



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 436

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S.P. 178

In Senate, February 16, 2021

**An Act Regarding the Authority of the Department of  
Environmental Protection Regarding Applications, Permits and  
Fines**

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Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.  
Received by the Secretary of the Senate on February 11, 2021. Referred to the Committee  
on Environment and Natural Resources pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BRENNER of Cumberland.

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

2 **Sec. 1. 38 MRSA §341-I** is enacted to read:

3 **§341-I. Fees, interest and lien authority**

4 **1. Applicability.** Notwithstanding any provision of this Title to the contrary, this  
5 section applies to all fees established pursuant to this Title.

6 **2. Interest.** In addition to other remedies specifically authorized in this Title, the  
7 department shall charge interest at a rate of 15% per annum on any fee or portion of a fee  
8 not paid by its due date, unless the commissioner finds the amount too small or the  
9 likelihood of recovery too uncertain.

10 **3. Lien established.** A fee or any portion of a fee not paid within 90 days of its due  
11 date and accruing interest is a lien against real estate of a license holder.

12 A. A certificate of lien signed by the commissioner must be sent by certified mail to  
13 the license holder or agent of record prior to being recorded and may be filed in the  
14 office of the clerk of the municipality in which the real estate is located. The lien is  
15 effective when the certificate is recorded with the registry of deeds for the county in  
16 which the real estate is located. The certificate of lien must include a description of the  
17 real estate, the amount of the lien and the name of the owner as grantor.

18 B. When the amount for which a lien has been recorded under this subsection has been  
19 paid or reduced, the commissioner, upon request by any person of record holding  
20 interest in the real estate that is the subject of the lien, shall issue a certificate  
21 discharging or partially discharging the lien. The certificate must be recorded in the  
22 registry in which the lien was recorded pursuant to paragraph A. Any action of  
23 foreclosure of the lien must be brought by the Attorney General in the name of the State  
24 in the Superior Court for the judicial district in which the real estate subject to the lien  
25 is located.

26 **Sec. 2. 38 MRSA §344, sub-§2-C** is enacted to read:

27 **2-C. After-the-fact application.** For an application submitted to the department after  
28 an activity requiring a permit pursuant to this Title has begun, the department may either  
29 accept or refuse to accept, in whole or in part, the application for processing. When  
30 considering whether to accept an application submitted after the date and time it is required  
31 to be submitted pursuant to this Title, the department may consider relevant factors  
32 including, but not limited to, the following:

33 A. The amount of time that has passed since the application was required to be  
34 submitted;

35 B. The impact on the environment caused by the activity that is the subject of the  
36 application;

37 C. Other violations of rules, statutes or licenses related to the activity that is the subject  
38 of the application;

39 D. The applicant's prior noncompliance with rules, statutes or licenses and deadlines  
40 for submission of applications under this Title;

1           E. The potential negative effect on voluntary compliance programs and other licensing  
2           programs within the department caused by accepting the application; and

3           F. The deterrent effect a refusal to accept the application would have on both the  
4           applicant and others that perform activities requiring approval by the department  
5           without first submitting a timely application.

6           **Sec. 3. 38 MRSA §347-A, sub-§1, ¶B**, as repealed and replaced by PL 1993, c.  
7           204, §1, is amended to read:

8           B. Before initiating a civil enforcement action pursuant to paragraph A, the  
9           commissioner shall issue a notice of violation to the person or persons the  
10          commissioner considers likely to be responsible for the alleged violation or violations.  
11          The notice of violation must describe the alleged violation or violations, to the extent  
12          then known by the commissioner; cite the applicable law, rule and term or condition of  
13          the license, permit or order alleged to have been violated; and provide time periods for  
14          the alleged violator to take necessary corrective action and to respond to the notice. A  
15          notice of violation does not represent a final agency decision and is not appealable. For  
16          violations the commissioner finds to be minor, the notice may state that further  
17          enforcement action will not be pursued if compliance is achieved within the time period  
18          specified in the notice or under other appropriate circumstances. The commissioner is  
19          not required to issue a notice of violation before issuing an emergency order pursuant  
20          to subsection 3 or other applicable provision of this Title; nor is the commissioner  
21          required to issue a notice of violation before referring an alleged violation to the  
22          Attorney General for criminal prosecution or in a matter requiring immediate  
23          enforcement action.

