imposing by rule any requirements that qualify as an unfunded mandate on a waste discharge licensee unless the requirement is necessary to comply with a federal regulation.