24          **Sec. 4. 38 MRSA §347-A, sub-§2**, as amended by PL 1999, c. 127, Pt. A, §54, is  
25          further amended to read:

26          **2. Hearings.** The commissioner shall give at least 30 days' written notice to the alleged  
27          violator of the date, time and place of any hearing held pursuant to subsection 1, paragraph  
28          A, subparagraph (3). The notice must specify the act or omission ~~which~~ that is claimed to  
29          be in violation of law or regulation.

30          Any hearing conducted under the authority of this subsection must be in accordance with  
31          the provisions of Title 5, chapter 375, subchapter IV ~~4~~. ~~At the hearing, the alleged violator~~  
32          ~~may appear in person or by attorney and answer the allegations of violation and file a~~  
33          ~~statement of the facts, including the methods, practices and procedures, if any, adopted or~~  
34          ~~used by that person to comply with this chapter and present such evidence as may be~~  
35          ~~pertinent and relevant to the alleged violation.~~

36          After a hearing, or in the event of a failure of the alleged violator to appear on the date set  
37          for a hearing, the commissioner shall, as soon as practicable, make findings of fact based  
38          on the record and, if the commissioner finds that a violation exists, shall issue an order  
39          aimed at ending the violation and that may include required corrective action and a civil  
40          penalty calculated pursuant to section 349, subsection 2. The person to whom an order is  
41          directed shall immediately comply with the terms of that order.

42          **Sec. 5. 38 MRSA §347-A, sub-§7**, as enacted by PL 2001, c. 365, §2, is amended  
43          to read:

1           **7. Landowner liability for actions of others.** An owner, lessee, manager, easement  
2 holder or occupant of premises is not subject to criminal sanctions or civil penalties or  
3 forfeitures for a violation of laws or rules enforced by the department or the board if that  
4 person provides substantial credible evidence that the violation was committed by another  
5 person other than that person or a contractor, employee or agent of the owner, lessee,  
6 manager, easement holder or occupant. This subsection does not prevent the department,  
7 the board or a court from requiring an owner, lessee, manager, easement holder or occupant  
8 of premises to remediate or abate environmental hazards or damage or to reimburse the  
9 department for the cost of such remediation or abatement. ~~An~~ Once notified in writing of  
10 a violation, an owner, lessee, manager, easement holder or occupant of premises is subject  
11 to criminal sanctions or civil penalties or forfeitures for failure to remediate or abate a  
12 violation of this Title or an environmental hazard or damage; to reimburse the department  
13 for the cost of such remediation or abatement; or to comply with a lawful administrative  
14 order or court order ~~to remediate or abate environmental hazards or damage for such~~  
15 remediation or abatement.

16           A. The department shall investigate substantiated allegations by an owner, lessee,  
17 manager, easement holder or occupant that the violation was caused by another person.

18           B. If an owner, lessee, manager, easement holder or occupant is subjected to criminal  
19 sanctions or civil penalties or forfeitures, or if such a person is required to remediate  
20 or abate environmental hazards or damage as a result of violations by another person,  
21 the owner, lessee, manager, easement holder or occupant has a cause of action against  
22 the actual violator to recover all damages and costs, including attorney's fees, incurred  
23 in connection with the environmental damage, and all costs, including attorney's fees,  
24 incurred in bringing the action to recover.

25           C. This subsection does not apply to persons who are defined as "responsible parties"  
26 under chapter 3, subchapters ~~H-A~~ 2-A and ~~H-B~~ 2-B; chapter 13, subchapter ~~H-A~~ 2-A;  
27 or chapter 13-B.

28           **Sec. 6. 38 MRSA §347-C**, as repealed and replaced by PL 2017, c. 137, Pt. A, §5,  
29 is amended to read:

30           **§347-C. Right of inspection and entry**

31           Employees and agents of the department may:

32           **1. Property.** Enter any property at reasonable hours in order to inspect the property  
33 ~~to~~, take samples, inspect records relevant to any regulated activity or as appropriate conduct  
34 tests ~~as appropriate~~ to determine compliance with any laws administered by the department  
35 or the terms and conditions of any order, regulation, license, permit, approval or decision  
36 of the commissioner or of the board; and

37           **2. Buildings.** Enter any building with the consent of the property owner, occupant or  
38 agent, or pursuant to an administrative search warrant, in order to inspect the property or  
39 structure, including the premises of an industrial user of a publicly owned treatment works,  
40 ~~and to~~ take samples, inspect records relevant to any regulated activity or as appropriate  
41 conduct tests ~~as appropriate~~ to determine compliance with any laws administered by the  
42 department or the terms and conditions of any order, regulation, license, permit, approval  
43 or decision of the commissioner or of the board.

1           **Sec. 7. 38 MRSA §349, sub-§2**, as corrected by RR 2009, c. 2, §116, is amended  
2 to read:

3           **2. Civil penalties.** Except as otherwise specifically provided, a person who violates a  
4 law administered by the department, including, without limitation, a violation of the terms  
5 or conditions of an order, rule, license, permit, approval or decision of the board or  
6 commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of  
7 litter for a commercial purpose, in violation of Title 17, section 2264-A, is subject to a civil  
8 penalty, payable to the State, of not less than \$100 and not more than ~~\$10,000~~ \$25,000 for  
9 each day of that violation or, if the violation relates to hazardous waste, of not more than  
10 ~~\$25,000~~ \$65,000 for each day of the violation. This penalty is recoverable in a civil action  
11 or may be assessed in an enforcement hearing pursuant to section 347-A.

12           **Sec. 8. 38 MRSA §349, sub-§5**, as amended by PL 1989, c. 890, Pt. B, §8 and  
13 affected by Pt. A, §40, is further amended to read:

14           **5. Considerations.** In setting a penalty, the court shall consider, but ~~shall~~ is not be  
15 limited to, the following:

16           A. Prior violations by the same party;

17           B. The degree of environmental damage that cannot be abated or corrected;

18           C. The extent to which the violation continued following an order of the commissioner  
19 or board to correct it; ~~and~~

20           D. The importance of setting a civil penalty substantial enough to deter others from  
21 similar violations;

22           E. When sampling or submission of data is required, the effect that failing to submit  
23 data, providing inaccurate, incorrect or false data or failing to take required samples  
24 has on the department's ability to determine the extent to which the violation caused  
25 environmental damage or harm to human health; and

26           F. The potential negative effect of the violation on voluntary compliance and self-  
27 reporting programs administered by the department.

28           **Sec. 9. 38 MRSA §349, sub-§6**, as amended by PL 1997, c. 794, Pt. A, §8, is further  
29 amended to read:

30           **6. Maximum penalties.** The maximum civil penalty may exceed ~~\$10,000~~ \$25,000  
31 for each day of that violation, but may not exceed ~~\$25,000~~ \$65,000 for each day of the  
32 violation, when it can be shown that there has been a previous violation of the same law  
33 administered by the department, including, without limitation, a violation of the terms or  
34 conditions of an order, rule, license, permit, approval or decision of the board or  
35 commissioner, by the same party within the 5 preceding years, and the maximum criminal  
36 penalty may exceed ~~\$25,000~~ \$65,000 for each day of violation, but may not exceed twice  
37 the amounts in subsection 1, when it can be shown that there has been a previous violation  
38 of the same law by the same party.

39           **Sec. 10. 38 MRSA §353**, as affected by PL 2011, c. 653, §33 and amended by PL  
40 2015, c. 124, §2, is repealed.

41           **Sec. 11. 38 MRSA §2205, sub-§6**, as amended by PL 1995, c. 465, Pt. A, §77 and  
42 affected by Pt. C, §2, is further amended to read:

