

CHAPTER 2

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUBCHAPTER 1

ORGANIZATION AND POWERS

§341. Department

(REPEALED)

SECTION HISTORY

PL 1971, c. 618, §8 (NEW). PL 1975, c. 771, §418 (RPR). PL 1977, c. 78, §202 (AMD). PL 1977, c. 213, §4 (AMD). PL 1983, c. 812, §289 (AMD). PL 1989, c. 890, §§A12,40 (RP).

§341-A. Department of Environmental Protection

There is established a Department of Environmental Protection, in this Title called the "department." [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

1. Purpose. The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues. [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

2. Composition. The department shall consist of the Board of Environmental Protection, in the laws administered by the department called "board," and of a Commissioner of Environmental Protection, in the laws administered by the department called "commissioner." [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

3. Commissioner. The commissioner is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

A. The commissioner serves at the pleasure of the Governor. [PL 1995, c. 3, §5 (AMD).]

B. The commissioner may not participate in the review of or act on an application for a National Pollutant Discharge Elimination System permit or the modification, renewal or appeal of a permit under Section 402 of the Federal Water Pollution Control Act, 33 United States Code, Section 1342 if the commissioner receives, or during the previous 2 years has received, a significant portion of income directly or indirectly from National Pollutant Discharge Elimination System permit holders or applicants. If the commissioner's authority is restricted under this paragraph, the commissioner shall delegate duties related to the restricted matter to employees of the department who do not hold major policy-influencing positions pursuant to Title 5, section 938 and who do not receive or have not received during the previous 2 years a significant portion of income directly or indirectly from National Pollutant Discharge Elimination System permit holders or applicants. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement. Duties that must be delegated include National Pollutant Discharge Elimination System permitting, enforcement, establishment of waste load allocations and total maximum daily loads and establishment and implementation of water quality standards but not other Federal Water Pollution Control Act

matters such as water quality certification. The restriction imposed by this paragraph may not be interpreted to be more restrictive than federal law or the regulations of the United States Environmental Protection Agency. If a person with a conflict under this paragraph is nominated for the position of commissioner, the Governor shall submit to the President of the Senate and Speaker of the House of Representatives a plan for delegating the duties required to be delegated under this paragraph. The plan must be submitted with the information packet required to be provided by the Governor to the President of the Senate and Speaker of the House of Representatives under Title 3, section 154. [PL 2011, c. 357, §1 (AMD).]

C. The commissioner may delegate duties assigned to the commissioner under this Title to staff of the department. [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

D. The commissioner is subject to the conflict-of-interest provisions of Title 5, section 18. [PL 2011, c. 357, §2 (NEW).]
[PL 2011, c. 357, §§1,2 (AMD).]

4. Licenses and permits. For purposes of this Title, licenses or permits issued by the department may be issued by either the commissioner or the board subject to the provisions of section 341-D, subsection 2.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY

PL 1989, c. 890, §A13 (NEW). PL 1989, c. 890, §A40 (AFF). PL 1995, c. 3, §5 (AMD). PL 1997, c. 794, §A2 (AMD). PL 2011, c. 357, §§1, 2 (AMD).

§341-B. Rules

The purpose of the Board of Environmental Protection is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions. The board shall fulfill its purpose through rulemaking, decisions on selected permit applications, decisions on appeals of the commissioner's licensing actions, review of the commissioner's enforcement actions and recommending changes in the law to the Legislature. [PL 2019, c. 315, §3 (AMD).]

SECTION HISTORY

PL 1989, c. 890, §§A13,40 (NEW). PL 2011, c. 304, Pt. H, §1 (AMD). PL 2019, c. 315, §3 (AMD).

§341-C. Board membership

Membership of the Board of Environmental Protection is governed by this section. [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

1. Appointments. The board consists of 7 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

[PL 2011, c. 304, Pt. H, §2 (AMD).]

2. Qualifications and requirements. Members of the board must be chosen to represent the broadest possible public interest and experience that can be brought to bear on the administration and implementation of this Title and all other laws the board is charged with administering. At least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district. The boundaries of the congressional districts are defined in Title 21-A, chapter 15. A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the board. If a county or municipality is a participant in an adjudicatory

proceeding before the board, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

[PL 2019, c. 180, §1 (AMD).]

3. Terms; vacancies. The members must be appointed for staggered 4-year terms. A member may not serve more than 2 consecutive 4-year terms. A member continues to serve until that member has been reappointed or a successor has been appointed, except that, if the member has not been reappointed or a successor has not been appointed one year after the member's term expires, the member may no longer continue to serve. A vacancy occurring other than by expiration of a term must be filled by appointment for the unexpired portion of the term.

[PL 2017, c. 334, §1 (AMD).]

4. Chair. The Governor shall appoint one member to serve as chair.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

5. Expired terms.

[PL 2017, c. 334, §2 (RP).]

6. Compensation. Members are entitled to compensation according to the provisions of Title 5, section 12004-D.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

7. Conflict of interest. Members are governed by the conflict of interest provisions of Title 5, section 18. If a member believes that a conflict of interest may require that member's abstention in a proceeding, unless the member in question objects, the question of the conflict of interest must be submitted to a nonbinding advisory vote of the members present, excluding the member in question.

[PL 1999, c. 784, §5 (AMD).]

8. Federal standards. In accordance with federal standards, board member participation is limited by this subsection. For the purposes of this subsection, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.

A. A board member may not participate in the review of or act on an application for a National Pollutant Discharge Elimination System permit or the modification, renewal or appeal of a permit under Section 402 of the Federal Water Pollution Control Act, 33 United States Code, Section 1342 if the board member receives, or during the previous 2 years has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the National Pollutant Discharge Elimination System. Board members whose participation is restricted under this paragraph shall recuse themselves and may not participate in any National Pollutant Discharge Elimination System matter as long as the restriction applies. The recusal must be from all National Pollutant Discharge Elimination System permitting, enforcement, establishment of waste load allocations and total maximum daily loads and establishment and implementation of water quality standards but not other Federal Water Pollution Control Act matters such as water quality certification. The restriction imposed by this paragraph may not be interpreted to be more restrictive than federal law or the regulations of the United States Environmental Protection Agency. [PL 2019, c. 180, §2 (NEW).]

B. A board member may not participate in the review of or act on any permitting decision or enforcement order under the federal Clean Air Act, 42 United States Code, Section 7401, et seq. if the board member receives or derives a significant portion of that board member's income from persons subject to permits or enforcement orders under the federal Clean Air Act. Board members whose participation is restricted under this paragraph shall recuse themselves from all permitting and enforcement matters under the federal Clean Air Act. The restriction imposed by this paragraph may not be interpreted to be more restrictive than federal law or the regulations of the United States Environmental Protection Agency. [PL 2019, c. 180, §2 (NEW).]

[PL 2019, c. 180, §2 (RPR).]

SECTION HISTORY

PL 1989, c. 890, §§A13,40 (NEW). PL 1995, c. 3, §6 (AMD). PL 1997, c. 346, §2 (AMD). PL 1997, c. 794, §A3 (AMD). PL 1999, c. 784, §5 (AMD). PL 2011, c. 304, Pt. H, §§2, 3 (AMD). PL 2011, c. 357, §3 (AMD). PL 2017, c. 334, §§1, 2 (AMD). PL 2019, c. 180, §1, 2 (AMD).

§341-D. Board responsibilities and duties

The board is charged with the following duties and responsibilities. [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

1. Rulemaking.

[PL 1995, c. 347, §1 (AMD); MRSA T. 38 §341-D, sub-§1 (RP).]

1-A. Rulemaking.

[PL 1997, c. 364, §17 (AMD); MRSA T. 38 §341-D, sub-§1-A (RP).]

1-B. Rulemaking.

[PL 2011, c. 304, Pt. H, §4 (RP).]

1-C. Rulemaking. The board shall adopt, amend or repeal rules in accordance with section 341-H. [PL 2011, c. 304, Pt. H, §5 (NEW).]

2. Permit and license applications. Except as otherwise provided in this subsection, the board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

A. [PL 2011, c. 304, Pt. H, §6 (RP).]

B. [PL 2011, c. 304, Pt. H, §6 (RP).]

C. [PL 2011, c. 304, Pt. H, §6 (RP).]

D. [PL 2011, c. 304, Pt. H, §6 (RP).]

E. Will have an environmental or economic impact in more than one municipality, territory or county; [PL 2011, c. 304, Pt. H, §6 (NEW).]

F. Involves an activity not previously permitted or licensed in the State; [PL 2011, c. 304, Pt. H, §6 (NEW).]

G. Is likely to come under significant public scrutiny; and [PL 2011, c. 304, Pt. H, §6 (NEW).]

H. Is located in more than one municipality, territory or county. [PL 2011, c. 304, Pt. H, §6 (NEW).]

The board shall also decide each application for approval of permits and licenses that is referred to it jointly by the commissioner and the applicant.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A when it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been met.

The board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4, for a certification pursuant to Title 35-A, section 3456 or for a general permit pursuant to section 480-HH or section 636-A.

Prior to holding a hearing on an application over which the board has assumed jurisdiction, the board shall ensure that the department and any outside agency review staff assisting the department in its

review of the application have submitted to the applicant and the board their review comments on the application and any additional information requests pertaining to the application and that the applicant has had an opportunity to respond to those comments and requests. If additional information needs arise during the hearing, the board shall afford the applicant a reasonable opportunity to respond to those information requests prior to the close of the hearing record.

[PL 2011, c. 304, Pt. H, §6 (AMD).]

3. Modification or corrective action. At the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met.

- A. [PL 2011, c. 304, Pt. H, §7 (RP).]
- B. [PL 2011, c. 304, Pt. H, §7 (RP).]
- C. [PL 2011, c. 304, Pt. H, §7 (RP).]
- D. [PL 2011, c. 304, Pt. H, §7 (RP).]
- E. [PL 2011, c. 304, Pt. H, §7 (RP).]
- F. [PL 2011, c. 304, Pt. H, §7 (RP).]
- G. [PL 2011, c. 304, Pt. H, §7 (RP).]

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

[PL 2011, c. 304, Pt. H, §7 (RPR).]

4. Appeal or review. The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

- (1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time; or
- (2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board; [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

B. [PL 2011, c. 304, Pt. H, §8 (RP).]

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A; and [PL 2007, c. 661, Pt. B, §3 (AMD).]

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department,

including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee may serve as a nonvoting member of the board and is entitled to fully participate but is not required to attend meetings and hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department. [PL 2017, c. 334, §3 (AMD).]

[PL 2017, c. 334, §3 (AMD).]

5. Requests for reconsideration.

[PL 2011, c. 304, Pt. H, §10 (RP).]

6. Enforcement. The board shall:

A. [PL 2011, c. 304, Pt. H, §11 (RP).]

B. [PL 2011, c. 304, Pt. H, §11 (RP).]

C. [PL 2011, c. 304, Pt. H, §11 (RP).]

D. [PL 2011, c. 304, Pt. H, §11 (RP).]

E. Advise the commissioner on enforcement priorities and activities; [PL 2019, c. 315, §4 (NEW).]

F. Advise the commissioner on the adequacy of penalties and enforcement activities; [PL 2019, c. 315, §4 (NEW).]

G. Approve administrative consent agreements pursuant to section 347-A, subsection 1; and [PL 2019, c. 315, §4 (NEW).]

H. Hear appeals of emergency orders pursuant to section 347-A, subsection 3. [PL 2019, c. 315, §4 (NEW).]

[PL 2019, c. 315, §4 (AMD).]

7. Reports to the Legislature. The board shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 15th of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.

[PL 2011, c. 304, Pt. H, §12 (AMD).]

8. Other duties. The board shall carry out other duties as required by law.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY

PL 1989, c. 890, §§A13,40 (NEW). PL 1991, c. 804, §A1 (AMD). PL 1993, c. 328, §1 (AMD). PL 1993, c. 356, §1 (AMD). PL 1995, c. 347, §§1,2 (AMD). PL 1995, c. 642, §§1,2 (AMD). PL 1997, c. 364, §17 (AMD). PL 1999, c. 784, §6 (AMD). PL 2007, c. 661, Pt. B, §§1-4 (AMD). PL 2009, c. 121, §1 (AMD). PL 2009, c. 615, Pt. E, §§1, 2 (AMD). PL 2011, c. 304, Pt. H, §§4-12 (AMD). PL 2017, c. 334, §3 (AMD). PL 2019, c. 315, §4 (AMD).

§341-E. Board meetings

Board meetings held under section 341-D are governed by the following provisions. [PL 2011, c. 304, Pt. H, §13 (AMD).]

1. Quorum. Four members of the board constitute a quorum. A quorum is required to open a meeting and for a vote of the board.

[PL 2011, c. 304, Pt. H, §13 (AMD).]

2. Proceedings recorded. All proceedings before the board must be recorded electronically.
[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY

PL 1989, c. 890, §§A13,40 (NEW). PL 2011, c. 304, Pt. H, §13 (AMD).

§341-F. Administration

Responsibility for the administration of the board lies with the chair. [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

1. Staff. Staff of the board must be hired by the chair with the consent of the board. The executive analyst shall direct the daily administrative and operational functions of the board and board staff in an impartial and objective manner. The board shall prescribe the duties of the executive analyst. The executive analyst is prohibited from participating in any activity that substantially compromises the executive analyst's ability to discharge effectively and impartially the executive analyst's duties to the board.

[PL 1999, c. 784, §7 (AMD).]

2. Unclassified employee. The executive analyst of the board is unclassified and may be removed by majority vote of the board.

[PL 1999, c. 784, §7 (AMD).]

3. Conflict of interest. Notwithstanding Title 5, section 18, subsection 1, each professional staff member of the board is an "executive employee" solely for the purposes of Title 5, section 18.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

4. Budget. The board shall prepare and adopt a biennial operating budget to be submitted to the commissioner for inclusion in the department's budget.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

5. Consultants. The board may obtain the services of consultants on a contractual basis or otherwise as necessary to carry out the responsibilities under this Title.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

6. Cooperation with other agencies. The board may cooperate with other state or federal departments or agencies to carry out the responsibilities under this Title.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY

PL 1989, c. 890, §§A13,40 (NEW). PL 1999, c. 784, §7 (AMD).

§341-G. Board of Environmental Protection Fund

There is established the Board of Environmental Protection Fund to be used by the board as a nonlapsing fund to carry out its duties under this Title. Notwithstanding any other provision of law, the funds identified in subsection 1 transfer annually to the Board of Environmental Protection Fund in an amount not to exceed \$325,000. Money in the Board of Environmental Protection Fund may only be expended in accordance with allocations approved by the Legislature. [PL 2003, c. 245, §2 (AMD).]

1. Transfer funds. The amount transferred from each fund must be proportional to that fund's contribution to the total special revenues received by the department under chapter 2, subchapter 2; section 551; chapter 13, subchapter 4; and section 1364. Any funds received by the board from the General Fund must be credited towards the amount owed by the Maine Environmental Protection Fund, chapter 2, subchapter 2.

[PL 2015, c. 494, Pt. A, §49 (RPR).]

2. Investment of funds. Money in the Board of Environmental Protection Fund not currently needed to meet the obligations of the board in the exercise of its responsibilities under this Title must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund.

[PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY

PL 1989, c. 890, §A13 (NEW). PL 1989, c. 890, §A40 (AFF). PL 1991, c. 817, §8 (AMD). PL 1997, c. 364, §18 (AMD). PL 2003, c. 245, §2 (AMD). PL 2015, c. 267, Pt. NNNN, §1 (AMD). PL 2015, c. 319, §7 (AMD). PL 2015, c. 494, Pt. A, §49 (AMD).

§341-H. Departmental rulemaking

Subject to Title 5, chapter 375, subchapter 2-A, the board may adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering as provided in this section. The board shall also adopt, amend and repeal rules as necessary for the conduct of the department's business, including the processing of applications, the conduct of hearings and other administrative matters. [PL 2019, c. 315, §5 (NEW).]

1. Rule-making authority of the board.

[PL 2019, c. 315, §5 (RP).]

2. Rule-making authority of the commissioner.

[PL 2019, c. 315, §5 (RP).]

3. Duties of department. The department shall:

A. Identify in its regulatory agenda under Title 5, section 8060, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than a federal standard, if an applicable federal standard exists; and [PL 2019, c. 315, §5 (AMD).]

B. During the consideration of any proposed rule, when feasible, and using information available to it, identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard. [PL 2019, c. 315, §5 (AMD).]

C. [PL 2019, c. 315, §5 (RP).]

[PL 2019, c. 315, §5 (AMD).]

3-A. Additional public comment. Notwithstanding Title 5, chapter 375, subchapter 2 or 2-A, the board shall accept and consider additional public comment on a proposed rule following the close of the formal rule-making comment period at a meeting that is not a public hearing only if the additional public comment is directly related to comments received during the formal rule-making comment period or is in response to changes to the proposed rule. Public notice of the meeting must comply with Title 1, section 406 and must state that the board will accept additional public comment on the proposed rule at that meeting.

[PL 2019, c. 315, §5 (NEW).]

4. Legislative review of a rule. If a rule adopted by the board is the subject of a request for legislative review of a rule under Title 5, chapter 377-A, the Executive Director of the Legislative Council shall immediately notify the board of that request and of the legislative committee's decision under that chapter on whether or not to review the rule.

[PL 2019, c. 315, §5 (AMD).]

SECTION HISTORY

PL 2011, c. 304, Pt. H, §14 (NEW). PL 2011, c. 538, §1 (AMD). PL 2019, c. 315, §5 (AMD).

§342. Commissioner, duties

The Commissioner of Environmental Protection shall have the following duties: [PL 1971, c. 618, §8 (NEW).]

1.

[PL 1983, c. 483, §1 (RP).]

1-A. Administration of department. The commissioner is the chief administrative officer of the department and responsible for all administrative matters of the department, except as otherwise specified. The commissioner shall assure that all determinations made by the staff of the department are promptly rendered. The commissioner shall resolve disputes between department staff and applicants with respect to any questions regarding requirements, interpretation or application of the laws, rules or department policy. In resolving disputes, the commissioner shall attempt to reach a fair and appropriate result given all of the circumstances of the issue and may utilize the services of such consultants or experts as the commissioner determines would be helpful to resolve any disputed issue. For purposes of this subsection and section 341-A, subsection 3, paragraph C, staff of the department does not include staff of the board.

[PL 1989, c. 890, Pt. A, §14 (AMD); PL 1989, c. 890, Pt. A, §40 (AFF).]

2. Employment of personnel. The commissioner may employ, subject to the Civil Service Law, personnel for the department and prescribe the duties of these employees, except persons occupying the positions defined in Title 5, section 938, subsection 1-A, as the commissioner determines necessary to fulfill the duties of the department. For purposes of this subsection, personnel for the department does not include staff of the board.

[PL 1995, c. 560, Pt. E, §3 (AMD).]

3.

[PL 1989, c. 890, Pt. A, §16 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

3-A. Negotiating agreements. The commissioner may negotiate and enter into agreements with federal, state and municipal agencies.

[PL 1989, c. 890, Pt. A, §17 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

4. Organization of department. The commissioner, after consultation with the Board of Environmental Protection, shall organize the department into the bureaus, divisions, regional offices and other administrative units necessary to fulfill the duties of the department. After consultation with the board, the commissioner shall prescribe the functions of the bureaus and other administrative units to insure that the powers and duties of the department are administered efficiently so that all license applications and other business of the department may be expeditiously completed in the public interest.

A. In coordination with the Health and Environmental Testing Laboratory in the Department of Health and Human Services, the commissioner shall ensure that sampling, data handling and analytical procedures are carried out in accordance with the highest professional standards so that data generated for departmental programs are of known and predictable precision and accuracy. [PL 1991, c. 499, §9 (RPR); PL 1991, c. 499, §26 (AFF); PL 2003, c. 689, Pt. B, §6 (REV).]

B. The Office of Pollution Prevention is established within the department to review department programs and make recommendations to the commissioner on means of integrating pollution prevention into department programs. The Office of Pollution Prevention has the following functions:

- (1) To establish pollution prevention priorities within the department;

- (2) To coordinate department pollution prevention activities with those of other agencies and entities;
- (3) To ensure that rules, programs and activities of the department are consistent with pollution prevention goals and do not hinder pollution prevention initiatives;
- (4) To provide technical assistance, training and educational activities to assist the general public, governmental entities and the regulated community with development and implementation of pollution prevention programs as funds allow;
- (5) To establish an award program to recognize businesses, local governments, department staff and others that have implemented outstanding or innovative pollution prevention programs, activities or methods;
- (6) To identify opportunities to use the state procurement system to encourage pollution prevention;
- (7) To develop procedures to determine the effectiveness of the department's pollution prevention programs and activities;
- (8) To assume responsibility for the administration and implementation of chapter 27; and
- (9) To administer and evaluate the Technical and Environmental Assistance Program established in section 343-B.

The commissioner shall designate an employee of the department to manage the functions of the Office of Pollution Prevention. That person may provide independent testimony to the Legislature, may make periodic reports to the administrator of the federal Environmental Protection Agency for transmittal to the United States Congress and may address problems or concerns related to the functions of the office, including the investigation of complaints concerning the Technical and Environmental Assistance Program.

The commissioner shall identify a staff person or persons in each bureau of the department whose primary responsibility is to provide guidance to any party through the permit review process. [PL 2009, c. 579, Pt. B, §5 (AMD); PL 2009, c. 579, Pt. B, §13 (AFF).]
[PL 2009, c. 579, Pt. B, §5 (AMD); PL 2009, c. 579, Pt. B, §13 (AFF).]

5. Designation of deputy commissioner.

[PL 1985, c. 746, §5 (RP).]

5-A. Designation of deputy commissioner and directors. The commissioner may employ, to serve at his pleasure, the following:

A. A deputy commissioner; [PL 1985, c. 746, §6 (NEW).]

B. [PL 1987, c. 419, §3 (RP).]

C. Directors as defined in Title 5, section 938, subsection 1-A. [PL 1995, c. 560, Pt. E, §4 (AMD).]

[PL 1995, c. 560, Pt. E, §4 (AMD).]

6. Technical services.

[PL 1991, c. 66, Pt. A, §1 (RP).]

7. Representation in court. The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the department and set forth in Title 4, section 152, subsection 6-A. The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to represent a municipality in an action to obtain

an administrative search warrant to allow entry of a local plumbing inspector onto property without the consent of the property owner in order to inspect a subsurface waste water disposal system in an area designated by the department as provided in section 424-A, subsection 3, paragraph A. Licensed Maine attorneys do not need to file the certification referred to in the Maine Rules of Civil Procedure, Rule 80K(h). Certification of nonattorney employees must be provided as under Title 30-A, section 4453. [PL 2007, c. 568, §7 (AMD).]

8. Data base. The commissioner shall develop by January 1, 1991, and maintain a data base of license applications received and decisions made by the department. The data base must include information on all applications pending or received after January 1, 1990. For each application the data base must include:

- A. The type of license sought; [PL 1991, c. 66, Pt. A, §2 (RPR).]
- B. The name and address of the applicant and the name of a natural person who is the representative of the applicant; [PL 1991, c. 66, Pt. A, §2 (RPR).]
- C. The location of the project; [PL 1991, c. 66, Pt. A, §2 (RPR).]
- D. The date of acceptance of the application for processing; [PL 1991, c. 66, Pt. A, §2 (RPR).]
- E. The current processing status of the application; [PL 1991, c. 66, Pt. A, §2 (RPR).]
- F. An indication of whether the commissioner or the board will decide the application; [PL 1991, c. 66, Pt. A, §2 (RPR).]
- G. A brief description of the project, including any substantial issues raised during the licensing process; and [PL 1991, c. 66, Pt. A, §2 (RPR).]
- H. A brief description of the final action taken by the department, either by the commissioner or the board, on the application. [PL 1991, c. 66, Pt. A, §2 (RPR).]

The commissioner shall maintain a central archive of all applications received and licenses issued by the department.

[PL 1991, c. 66, Pt. A, §2 (RPR).]

9. Rules. The commissioner may submit to the board new or amended rules for its adoption. [PL 2019, c. 315, §6 (AMD).]

10. Consultants. The commissioner may contract with or otherwise employ consultants for services necessary to carry out duties under this Title. [PL 1989, c. 890, Pt. A, §18 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

11. Administrative duties for the board. The commissioner shall meet the administrative requirements of the board including bookkeeping, expense reimbursement and payroll matters. [PL 1989, c. 890, Pt. A, §18 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

11-A. Recommendations and assistance to board. The commissioner shall make recommendations to the board regarding proposed rules; permit and license applications over which the board has jurisdiction; modification or corrective action on licenses; appeals of license and permit decisions; enforcement actions; and other matters considered by the board. The commissioner shall also provide the board with the technical services of the department. [PL 2019, c. 315, §7 (AMD).]

11-B. Revoke or suspend licenses and permits. Notwithstanding Title 5, section 10051, after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the commissioner may revoke or suspend a license whenever the commissioner finds that:

- A. The licensee has violated any condition of the license; [PL 2011, c. 304, Pt. H, §17 (NEW).]

- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts; [PL 2011, c. 304, Pt. H, §17 (NEW).]
- C. The licensed discharge or activity poses a threat to human health or the environment; [PL 2011, c. 304, Pt. H, §17 (NEW).]
- D. The license fails to include any standard or limitation legally required on the date of issuance; [PL 2011, c. 304, Pt. H, §17 (NEW).]
- E. There has been a change in any condition or circumstance that requires revocation or suspension of a license; [PL 2011, c. 304, Pt. H, §17 (NEW).]
- 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; [PL 2011, c. 304, Pt. H, §17 (NEW).]
- G. The licensee has violated any law administered by the department; or [PL 2011, c. 304, Pt. H, §17 (NEW).]
- H. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990. [PL 2011, c. 304, Pt. H, §17 (NEW).]

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. [PL 2017, c. 137, Pt. A, §4 (AMD).]

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. [PL 2011, c. 538, §3 (NEW).]

12. Coordination and assistance procedures. The commissioner shall establish procedures to assist the public and applicants and coordinate processing for all environmental permits issued by the department. These procedures must, to the extent practicable, ensure:

- A. Availability to the public of necessary information concerning these environmental permits; [PL 1989, c. 890, Pt. A, §18 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]
 - B. Assistance to applicants in obtaining environmental permits from the department; and [PL 1989, c. 890, Pt. A, §18 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]
 - C. That the public understands the permitting process and all the procedures of the department including those of the board. Any written material must be in clear, concise language. [PL 1989, c. 890, Pt. A, §18 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]
- [PL 1989, c. 890, Pt. A, §18 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

13. Agricultural impacts. The commissioner shall notify and regularly inform the Commissioner of Agriculture, Conservation and Forestry on proposed legislation or rules that may affect agricultural activity. [PL 1991, c. 66, Pt. A, §3 (NEW); PL 2011, c. 657, Pt. W, §6 (REV).]

14. Environmental priorities report. [PL 2003, c. 245, §4 (RP).]

15. Technical services. The commissioner shall establish a technical services unit within the department to assist any person involved in a real estate transaction in determining whether real property that is the subject of the transaction has been the site of a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products.

The commissioner may also assist in or supervise the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, review and approval of a requester's investigation plans, site assessments and reports, voluntary response action plans and implementation of those plans.

The fee for department assistance in submitting a voluntary response action plan under section 343-E is equal to 1% of the assessed value of the property at the time the request is submitted, except that the fee may not exceed \$15,000.

For all other requests for assistance under this subsection, a person shall pay the department an initial nonrefundable fee of up to \$500 to be determined by the commissioner. The person shall also pay the department for its actual direct and indirect costs of providing assistance, which must be determined by the commissioner but which must not on an hourly basis exceed \$50 per hour per person. Money received by the department for assistance under this subsection must be deposited in the Uncontrolled Sites Fund established in section 1364, subsection 6.

[PL 2017, c. 92, §1 (AMD); PL 2017, c. 92, §2 (AFF).]

16. Receipt of funds. Through the Department of Administrative and Financial Services, the commissioner may establish accounts as necessary for the administration of funds held temporarily by the department and restricted to specific purposes by court order or otherwise, such as escrow funds, funds from court decrees and intervenor fees. The State Budget Officer may provide for allotment of the funds as requested. Funds received must be deposited with the Treasurer of State to the credit of the appropriate account and be invested, as provided by law, with interest credited to the account.

[PL 1993, c. 735, §1 (NEW).]

17. Serve as a director of Clean Government Initiative. The commissioner shall serve as a director, along with the Commissioner of Administrative and Financial Services, of the Clean Government Initiative established in section 343-H.

[PL 2001, c. 333, §4 (NEW).]

SECTION HISTORY

PL 1971, c. 618, §8 (NEW). PL 1977, c. 564, §134 (AMD). PL 1977, c. 596, §1 (AMD). PL 1981, c. 526, §1 (AMD). PL 1983, c. 483, §§1-3 (AMD). PL 1983, c. 536 (AMD). PL 1983, c. 566, §2 (AMD). PL 1983, c. 743, §2 (AMD). PL 1983, c. 796, §15 (AMD). PL 1985, c. 746, §§4-6 (AMD). PL 1985, c. 785, §B177 (AMD). PL 1985, c. 819, §§B6,7 (AMD). PL 1987, c. 205 (AMD). PL 1987, c. 419, §3 (AMD). PL 1987, c. 787, §4 (AMD). PL 1987, c. 816, §Z4 (AMD). PL 1989, c. 836, §3 (AMD). PL 1989, c. 869, §A2 (AMD). PL 1989, c. 890, §§A14-18 (AMD). PL 1989, c. 890, Pt. A, §40 (AFF). PL 1989, c. 890, §§B1,B2 (AMD). PL 1991, c. 66, §§A1-3 (AMD). PL 1991, c. 499, §9 (AMD). PL 1991, c. 499, §26 (AFF). PL 1991, c. 520, §1 (AMD). PL 1991, c. 804, §§A2,C2 (AMD). RR 1993, c. 2, §37 (COR). PL 1993, c. 355, §3 (AMD). PL 1993, c. 735, §1 (AMD). PL 1995, c. 560, §§E3,4 (AMD). PL 1997, c. 296, §10 (AMD). PL 1999, c. 127, §A53 (AMD). PL 1999, c. 784, §8 (AMD). PL 2001, c. 333, §4 (AMD). PL 2003, c. 245, §§3,4 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 568, §7 (AMD). PL 2009, c. 579, Pt. B, §5 (AMD). PL 2009, c. 579, Pt. B, §13 (AFF). PL 2011, c. 304, Pt. H, §§15-17 (AMD). PL 2011, c. 538, §§2, 3 (AMD). PL 2011, c. 657, Pt. W, §6 (REV). PL 2017, c. 92, §1 (AMD). PL 2017, c. 92, §2 (AFF). PL 2017, c. 137, Pt. A, §4 (AMD). PL 2019, c. 315, §§6, 7 (AMD).

§342-A. Operations

(REPEALED)

SECTION HISTORY

PL 1987, c. 816, §Z5 (NEW). PL 1989, c. 546, §4 (AMD). PL 1991, c. 499, §10 (RP). PL 1991, c. 499, §26 (AFF).

§342-B. Liability of fiduciaries and lenders

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. The following must be considered in determining whether a secured lender is "acting diligently to sell or otherwise divest" or as "evidence of diligent efforts to sell or divest:"

- (1) Use of the property during the period;
- (2) Market conditions;
- (3) Marketability of the site; or
- (4) Legal constraints on the sale or divestment.

If the lender holds the property for longer than the 5-year period but meets the conditions in subsection 4, paragraph C, subparagraph (4) and the requirements enumerated in this paragraph, then liability is not imposed on the lender. [PL 1993, c. 355, §4 (NEW).]

B. "Assets of the estate or trust" means assets of the estate or trust of which the site is a part; assets that subsequent to knowledge of the release are placed by the fiduciary or the grantor in an estate or trust over which the fiduciary has control if the grantor is or was an owner or operator of the release site at the time of the transfer; and assets that are transferred by the fiduciary upon or subsequent to knowledge of the release for less than full and fair consideration, to the extent of the amount that the fair market value exceeded the consideration received by the estate or trust. [PL 1993, c. 355, §4 (NEW).]

C. "Participates in management" means, while the borrower is in possession of the facility, executing decision-making control over the borrower's management of oil or hazardous materials or exercising control over substantially all of the operational aspects of the borrower's enterprise, but does not include the following:

- (1) Conducting or requiring site assessments of the property;
- (2) Engaging in periodic or regular monitoring of the business;
- (3) Financing conditioned on compliance with environmental laws;
- (4) Providing general business or financial advice, excluding management of hazardous materials and oil;
- (5) Providing general advice with respect to site management;
- (6) Policing the security interest or loan;
- (7) Engaging in work-out activities prior to foreclosure; or
- (8) Participating in foreclosure proceedings. [PL 1993, c. 355, §4 (NEW).]

[PL 1993, c. 355, §4 (NEW).]

2. Exemption from liability. Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings, liable or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367; and 1371 for discharges, releases or threats of releases of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant or a petroleum product or by-product if that person is:

A. A fiduciary, as defined in section 1362, subsection 1-D, but that exclusion does not apply to an estate or trust of which the site is a part; or [PL 1993, c. 355, §4 (NEW).]

B. A lender, as defined in section 1362, subsection 1-B, who, without participating in management of a site, holds indicia of ownership primarily to protect a security interest in the site. [PL 1993, c. 355, §4 (NEW).]

[PL 1993, c. 355, §4 (NEW).]

3. Exclusion from exemption for fiduciaries. The exemption from liability provided by subsection 2 does not apply if:

A. The fiduciary causes, contributes to or exacerbates the discharge, release or threat of release; or [PL 1993, c. 355, §4 (NEW).]

B. After acquiring title to or commencing control or management of the site, the fiduciary does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the site to the department and its authorized representatives so that necessary response actions may be conducted; and

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment. [PL 1993, c. 355, §4 (NEW).]

[PL 1993, c. 355, §4 (NEW).]

4. Exclusion from exemption for lenders. The exemption from liability for lenders provided in subsection 2 does not apply if:

A. The secured lender causes, contributes to or exacerbates the discharge, release or threat of release; [PL 1993, c. 355, §4 (NEW).]

B. The secured lender participates in management of the site prior to acquiring ownership of the site; or [PL 1993, c. 355, §4 (NEW).]

C. After acquiring ownership of the site and upon obtaining knowledge of a release or threat of release, the secured lender does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the department and its authorized representatives so that necessary response actions may be conducted;

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment; and

(4) Act diligently to sell or otherwise divest the property within a limited time period of up to 5 years from the earlier of the lender's possession or ownership. There is a rebuttable presumption that the 2nd lender is acting diligently to sell or otherwise divest the property during the first 18 months after taking possession. The secured lender must demonstrate by a preponderance of the evidence diligent efforts to sell or divest the property during the next 42 months. [PL 1993, c. 355, §4 (NEW).]

When a lender has ownership or possession of a site pursuant to a security interest in the site, the term "owner" or "operator" means a person who owned or operated the site immediately prior to that secured lender obtaining ownership or possession of the site.

[PL 1993, c. 355, §4 (NEW).]

4-A. Exemption from liability for discharges during approved site investigation work. Notwithstanding subsection 3, paragraph A and subsection 4, paragraph A, a fiduciary or lender is exempt from liability under subsection 2 if the fiduciary or lender causes, contributes to or exacerbates

a discharge, release or threat of release while undertaking investigations in accordance with a voluntary response action plan approved by the commissioner under section 343-E.

[PL 2011, c. 206, §4 (NEW).]

5. Relationship to ground water fund claims. The exemption provided in subsection 2, paragraph B from liability under section 570 does not exempt lenders who apply to the Maine Ground and Surface Waters Clean-up and Response Fund for coverage pursuant to section 568-A from the obligation to pay the full amount of deductible determined by the commissioner.

[PL 2015, c. 319, §8 (AMD).]

6. Exempt person as party. Notwithstanding the exemption from liability provided by this section, a fiduciary may be named as a party in an administrative enforcement proceeding or civil action brought by the State pursuant to this Title for purposes of requiring the submission of information or documents relating to an uncontrolled hazardous substance site, for purposes of proceeding against the assets of the estate or trust for reimbursement, fines or penalties or for purposes of compelling the expenditure of assets of the estate or trust by the fiduciary to abate, clean up or mitigate threats or hazards posed by a discharge or release, or to comply with state environmental laws and regulations or the terms of a department order of enforcement proceeding. This subsection does not require the fiduciary to expend its own funds or to make the fiduciary personally liable for compliance pursuant to an order or enforcement proceeding except as provided in section 568, subsection 4, paragraph B or section 1365, subsection 6.

[RR 1993, c. 1, §111 (COR).]

SECTION HISTORY

RR 1993, c. 1, §111 (COR). PL 1993, c. 355, §4 (NEW). PL 2011, c. 206, §4 (AMD). PL 2015, c. 319, §8 (AMD).

§343. Regulations

(REPEALED)

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 694, §§751,752 (AMD). PL 1983, c. 566, §3 (RP).

§343-A. Rules

(REPEALED)

SECTION HISTORY

PL 1983, c. 566, §4 (NEW). PL 1989, c. 890, §§A19,40 (RP).

§343-B. Preapplication and presubmission meetings

At the request of a potential applicant or when required by rule, the department shall hold a preapplication meeting to identify the issues, types of information and documentation necessary for the department to properly assess a specific project. For any application that has had a preapplication meeting, the department shall also hold a presubmission meeting to review the application prior to the application being filed by the applicant unless the department determines that the presubmission meeting is unnecessary based upon the complexity of the application, status of development of the application or other factors and the applicant agrees not to hold a presubmission meeting. [PL 2005, c. 330, §4 (AMD).]

The board may adopt rules that identify classes of applications that require an applicant to attend a preapplication and presubmission meeting held by the department prior to submitting the application. [PL 1991, c. 804, Pt. B, §1 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

SECTION HISTORY

PL 1991, c. 804, §B1 (NEW). PL 1991, c. 804, §B7 (AFF). PL 2005, c. 330, §4 (AMD).

§343-C. Technical and Environmental Assistance Program

The Technical and Environmental Assistance Program, referred to in this section as the "program," is administered by the Office of Pollution Prevention. Participation in the program by any person is voluntary. The department may not require any person to participate in the program. [PL 1991, c. 804, Pt. C, §3 (NEW).]

1. Program components. The program must:

- A. Provide for the development, collection and coordination of information concerning compliance methods and technologies; [PL 1991, c. 804, Pt. C, §3 (NEW).]
- B. Provide for the encouragement of lawful cooperation among persons engaged in activities regulated by the department; [PL 1991, c. 804, Pt. C, §3 (NEW).]
- C. Provide assistance with pollution prevention and accidental release detection and prevention; [PL 1991, c. 804, Pt. C, §3 (NEW).]
- D. Ensure that a person engaging in an activity that is subject to regulation by the department is informed of that person's rights and obligations under environmental programs administered by the department, and assist persons in determining the applicable permitting and programmatic requirements of the department; and [PL 1991, c. 804, Pt. C, §3 (NEW).]
- E. Develop procedures to consider requests from regulated persons to modify work practice or technological compliance methods or the milestones for implementing those methods. [PL 1991, c. 804, Pt. C, §3 (NEW).]

Any instance of noncompliance identified as a result of a person requesting assistance through the program must be corrected by that person. The commissioner is not required to initiate a formal enforcement action against a person found to be in noncompliance as a result of a request for assistance through the program. The commissioner, in cooperation with the Attorney General and in conformity with federal requirements, shall develop a written enforcement policy for responding to violations identified as a result of a small business requesting assistance through the program. The policy must outline conditions under which the department will forego civil penalties when the violation is not a recurrence of a violation for which a prior formal or informal enforcement response has been taken, the violation was inadvertent and did not result in significant environmental harm or risk to human health and the business acts promptly and responsibly to correct the violation.

[PL 1995, c. 234, §1 (AMD).]

2. Other duties. In administering the program, the Office of Pollution Prevention shall:

- A. Operate a telephone hotline to enhance accessibility of the program; and [PL 2013, c. 300, §7 (AMD).]
 - B. [PL 2013, c. 300, §8 (RP).]
 - C. Periodically review the program with trade associations, municipal organizations and regulated persons. [PL 1991, c. 804, Pt. C, §3 (NEW).]
- [PL 2013, c. 300, §§7, 8 (AMD).]

3. Staffing. The commissioner shall establish adequate staffing to effectively carry out the duties of the Technical and Environmental Assistance Program.

[PL 1993, c. 500, §1 (NEW); PL 1993, c. 500, §5 (AFF).]

SECTION HISTORY

PL 1991, c. 804, §C3 (NEW). PL 1993, c. 500, §1 (AMD). PL 1993, c. 500, §5 (AFF). PL 1995, c. 234, §1 (AMD). PL 2013, c. 300, §§7, 8 (AMD).

§343-D. Pollution Prevention and Small Business Assistance Advisory Panel**(REPEALED)**

SECTION HISTORY

PL 1991, c. 804, §C3 (NEW). PL 1991, c. 804, §C5 (AFF). PL 1993, c. 500, §2 (AMD). PL 1993, c. 500, §5 (AFF). PL 1995, c. 465, §A11 (AMD). PL 1995, c. 465, §C2 (AFF). PL 1995, c. 656, §A18 (AMD). PL 2009, c. 121, §2 (AMD). PL 2009, c. 579, Pt. B, §§6, 7 (AMD). PL 2009, c. 579, Pt. B, §13 (AFF). PL 2011, c. 206, §§5, 6 (AMD). PL 2011, c. 206, §37 (AFF). PL 2021, c. 36, §22 (RP).

§343-E. Voluntary response action program

1. Liability protection for complete cleanup. Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 or 1371 for, or as a result of, a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products, if the person investigates the discharge, release or threatened release and undertakes and completes response actions to remove or remedy all known discharges, releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner. [PL 1993, c. 355, §5 (NEW).]

2. Liability protection for partial cleanup. The commissioner may approve a voluntary response action plan submitted under this section that does not require removal or remedy of all discharges, releases and threatened releases at an identified area of real property conditioned upon any or all of the terms identified in subsection 3 and based on consideration of the following:

A. If reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that protects public health and the environment; [PL 1993, c. 355, §5 (NEW).]

B. The response actions and the activities associated with any reuse or development proposed for the property will not cause, contribute or exacerbate discharges, releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan and will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases or threatened releases; and [PL 1993, c. 355, §5 (NEW).]

C. The owner of the property that is the subject of the partial voluntary response action plan agrees to cooperate with the commissioner, the requestor or the commissioner's authorized representatives to avoid any action that interferes with the response actions. [PL 1993, c. 355, §5 (NEW).]
[PL 1993, c. 355, §5 (NEW).]

3. Conditions for protection. The commissioner may condition the protection from liability provided by this section on the requestor's agreement to any or all of the following terms that the commissioner may determine to be necessary:

A. To provide access to the property to the commissioner and the commissioner's authorized representatives; [PL 1993, c. 355, §5 (NEW).]

B. To allow the commissioner or the commissioner's authorized representatives to undertake activities at the property including placement of borings, wells, equipment, and structures on the property; and [PL 1993, c. 355, §5 (NEW).]

C. To the extent the requestor has title to the property, to grant easements or other interests in the property to the department for any of the purposes provided in paragraph A or B. An agreement under this subsection must apply to and be binding upon the successors and assigns of the owner.

To the extent the requestor has title to the property, the requestor shall record the agreement or a memorandum approved by the commissioner that summarizes the agreement in the registry of deeds for the county where the property is located. [PL 1993, c. 355, §5 (NEW).]
[PL 1993, c. 355, §5 (NEW).]

4. Investigation report. A voluntary response action plan submitted for approval of the commissioner must include an investigation report prepared by an appropriate professional that identifies and describes the nature and extent of the discharges, releases and threatened releases at the identified area of real property, methods of investigation, the analytical results and the professional's evaluation of this information.
[PL 1993, c. 355, §5 (NEW).]

5. Approval of plan. When the commissioner approves a voluntary response action plan pursuant to subsection 1 or 2, the commissioner shall include in the approval a no-action assurance pursuant to subsection 9, acknowledging that so long as the plan is implemented pursuant to its terms and with the exercise of due care, the person submitting the plan and those persons identified in subsection 6 will receive the protection from liability provided under this section. Upon completion of the voluntary response action plan, the parties implementing the voluntary response action plan shall notify the commissioner who shall issue a certificate of completion upon demonstration by the parties that the response action is complete. In addition, a person who has submitted and received department approval of a voluntary response action plan and is implementing or has implemented that plan pursuant to its terms is not liable for claims for contribution regarding the site.
[PL 1993, c. 355, §5 (NEW).]

6. Additional persons protected from liability. In addition to the person who undertakes and completes a voluntary response action pursuant to an approved voluntary response action plan, the liability protection provided by this section applies to the following persons:

A. An owner or operator who is a responsible party or who is subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threat of release and who undertakes and completes a voluntary response action plan that fully remediates all known discharges, releases or threatened releases. The liability protection is limited to protection from further clean-up requirements and does not include protection from liability for penalties, fines or natural resource damages, to the extent applicable, unless a no-action assurance issued pursuant to subsection 9 so provides; [PL 1993, c. 355, §5 (NEW).]

B. A person providing financing to the person who undertakes and completes the response actions or who acquires or develops the identified property; [PL 1993, c. 355, §5 (NEW).]

C. A lender or fiduciary as defined in section 1362 who arranges for the undertaking and completion of response actions; [PL 1993, c. 355, §5 (NEW).]

D. A person who seeks to acquire or develop the identified property and who arranges for the undertaking and completion of response actions; [PL 1993, c. 355, §5 (NEW).]

E. A successor or assign of a person to whom the liability protection applies; and [PL 1993, c. 355, §5 (NEW).]

F. A person acting in compliance with a voluntary response action program approved by the commissioner who, while implementing the voluntary response action plan and exercising due care in implementation, causes, contributes or exacerbates a discharge or release, provided that the discharge or release is removed or remediated to the satisfaction of the commissioner. [PL 1993, c. 355, §5 (NEW).]

[PL 1993, c. 355, §5 (NEW).]

7. Persons ineligible for protection from liability. The protection from liability provided by this section does not apply to:

A. A person who causes, contributes or exacerbates a discharge, release or threatened release that was not remedied under an approved voluntary response action plan; [PL 1993, c. 355, §5 (NEW).]

B. For partial voluntary response action plans that do not require removal or remediation of all known releases, a person who was responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threatened release; or [PL 1993, c. 355, §5 (NEW).]

C. A person who obtains approval of a voluntary response action plan for purposes of this section by fraud or intentional misrepresentation, or by knowingly failing to disclose material information, or a successor or assign of the person who obtained approval if that successor or assign had knowledge that the approval was obtained by fraud or intentional misrepresentation or by knowingly failing to disclose material information. [PL 1993, c. 355, §5 (NEW).]
[PL 1993, c. 355, §5 (NEW).]

8. Effect of protection from liability. This section does not affect the authority of the commissioner to exercise the powers or duties under law with respect to a discharge, release or threatened release, or the right of the commissioner or any other person to seek relief available, against a party who is not subject to the liability protection provided under this section.
[PL 1993, c. 355, §5 (NEW).]

9. No-action assurance. The commissioner shall issue a written determination or enter into an agreement pursuant to subsections 1 or 2 to take no action under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 against a person afforded protection for undertaking a voluntary response action plan pursuant to subsection 6 when the commissioner approves a voluntary response action plan pursuant to subsections 1 and 2. For partial voluntary response action plans approved under subsection 2, the commissioner's written determination or agreement to take no action may be limited to the matters addressed by the terms of the voluntary response action plan.

A. A determination issued or agreement entered into under this subsection may be conditioned upon those terms identified in subsection 3 and upon any other reasonable conditions determined necessary by the commissioner. [PL 1993, c. 355, §5 (NEW).]

B. A determination issued or agreement entered into under this subsection may extend to the successors and assigns of the person to whom it originally applies if the successors and assigns are bound by the conditions in the determination or agreements. [PL 1993, c. 355, §5 (NEW).]

C. Issuance of a determination or execution of an agreement under this subsection does not affect the authority of the commissioner to expend funds, to take response action with respect to the discharge or release subject to the determination or agreement, or to take administrative or judicial action with respect to persons not bound by the determination or agreement. [PL 1993, c. 355, §5 (NEW).]
[PL 1993, c. 355, §5 (NEW).]

SECTION HISTORY

PL 1993, c. 355, §5 (NEW).

§343-F. Reporting and disclosure requirements

An environmental professional who obtains analytical information indicating a discharge or release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products at a site, at levels that, in that professional's best professional judgment, require removal or remedial action to prevent significant threats to public health

or the environment shall advise that professional's client of that information. [PL 1993, c. 355, §5 (NEW).]

If the client of the environmental professional is not the owner or operator of the site, the client shall disclose the analytical information to the owner or operator of the site. Upon receipt of that information, the owner or operator shall submit this information to the commissioner within a reasonable time period unless the time period is otherwise prescribed by law. This section does not affect the legal protections afforded to confidential business information or other privileges, if any, that may be applicable. If the client makes a disclosure and the owner or operator does not submit this information to the commissioner, the client and the environmental professional may not be held liable for the owner's or the operator's failure to disclose. [PL 1993, c. 355, §5 (NEW).]

An applicant or permit holder who directly or indirectly retains an environmental professional for the purpose of providing information to the department shall disclose to the department if the environmental professional has a direct or indirect financial interest in the applicant, the permit holder or the property or activity that is the subject of the permit. [PL 2007, c. 399, §8 (NEW).]

SECTION HISTORY

PL 1993, c. 355, §5 (NEW). PL 2007, c. 399, §8 (AMD).

§343-G. Environmental management systems

(REPEALED)

SECTION HISTORY

PL 1999, c. 562, §1 (NEW). MRSA T. 38 §343-G, sub-§4 (RP).

§343-H. Clean Government Initiative

1. Initiative established; directors. The Clean Government Initiative, referred to in this section as the "initiative," is established to assist state agencies and state-supported institutions of higher learning in meeting applicable environmental compliance requirements and to incorporate environmentally sustainable practices into all state government functions. The initiative is jointly directed by the commissioner, the Commissioner of Administrative and Financial Services, the Chancellor of the University of Maine System or the chancellor's designee and the President of the Maine Community College System or the president's designee, referred to in this section as the "directors."

[PL 2001, c. 695, §1 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

1-A. State-supported institution of higher learning. For purposes of this section, "state-supported institution of higher learning" means the University of Maine System, the Maine Maritime Academy and the Maine Community College System.

[PL 2001, c. 695, §1 (NEW); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

2. Duties; responsibilities. The directors of the initiative shall:

A. Establish a coordinated state government environmental plan to ensure that:

- (1) All agencies and state-supported institutions of higher learning comply with state and federal environmental laws; and
- (2) Environmentally sustainable practices are incorporated into state government planning, operations and regulatory functions; [PL 2001, c. 695, §1 (AMD).]

B. Establish metrics to measure and assess the environmental compliance and performance of state agencies and state-supported institutions of higher learning. In developing those metrics, the

directors shall seek to achieve continuous improvement in environmental compliance and performance of all state agencies through:

- (1) Pollution prevention;
- (2) Improvements in energy efficiency, including facility siting, design, construction and management; and
- (3) Procurement of environmentally friendly commodities and services, as assessed on a life cycle basis, including technically comparable, cost-effective and reasonably available alternatives to products that may release dioxin or mercury to the environment, recycling of waste products and enhanced fleet efficiency; [PL 2001, c. 695, §1 (AMD).]

C. Advise and assist state agencies and state-supported institutions of higher learning in developing environmental compliance audits and plans and in implementing those plans; [PL 2001, c. 695, §1 (AMD).]

D. Advise the Governor and the Legislature in the formulation of policies for the effective achievement of initiative goals; and [PL 2001, c. 333, §5 (NEW).]

E. Ensure that the capital master plan established under Title 5, section 299 is implemented in a manner consistent with the initiative. [PL 2001, c. 333, §5 (NEW).]

[PL 2001, c. 695, §1 (AMD).]

3. Responsibilities of state agencies and state-supported institutions of higher learning. State agencies and state-supported institutions of higher learning shall cooperate with the directors in implementing the initiative and shall provide staff assistance and technical support upon request. In addition, each state agency and state-supported institution of higher learning shall:

A. Complete or demonstrate completion of an audit of its facilities to determine compliance with applicable state and federal environmental laws; [PL 2001, c. 333, §5 (NEW).]

B. [PL 2009, c. 121, §3 (RP).]

C. Appoint an employee in the agency or state-supported institution of higher learning to be responsible for ensuring the development and implementation of agency activities under the initiative; and [PL 2001, c. 695, §1 (AMD).]

D. Establish standards for leasing or building state facilities consistent with the initiative. [PL 2001, c. 333, §5 (NEW).]

Each agency and state-supported institution of higher learning shall fund costs associated with implementing this initiative from within existing budgeted resources.

[PL 2009, c. 121, §3 (AMD).]

4. Reporting.

[PL 2015, c. 124, §1 (RP).]

SECTION HISTORY

PL 2001, c. 333, §5 (NEW). PL 2001, c. 695, §1 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 551, §4 (AMD). PL 2009, c. 121, §§3, 4 (AMD). PL 2015, c. 124, §1 (AMD).

§343-I. Smart Tracks for Exceptional Performers and Upward Performers Program

The Smart Tracks for Exceptional Performers and Upward Performers Program, known as "the STEP-UP Program" and referred to in this section as "the program," is established within the department and administered by the commissioner. In cooperation with program participants, the department shall establish guidelines for the program. The department shall create a contractual relationship between the commissioner and state organizations and businesses to achieve sustainability

objectives, including energy and natural resources conservation. For the purposes of the program, "sustainability" means meeting the needs of the present without compromising the ability of future generations to meet their needs. The program must include a variety of sustainability tracks and goals and must be publicized at local and state levels. Beginning January 2006 and biennially thereafter, the department shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters on the status of the program, progress toward meeting goals and recommended changes to improve the program. [PL 2005, c. 90, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 90, §1 (NEW).

§344. Processing of applications

1. Acceptance and notification. The commissioner shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted. If a written notice of acceptance or nonacceptance is not mailed to the applicant within 15 working days of receipt of the application, the application is deemed to be accepted as complete for processing on the 15th working day after receipt by the department. If the application is not accepted, the commissioner shall return the application to the applicant with the reasons for nonacceptance specified in writing. Any applicant whose application has not been accepted by the commissioner shall attend a presubmission meeting with the department before resubmitting that application. The commissioner shall notify the board of all applications accepted as complete.

An application is acceptable as complete for processing if the application is properly filled out and information is provided for each of the items included on the form. Acceptance of an application as complete for review does not constitute a determination by the department on the sufficiency of that information and does not preclude the department from requesting additional information during processing.

The commissioner shall require the applicant to provide notice to the public for each application for a permit or license accepted. The commissioner shall solicit comments from the public for each application in a manner prescribed by the board in the rules.

A. [PL 1989, c. 890, Pt. A, §20 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

B. [PL 1989, c. 890, Pt. A, §20 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

All correspondence notifying an applicant of denial of an application by the board or commissioner must be by certified mail, return receipt requested.

[PL 1991, c. 804, Pt. B, §2 (AMD); PL 1991, c. 804, Pt. B, §7 (AFF).]

1-A. Governing rules. An application for a permit, license or approval is processed under the substantive rules in effect on the date the application or request for approval is determined to be complete for processing. Notwithstanding Title 1, section 302, after the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402 (c)(1) of the Federal Water Pollution Control Act, as amended, any waste discharge license issued or modified by the State pursuant to its authority to grant permits under the Federal Water Pollution Control Act must comply with State statutory or regulatory requirements that take effect prior to final issuance of that license.

[PL 1997, c. 794, Pt. A, §4 (AMD).]

2. Delegation.

[PL 1989, c. 890, Pt. A, §21 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

2-A. Processing time limits, decisions and appeals. After the commissioner accepts an application for processing, the commissioner may approve, approve with conditions, disapprove or refer the application as follows.

A. Except as otherwise provided in this paragraph, the commissioner shall decide as expeditiously as possible if an application meets 3 of the 4 criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If an interested person requests that the commissioner refer an application to the board and the commissioner determines that the criteria are not met, the commissioner shall notify the board of that request. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, a certification pursuant to Title 35-A, section 3456 or a general permit pursuant to section 480-HH or section 636-A. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development, an offshore wind power project or a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A.

(2) The expedited review periods of 185 days and 270 days specified in subparagraph (1) do not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the development if the commissioner determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development. If an expedited review period does not apply, a review period specified pursuant to section 344-B applies.

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant. [PL 2011, c. 304, Pt. H, §18 (AMD).]

B. The commissioner shall decide whether an application meets the permit by rule provisions under subsection 7 within 20 working days after notifying the applicant of acceptance of the application. [PL 1989, c. 890, Pt. A, §22 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

C. For those applications that do not fall under the permit by rule provisions of subsection 7, the commissioner shall decide upon the application pursuant to the provisions of section 344-B. [PL 1991, c. 804, Pt. B, §3 (AMD); PL 1991, c. 804, Pt. B, §7 (AFF).]

D. For an application for a permit for a grid-scale wind energy development, as defined in Title 35-A, section 3451, subsection 6, the following procedures apply.

(1) The commissioner shall accept public comment on an application during the course of processing the application. The commissioner shall set a deadline for receiving public comments.

(2) The commissioner may not issue the final decision until 10 business days after the close of the public comment period. The commissioner's final decision must include responses to the public comments. [PL 2015, c. 264, §1 (RPR).]

Any person aggrieved by a final license or permit decision of the commissioner may appeal that decision to the board. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal.

[PL 2015, c. 264, §1 (AMD).]

2-B. Conflict with federal requirements. The commissioner may waive the time requirements of this section for those activities which require a federal permit or license when those provisions are inconsistent with federal law.

[PL 1989, c. 890, Pt. A, §22 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

3. Time limits for processing applications.

[PL 1989, c. 890, Pt. A, §23 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

4. Exceptions.

[PL 1989, c. 890, Pt. A, §24 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

4-A. Draft decisions and commissioner recommendations. Draft permits and licenses and commissioner recommendations are subject to the following provisions.

A. For those applications to be decided by the commissioner that do not fall under the permit by rule provisions of subsection 7, the commissioner shall, if requested by the applicant or any interested party, issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of an interest in the application before the commissioner takes final action on the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 5 working days before the commissioner takes final action on the application. [PL 1989, c. 890, Pt. A, §25 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

B. For those applications to be decided by the board, the commissioner shall provide a summary of the application to the board, all interested governmental agencies and other interested parties in a manner prescribed by the board by rule. The rule must provide at least 10 working days for the receipt of comments on the application prior to the preparation of a draft permit or license. If requested by the applicant or any interested party, the commissioner shall prepare a draft permit or license and shall give reasonable notice of the date the board will act on the application to the applicant and to any other person who has notified the commissioner of an interest in the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 15 working days before the board acts on the application. [PL 1989, c. 890, Pt. A, §25 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

The commissioner may incorporate comments on draft permits at the discretion of the commissioner. The commissioner may make any revised draft available for public comment. If the commissioner decides the draft is substantially revised, the commissioner shall make it available for public comment. [PL 1989, c. 890, Pt. A, §25 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

5. Reconsideration.

[PL 1989, c. 890, Pt. A, §26 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

6. Fees. The commissioner may establish reasonable fees for the reproduction of materials in the department's custody, including all or part of any application submitted to the department and any records of public hearings. All such fees may be retained by the department and deposited in the Maine Environmental Protection Fund to reimburse expenses incurred in reproducing these materials.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §3 (AMD).]

7. Permit by rule. The Board of Environmental Protection may permit, by rule, any class of activities that would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment. Any such rule must describe with specificity the class of activities covered by the rule and may establish standards of design, construction or use as may be considered necessary to avoid adverse environmental impacts. Any such rule must require notification to the commissioner prior to the undertaking of the regulated activity.

[PL 2011, c. 120, §2 (AMD).]

8. Effective date of license. Except as provided in this subsection, a license granted by the commissioner is effective when the commissioner signs the license. The commissioner may attach a condition to the license requiring up to a 30-day delay in any physical alteration of the project area and any construction activity authorized by the license. A license granted by the board is effective when the chair of the board or the chair's designee signs the license.

[PL 1989, c. 890, Pt. A, §27 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

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.

[PL 2011, c. 538, §4 (AMD).]

10. Voluntary surrender. Unless otherwise provided in this Title or rules adopted pursuant to this Title, a license may be voluntarily surrendered by the license holder upon department approval.

[PL 2009, c. 121, §5 (NEW).]

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 694, §§753,754 (AMD). PL 1983, c. 453, §§1-4 (AMD). PL 1983, c. 779, §1 (AMD). PL 1985, c. 589, §1 (AMD). PL 1985, c. 746, §§7-9 (AMD). PL 1987, c. 274, §§1,2 (AMD). PL 1989, c. 546, §§5,6 (AMD). PL 1989, c. 890, §§A20-27, B3 (AMD). PL 1989, c. 890, Pt. A, §40 (AFF). PL 1991, c. 183 (AMD). PL 1991, c. 804, §§A3,B2,3 (AMD). PL 1991, c. 804, §B7 (AFF). PL 1997, c. 794, §A4 (AMD). PL 2007, c. 661, Pt. B, §5 (AMD). PL 2009, c. 121, §5 (AMD). PL 2009, c. 615, Pt. E, §3 (AMD). PL 2011, c. 120, §2 (AMD). PL 2011, c. 304, Pt. H, §18 (AMD). PL 2011, c. 538, §4 (AMD). PL 2013, c. 325, §4 (AMD). PL 2015, c. 264, §1 (AMD).

§344-A. Outside review of applications

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred to throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as state agencies, the University of Maine System or the soil and water conservation districts. Except for an agreement for outside review regarding review of an application for a wind energy development as defined in Title 35-A, section 3451, subsection 11, a certification pursuant to Title 35-A, section 3456, an application for an offshore wind power project as defined in section 480-B, subsection 6-A or a general permit pursuant to section 480-HH or section 636-A or an application for a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power, the commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review. [PL 2009, c. 615, Pt. E, §4 (AMD).]

1. Standards for outside review. Prior to entering into an agreement with an outside reviewer, the commissioner must determine that:

A. The agreement protects the public interest and the interest of the applicant; [PL 1991, c. 471 (NEW).]

B. The agreement ensures a fair, consistent and adequate review of the application; [PL 1991, c. 471 (NEW).]

C. The agreement provides the public with the same opportunity to comment on the application as would be provided if the application were reviewed by the department; [PL 1991, c. 471 (NEW).]

D. The outside reviewer meets the minimum qualification standards established by the commissioner; and [PL 1991, c. 471 (NEW).]

E. The application can not be reviewed by existing departmental personnel in a reasonable period of time. [PL 1991, c. 471 (NEW).]

[PL 1991, c. 471 (NEW).]

2. Qualifications. The commissioner shall establish qualification standards for outside reviewers and shall develop a list of qualified outside reviewers. Standards established by the commissioner must include initial qualification standards and standards ensuring that outside reviewers continue to maintain a high level of scientific and regulatory expertise in one or more relevant areas of knowledge. [PL 1991, c. 471 (NEW).]

3. Conflict of interest. An outside reviewer may not review any portion of an application submitted by an applicant who directly or indirectly employed the reviewer in any capacity at any time during the 12-month period immediately preceding the submission of the application. An outside reviewer must sign a written agreement with the commissioner not to be employed, directly or indirectly, by any applicant whose application was reviewed by that reviewer for at least 12 months from the date the review of the application is complete.

[PL 1991, c. 471 (NEW).]

4. Penalty. Notwithstanding section 349, any person who knowingly violates subsection 3 is guilty of a Class D crime. Notwithstanding Title 17-A, section 4-A, section 1704, subsection 4 and section 1705, subsection 5, the fine for each violation may not be less than \$5,000 nor more than \$25,000.

[PL 2019, c. 113, Pt. C, §114 (AMD).]

5. Repeal.

[PL 1993, c. 356, §2 (RP).]

SECTION HISTORY

PL 1991, c. 471 (NEW). PL 1993, c. 356, §2 (AMD). PL 2007, c. 661, Pt. B, §6 (AMD). PL 2009, c. 270, Pt. A, §1 (AMD). PL 2009, c. 615, Pt. E, §4 (AMD). PL 2019, c. 113, Pt. C, §114 (AMD).

§344-B. Timetables for processing permit applications

Pursuant to the provisions of this section, the commissioner shall determine and annually publish a processing time for each type of permit or license issued by the department. When establishing processing times for permits or licenses, the commissioner shall take into consideration all duties and responsibilities of the department and the availability of resources. [PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

The provisions of this section apply only to new permit and license applications. [PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

1. Publication of timetables. No later than November 1st of each year, the commissioner shall publish processing timetables for each permit and license issued by the department. Permit and license processing timetables must be published simultaneously in all newspapers designated by the Secretary of State as papers of record under Title 5, section 8053, subsection 5. The commissioner shall enter the published processing timetables into the record of the board at the first meeting of the board following publication.

Except as provided in this section, the deadline governing the processing of an application is determined by the timetable in effect on the date the application is determined to be complete.

[PL 2001, c. 212, §1 (AMD).]

2. Consultation. Prior to publishing timetables pursuant to subsection 1, the commissioner shall review the proposed processing timetables with an advisory committee established for that purpose. The commissioner shall appoint the members of the advisory committee. In appointing the members, the commissioner shall seek to appoint a committee that is broadly representative of business, environmental and other interest groups. The purpose of the committee is solely advisory. [PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

3. Processing period. The processing period for an application begins on the date the commissioner notifies the applicant that the application is complete. Except as provided in paragraph A, the consent of the applicant is required to stop the processing period or to extend the deadline.

A. The processing time for an application stops if:

(1) The commissioner determines that a public hearing is required. Under this subparagraph, the processing period may be stopped only for as long as necessary to accommodate the public hearing process and must commence at the end of the comment period following the public hearing;

(2) The board assumes jurisdiction over an application. If the board assumes jurisdiction over an application, the board shall set a new timetable for the application and shall stop the processing period or extend the deadline subject to the conditions of this subsection. The forfeiture provisions of subsection 5 do not apply to timetables set by the board; or

(3) The commissioner determines that the applicant has significantly modified the application. Under this subparagraph, the processing period is stopped until the applicant and the commissioner agree to a new timetable. [PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

B. The commissioner may stop the processing time with the consent of the applicant for any period of time agreeable to the commissioner and the applicant if the commissioner determines that:

(1) Additional information is required from the applicant;

(2) Agencies other than the department that are required to comment on an application do not respond within the time frames established by a memorandum of understanding between the agencies; or

(3) The applicant wishes to stop the processing period or to extend the deadline. [PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

Expiration of a processing period may not be the sole reason for denial of an application.

[PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

4. Multiple permits. For projects that require more than one permit from the department, the commissioner and the applicant shall determine the timetable or timetables applicable to all permit or license applications required for that project at a presubmission meeting.

[PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

5. Forfeiture. If the commissioner fails to approve or deny an application prior to the applicable deadline, the commissioner shall pay the applicant an amount equal to 50% of the permit or license processing fee. The remainder of the permit or license processing fee is payable to the applicant if the commissioner does not approve or deny the application within 120 calendar days after that deadline. Forfeitures payable under this subsection may not exceed the permit or license processing fee paid by the applicant.

[PL 1991, c. 804, Pt. B, §4 (NEW); PL 1991, c. 804, Pt. B, §7 (AFF).]

6. Report.

[PL 2007, c. 619, §5 (RP).]

SECTION HISTORY

PL 1991, c. 804, §B4 (NEW). PL 1991, c. 804, §B7 (AFF). PL 2001, c. 212, §1 (AMD). PL 2007, c. 619, §5 (AMD).

§345. Hearings**(REPEALED)**

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 694, §§755-757 (AMD). PL 1981, c. 524, §16 (AMD). PL 1983, c. 566, §5 (RP).

§345-A. Hearings**1. Hearings.**

[PL 1989, c. 890, Pt. A, §28 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

1-A. Department hearings. The board and commissioner may hold public hearings as necessary to carry out responsibilities under this Title.

[PL 1989, c. 890, Pt. A, §29 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

2. Maine Administrative Procedure Act. Except as provided elsewhere, all hearings of the department must be conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

[PL 1989, c. 890, Pt. A, §30 (AMD); PL 1989, c. 890, Pt. A, §40 (AFF).]

2-A. Intervenor procedures. The board shall adopt rules that define the procedures and scope of participation for intervenors.

[PL 1991, c. 804, Pt. A, §4 (NEW).]

3. Fees. The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.

[PL 1983, c. 566, §6 (NEW).]

4. Subpoena power. The board and commissioner may each issue subpoenas to compel the production of books, records and other data related to the matters in issue at any hearing. If any person served with a subpoena demonstrates to the satisfaction of the issuer of the subpoena that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the issuer of the subpoena may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.

[PL 1985, c. 746, §10 (NEW).]

5. Public meetings. At the board's or commissioner's discretion, the board or commissioner may schedule and hold public meetings in the geographic area of a proposed project for the purpose of collecting comments that become part of the record in a pending action. Any such meeting must be held during the period when written public comments may be submitted to the department. This subsection and the conduct of a public meeting do not change any other obligation the department has to hold public hearings that are mandatory by statute or required after a timely request is filed.

[PL 2007, c. 43, §1 (NEW).]

SECTION HISTORY

PL 1983, c. 566, §6 (NEW). PL 1983, c. 743, §3 (AMD). PL 1985, c. 589, §2 (AMD). PL 1985, c. 746, §10 (AMD). PL 1989, c. 890, §§A28-30,40 (AMD). PL 1991, c. 804, §A4 (AMD). PL 2007, c. 43, §1 (AMD).

§346. Judicial appeals

1. Appeal to Superior Court. Except as provided in subsection 4 and section 347-A, subsection 3 or 4, any person aggrieved by any order or decision of the board or commissioner may appeal to the Superior Court. These appeals to the Superior Court must be taken in accordance with Title 5, chapter 375, subchapter 7.

[PL 2009, c. 642, Pt. B, §3 (AMD).]

2.

[PL 1977, c. 694, §759 (RP).]

2-A. Appeal. Any party to the appeal in the Superior Court under this section may obtain review by appeal to the Supreme Judicial Court sitting as the law court. The appeal shall be taken as in other civil cases.

[PL 1977, c. 696, §342 (NEW).]

3. Limitation.

[PL 2001, c. 232, §4 (RP).]

4. Appeal of decision. A judicial appeal of final action by the board or commissioner regarding an application for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, or a general permit pursuant to section 480-HH or section 636-A must be taken to the Supreme Judicial Court sitting as the Law Court. The Law Court has exclusive jurisdiction over request for judicial review of final action by the commissioner or the board regarding expedited wind energy developments or a general permit pursuant to section 480-HH or section 636-A. These appeals to the Law Court must be taken in the manner provided in Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[PL 2011, c. 420, Pt. A, §34 (RPR).]

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 694, §§758,759 (AMD). PL 1977, c. 696, §342 (AMD). PL 1989, c. 890, §§A40,B4 (AMD). PL 2001, c. 232, §4 (AMD). PL 2007, c. 661, Pt. B, §§7, 8 (AMD). PL 2009, c. 615, Pt. E, §5 (AMD). PL 2009, c. 642, Pt. B, §§3, 4 (AMD). PL 2011, c. 420, Pt. A, §34 (AMD).

§347. Violations

(REPEALED)

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 694, §760 (AMD). PL 1979, c. 444, §§1,2 (AMD). PL 1983, c. 566, §§7,8 (AMD). PL 1983, c. 743, §4 (AMD). PL 1983, c. 796, §16 (AMD). PL 1985, c. 496, §A3 (AMD). PL 1985, c. 746, §11 (AMD). PL 1987, c. 810, §§7,8,11 (AMD). PL 1989, c. 311, §3 (RP).

§347-A. Violations

1. General procedures. This subsection sets forth procedures for enforcement actions.

A. Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the board or the commissioner, the commissioner may initiate an enforcement action by taking one or more of the following steps:

- (1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the board and the Attorney General;
- (2) Referring the violation to the Attorney General for civil or criminal prosecution;
- (3) Scheduling and holding an enforcement hearing on the alleged violation pursuant to subsection 2; or
- (4) With the prior approval of the Attorney General, commencing a civil action pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3. [PL 2019, c. 315, §8 (AMD).]

B. Before initiating a civil enforcement action pursuant to paragraph A, the commissioner shall issue a notice of violation to the person or persons the commissioner considers likely to be responsible for the alleged violation or violations. The notice of violation must describe the alleged violation or violations, to the extent then known by the commissioner; cite the applicable law, rule and term or condition of the license, permit or order alleged to have been violated; and provide time periods for the alleged violator to take necessary corrective action and to respond to the notice. For violations the commissioner finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances. The commissioner is not required to issue a notice of violation before issuing an emergency order pursuant to subsection 3 or other applicable provision of this Title; nor is the commissioner required to issue a notice of violation before referring an alleged violation to the Attorney General for criminal prosecution or in a matter requiring immediate enforcement action. [PL 1993, c. 204, §1 (RPR).]

C. [PL 1993, c. 204, §1 (RP).]

D. [PL 1993, c. 204, §1 (RP).]
[PL 2019, c. 315, §8 (AMD).]

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

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

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the commissioner shall, as soon as practicable, make findings of fact based on the record and, if the commissioner finds that a violation exists, shall issue an order aimed at ending the violation. The person to whom an order is directed shall immediately comply with the terms of that order.

[PL 1999, c. 127, Pt. A, §54 (AMD).]

3. Emergency orders. Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations the department administers or of the terms or conditions of any of the department's orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. In the event that the persons are so numerous that the specified method of service is a practical impossibility or the commissioner is unable to identify the person or

persons causing or contributing to the hazard, the commissioner shall make the order known through prominent publication or announcement in news media serving the affected area.

The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but within 48 hours after receipt of the order the person may apply to the board for a hearing on the order. Within 7 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

[PL 2005, c. 330, §5 (AMD).]

4. Administrative consent agreements. Following issuance of a notice of violation pursuant to subsection 1 and after receipt of the alleged violator's response to that notice or expiration of the time period specified in the notice for a response, in situations determined by the commissioner appropriate for further enforcement action, the commissioner may send a proposed administrative consent agreement to the alleged violator or violators.

A. Except as otherwise expressly agreed to by the Attorney General, all proposed administrative consent agreements must be reviewed and approved by the Department of the Attorney General before being sent to the alleged violator. [PL 1993, c. 204, §2 (NEW).]

B. All proposed administrative consent agreements sent to the alleged violator must be accompanied by written correspondence from the department, in language reasonably understandable to a citizen, explaining the alleged violator's rights and responsibilities with respect to the proposed administrative consent agreement. The correspondence must include an explanation of the factors considered by the commissioner in determining the proposed civil penalty, a statement indicating that the administrative consent agreement process is a voluntary mechanism for resolving enforcement matters without the need for litigation and an explanation of the department's procedures for handling administrative consent agreements. The correspondence must also specify a reasonable time period for the alleged violator to respond to the proposed administrative consent agreement and offer the opportunity for a meeting with department staff to discuss the proposed agreement. Consent agreements shall, to the greatest extent possible, clearly set forth all the specific requirements or conditions with which the alleged violator must comply. [PL 1995, c. 123, §3 (AMD).]

C. After a proposed administrative consent agreement has been sent to the alleged violator, the commissioner may revise and resubmit the agreement if further circumstances become known to the commissioner, including information provided by the alleged violator, that justify a revision. [PL 1993, c. 204, §2 (NEW).]

D. The public may make written comments to the board at the board's discretion on an administrative consent agreement entered into by the board. [PL 2019, c. 315, §9 (AMD).]

E. When the department and the alleged violator can not agree to the terms of a consent agreement and the department elects to bring an enforcement action in District Court pursuant to section 342, subsection 7, the District Court shall refer the parties to mediation if either party requests mediation at or before the time the alleged violator appears to answer the department's complaint. The parties must meet with a mediator appointed by the Court Alternative Dispute Resolution Service created in Title 4, section 18-B at least once and try in good faith to reach an agreement. After the first meeting, mediation must end at the request of either party. If the parties have been referred to

mediation, the action may not be removed to Superior Court until after mediation has occurred.
[PL 1995, c. 560, Pt. I, §16 (AMD).]
[PL 2019, c. 315, §9 (AMD).]

5. Enforcement. All orders of the department and administrative consent agreements entered into by the department may be enforced by the Attorney General or the department. If any order of the department is not complied with, the commissioner shall immediately notify the Attorney General.
[PL 2011, c. 538, §5 (AMD).]

6. Public participation in enforcement settlements. After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, Section 1251 et seq., as amended, in any civil enforcement action brought under this section, section 348 or 349 involving discharges regulated by the Federal Water Pollution Control Act, the department shall publish notice of and provide at least 30 days for public comment on any proposed settlement as follows.

A. In the case of an administrative consent agreement, notice of the proposed agreement and the proposed agreement must be posted on the department's publicly accessible website at least 30 days before the board takes any action on the agreement. The Attorney General and the department shall receive and consider any written comments relating to the proposed agreement. [PL 2019, c. 315, §10 (AMD).]

B. In the case of judicial enforcement, each proposed judgment by consent must be filed with the court at least 30 days before the judgment is entered by the court. Prior to the entry of judgment, notices of the proposed judgment must be published in a newspaper having general circulation in the area in which the alleged violation occurred, and the Attorney General and the department shall receive and consider, and file with the court, any written comments relating to the proposed judgment. [PL 1997, c. 794, Pt. A, §5 (NEW).]

C. The Attorney General shall reserve the right to withdraw or withhold its consent to the proposed judgment if the comments, views or allegations concerning the judgment disclose facts or considerations that indicate that the proposed judgment is inappropriate, improper or inadequate and oppose an attempt by any person to intervene in the action. When the public interest in this notification process is not compromised, the Attorney General may permit an exception to publication as set forth in this section in a specific case where extraordinary circumstances require a period shorter than 30 days or a notification procedure other than that set forth in this section.
[PL 1997, c. 794, Pt. A, §5 (NEW).]
[PL 2019, c. 315, §10 (AMD).]

7. Landowner liability for actions of others. An owner, lessee, manager, easement holder or occupant of premises is not subject to criminal sanctions or civil penalties or forfeitures for a violation of laws or rules enforced by the department or the board if that person provides substantial credible evidence that the violation was committed by another person other than a contractor, employee or agent of the owner, lessee, manager, easement holder or occupant. This subsection does not prevent the department, the board or a court from requiring an owner, lessee, manager, easement holder or occupant of premises to remediate or abate environmental hazards or damage or to reimburse the department for the cost of such remediation or abatement. An owner, lessee, manager, easement holder or occupant of premises is subject to criminal sanctions or civil penalties or forfeitures for failure to comply with a lawful administrative order or court order to remediate or abate environmental hazards or damage.

A. The department shall investigate substantiated allegations by an owner, lessee, manager, easement holder or occupant that the violation was caused by another person. [PL 2001, c. 365, §2 (NEW).]

B. If an owner, lessee, manager, easement holder or occupant is subjected to criminal sanctions or civil penalties or forfeitures, or if such a person is required to remediate or abate environmental hazards or damage as a result of violations by another person, the owner, lessee, manager, easement

holder or occupant has a cause of action against the actual violator to recover all damages and costs, including attorney's fees, incurred in connection with the environmental damage, and all costs, including attorney's fees, incurred in bringing the action to recover. [PL 2001, c. 365, §2 (NEW).]

C. This subsection does not apply to persons who are defined as "responsible parties" under chapter 3, subchapters II-A and II-B; chapter 13, subchapter II-A; or chapter 13-B. [PL 2001, c. 365, §2 (NEW).]

[PL 2001, c. 365, §2 (NEW).]

8. Limitations on air and wastewater discharge enforcement actions.

[PL 2011, c. 350, §1 (RP).]

9. Limitations on enforcement actions. This subsection applies to enforcement actions for civil penalties.

A. An enforcement action must be commenced by the commissioner or the Attorney General within 6 years of the following, whichever occurs latest:

- (1) The discovery by the commissioner or the Attorney General of an act or omission giving rise to a violation;
- (2) The identification by the commissioner or the Attorney General of the person responsible for the violation; and
- (3) The last day of an ongoing violation. [PL 2011, c. 350, §2 (NEW).]

B. For purposes of this subsection, an enforcement action is commenced when any of the following occurs:

- (1) The commissioner proposes an administrative consent agreement in writing to the violator pursuant to subsection 4;
- (2) The commissioner schedules an enforcement hearing on the alleged violation pursuant to subsection 2;
- (3) The commissioner, with the prior approval of the Attorney General, files a complaint in District Court pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3; and
- (4) The Attorney General files a complaint in District Court or Superior Court. [PL 2011, c. 350, §2 (NEW).]

C. The commencement of an enforcement action by any of the means set forth in paragraph B tolls the running of the 6-year limitation period for the purpose of bringing any other action pursuant to subsection 1, paragraph A. [PL 2011, c. 350, §2 (NEW).]

[PL 2011, c. 350, §2 (NEW).]

SECTION HISTORY

PL 1989, c. 311, §4 (NEW). PL 1989, c. 890, §§A31,32 (AMD). PL 1989, c. 890, Pt. A, §40 (AFF). PL 1993, c. 204, §§1,2 (AMD). PL 1995, c. 123, §§3,4 (AMD). PL 1995, c. 560, §16 (AMD). PL 1997, c. 794, §A5 (AMD). PL 1999, c. 127, §A54 (AMD). PL 2001, c. 365, §2 (AMD). PL 2003, c. 245, §5 (AMD). PL 2005, c. 330, §5 (AMD). PL 2007, c. 292, §12 (AMD). PL 2007, c. 337, §1 (AMD). PL 2011, c. 304, Pt. H, §§19, 20 (AMD). PL 2011, c. 350, §§1, 2 (AMD). PL 2011, c. 538, §§5, 6 (AMD). PL 2019, c. 315, §§8-10 (AMD).

§347-B. Modification, revocation or suspension of license

(REPEALED)

SECTION HISTORY

PL 1989, c. 311, §4 (NEW). PL 1989, c. 890, §§A33,40 (RP).

§347-C. Right of inspection and entry

Employees and agents of the department may: [PL 2017, c. 137, Pt. A, §5 (NEW).]

1. Property. Enter any property at reasonable hours in order to inspect the property to take samples, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board; and [PL 2017, c. 137, Pt. A, §5 (NEW).]

2. Buildings. Enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board. [PL 2017, c. 137, Pt. A, §5 (NEW).]

SECTION HISTORY

PL 1989, c. 311, §4 (NEW). PL 1989, c. 890, §§A40,B5 (AMD). PL 1997, c. 794, §A6 (AMD). PL 2017, c. 137, Pt. A, §5 (RPR).

§348. Judicial enforcement

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. [PL 2011, c. 538, §7 (AMD).]

2. Restoration. The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the department or of any order, rule, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible. Where the court finds that the violation was wilful, the court shall order restoration under this subsection unless the restoration will:

A. Result in a threat or hazard to public health or safety; [PL 1983, c. 796, §17 (NEW).]

B. Result in substantial environmental damage; or [PL 1983, c. 796, §17 (NEW).]

C. Result in a substantial injustice. [PL 1983, c. 796, §17 (NEW).]

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §6 (AMD).]

3. Injunction proceedings. If the department finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property, the department shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge or the commissioner may authorize pursuit of such an action in District Court. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347-B. [PL 2007, c. 292, §14 (AMD).]

4. Settlement. A person who has resolved that person's liability to the State in an administrative or judicially approved settlement and is implementing or has fully implemented that settlement pursuant

to its terms is not liable for claims by other potentially liable persons regarding response actions, response costs or damages, including without limitation natural resource damages, addressed in the settlement. The settlement does not discharge any other potentially liable persons unless its terms so provide. The protection afforded by this subsection includes protection against contribution claims and all other types of claims under state law that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another potentially liable person, if those actions, costs or damages are addressed in the settlement, but does not include protection against claims based on contractual indemnification or other express contractual agreements to pay the costs or damages. A potentially liable person who commences an action against a person who is protected from suits under this subsection is liable to the person against whom the claim is brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees. This section is not intended to create a right to contribution or other cause of action or to make a person liable to pay a portion of another person's response costs, damages or civil penalties.
[PL 1993, c. 732, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1983, c. 796, §17 (AMD). PL 1989, c. 890, Pt. A, §40 (AFF). PL 1989, c. 890, Pt. B, §6 (AMD). PL 1993, c. 732, Pt. A, §1 (AMD). PL 2007, c. 292, §§13, 14 (AMD). PL 2011, c. 538, §7 (AMD).

§349. Penalties

1. Criminal penalties. Except as otherwise specifically provided, a person who intentionally, knowingly, recklessly or with criminal negligence violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, commits a Class E crime. Notwithstanding Title 17-A, section 1704, subsection 5 and section 1705, subsection 5, the fine for a violation of this subsection may not be less than \$2,500 and not more than \$25,000 for each day of the violation, except that the minimum amount for knowing violations is \$5,000 for each day of violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.
[PL 2019, c. 113, Pt. C, §115 (AMD).]

2. Civil penalties. Except as otherwise specifically provided, a person who violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, is subject to a civil penalty, payable to the State, of not less than \$100 and not more than \$10,000 for each day of that violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation. This penalty is recoverable in a civil action.
[RR 2009, c. 2, §116 (COR).]

2-A. Supplemental environmental projects. In settling a civil enforcement action for any violation of any of the provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, the parties may agree to a supplemental environmental project that mitigates up to 100% of the assessed penalty. "Supplemental environmental project" means an environmentally beneficial project primarily benefiting public health or the environment that a violator is not otherwise required or likely to perform.

A. An eligible supplemental environmental project is limited to the following categories:

- (1) Pollution prevention projects that eliminate all or a significant portion of pollutants at the point of generation;
 - (2) Pollution reduction projects that significantly decrease the release of pollutants into a waste stream at the point of discharge to a point significantly beyond levels required for compliance;
 - (3) Environmental enhancement projects in the same ecosystem or geographic area of the violation that significantly improve an area beyond what is required to remediate any damage caused by the violation that is the subject of the enforcement action;
 - (4) Environmental awareness projects substantially related to the violation that provide training, publications or technical support to members of the public regulated by the department;
 - (5) Scientific research and data collection projects that advance the scientific basis on which regulatory decisions are made;
 - (6) Emergency planning and preparedness projects that assist state or local emergency response and planning entities in preparing or responding to emergencies; and
 - (7) Public health projects that provide a direct and measurable benefit to public health. [PL 1997, c. 570, §1 (NEW).]
- B. Supplemental environmental projects may not be used for the following situations:
- (2) When a project is required by law;
 - (3) If the violator had previously planned and budgeted for the project;
 - (4) To offset any calculable economic benefit of noncompliance;
 - (5) If the violation is the result of reckless or intentional conduct; or
 - (6) If the project primarily benefits the violator.

Any settlement that includes a supplemental environmental project must provide that expenditures are not tax deductible and are ineligible for certification as tax exempt pollution control facilities pursuant to Title 36, chapters 105 and 211. [PL 2017, c. 376, §1 (AMD).]
[PL 2017, c. 376, §1 (AMD).]

3. Falsification and tampering. A person may not knowingly:

- A. Make a false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained by any law administered by the department or by any order, rule, license, permit, approval or decision of the board or commissioner; [PL 2003, c. 452, Pt. W, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- B. Tamper with or render inaccurate a monitoring device or method required by any law or by any order, rule, license, permit, approval or decision of the board or commissioner; or [PL 2003, c. 452, Pt. W, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]
- C. Fail to comply with an information submittal required by the commissioner pursuant to section 568, subsection 3 or section 1364, subsection 3. [PL 2003, c. 452, Pt. W, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

A person who violates this subsection commits a Class E crime. Notwithstanding Title 17A, section 1704, subsection 5, a fine for a violation of this subsection may not be more than \$10,000.
[PL 2019, c. 113, Pt. C, §116 (AMD).]

4. Violations.
[PL 1987, c. 402, Pt. A, §195 (RP).]

5. Considerations. In setting a penalty, the court shall consider, but shall not be limited to, the following:

A. Prior violations by the same party; [PL 1983, c. 796, §19 (NEW).]

B. The degree of environmental damage that cannot be abated or corrected; [PL 1983, c. 796, §19 (NEW).]

C. The extent to which the violation continued following an order of the commissioner or board to correct it; and [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §8 (AMD).]

D. The importance of setting a civil penalty substantial enough to deter others from similar violations. [PL 1983, c. 796, §19 (NEW).]

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §8 (AMD).]

6. Maximum penalties. The maximum civil penalty may exceed \$10,000 for each day of that violation, but may not exceed \$25,000 for each day of the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years, and the maximum criminal penalty may exceed \$25,000 for each day of violation, but may not exceed twice the amounts in subsection 1, when it can be shown that there has been a previous violation of the same law by the same party.

[PL 1997, c. 794, Pt. A, §8 (AMD).]

7. Notification. The commissioner shall notify all newspapers of general circulation in the State of all administrative consent agreements, court-ordered consent decrees and adjudicated violations involving laws administered by the department.

[PL 1989, c. 110 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §9 (AMD).]

8. Economic benefit. If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, the maximum civil penalties may be increased for each day of the violation. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not complying with the applicable legal requirements.

[PL 1989, c. 282, §5 (NEW).]

9. Unavoidable malfunctions. The following considerations apply to violations resulting from unavoidable malfunctions.

A. The commissioner may exempt from civil penalty an air emission in excess of license limitations if the emission occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner in writing within 48 hours and submit a written report, together with any exemption requests, to the department on a quarterly basis. [PL 2003, c. 245, §6 (AMD).]

B. An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge and takes corrective action as soon as possible. There is not an affirmative defense if the malfunction is caused, entirely or in part, by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

The burden of proof is on the licensee seeking the affirmative defense under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner orally within 24 hours, and in writing within 5 days. [PL 2003, c. 245, §6 (AMD).]

[PL 2003, c. 245, §6 (AMD).]

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 510, §§89-91 (AMD). PL 1979, c. 127, §207 (AMD). PL 1979, c. 663, §226 (AMD). PL 1979, c. 699, §§1,2 (AMD). PL 1981, c. 470, §A162 (AMD). PL 1983, c. 566, §9 (AMD). PL 1983, c. 785, §8 (AMD). PL 1983, c. 796, §§18,19 (AMD). PL 1985, c. 162, §§2,3 (AMD). PL 1985, c. 485, §§1,2 (AMD). PL 1985, c. 746, §12 (AMD). PL 1987, c. 402, §A195 (AMD). PL 1987, c. 491, §3 (AMD). PL 1987, c. 517, §3 (AMD). PL 1989, c. 110 (AMD). PL 1989, c. 282, §§2-5 (AMD). PL 1989, c. 820, §§9,10 (AMD). PL 1989, c. 890, §§A40,B7-9 (AMD). PL 1991, c. 483, §1 (AMD). PL 1993, c. 232, §1 (AMD). PL 1993, c. 349, §71 (AMD). PL 1995, c. 235, §1 (AMD). PL 1997, c. 570, §1 (AMD). PL 1997, c. 794, §§A7-9 (AMD). PL 2003, c. 245, §6 (AMD). PL 2003, c. 452, §§W2-4 (AMD). PL 2003, c. 452, §X2 (AFF). RR 2009, c. 2, §116 (COR). PL 2017, c. 376, §1 (AMD). PL 2019, c. 113, Pt. C, §§115, 116 (AMD).

§349-A. Mining rules

(REPEALED)

SECTION HISTORY

PL 1989, c. 874, §1 (NEW). PL 2011, c. 653, §7 (RP). PL 2011, c. 653, §33 (AFF).

§349-B. Debarment from department contracts

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Repeat violation" means a violation of any legal requirement under this Title, or rules adopted under this Title, or of the terms or conditions of a license, permit or order issued by the board or the commissioner when a previous violation of any legal requirement under this Title, or rules adopted under this Title, or of the terms or conditions of a license, permit or order issued by the board or the commissioner was found. [PL 2007, c. 300, §1 (NEW).]

B. "Business" means a corporation, business trust, trust, partnership, limited liability company, association, joint venture, firm, association, organization or any other legal or commercial entity. [PL 2009, c. 360, §1 (NEW).]

C. "Direct financial interest" means ownership or part ownership of a business, including lands, stocks, bonds, debentures, warrants, partnership shares or other holdings, and also means any other arrangement where the individual may benefit from that individual's holding in or salary from that business. "Direct financial interest" includes employment, pensions, creditor relationships, real property and other financial relationships. [PL 2009, c. 360, §2 (NEW).]

[PL 2009, c. 360, §§1, 2 (AMD).]

2. Debarment. The commissioner may, after hearing, debar from participation in contracts with the department for 2 years any individual or business found to have committed a repeat violation when either the time for filing an appeal of the determination of that violation has expired or the appeals process has been exhausted.

A. If an individual is debarred under this section, any business in which that individual holds a direct financial interest may also be debarred if the commissioner finds that the individual is in a position to substantially influence the business's compliance with the laws and rules administered by the department. [PL 2009, c. 360, §3 (NEW).]

B. If a business is debarred under this section:

(1) Any individual that holds a direct financial interest in that debarred business may also be debarred if the commissioner finds that the individual knew or should have known of the actions or inactions upon which the debarment of the business is based and was or is in a position to substantially influence the debarred business's compliance with the laws and rules administered by the department; and

(2) Any other business that holds a direct financial interest in that debarred business may also be debarred if the commissioner finds that either business was or is in a position to substantially influence compliance by the other business with the laws and rules administered by the department. [PL 2009, c. 360, §3 (NEW).]

[PL 2009, c. 360, §3 (AMD).]

SECTION HISTORY

PL 2007, c. 300, §1 (NEW). PL 2009, c. 360, §§1-3 (AMD).

SUBCHAPTER 1-A

ENVIRONMENTAL AUDIT PROGRAM

§349-L. Scope of program

This subchapter is intended to enhance the protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of state and federal environmental requirements. An environmental audit program and a compliance management system developed under this subchapter may be part of a regulated entity's comprehensive environmental management system. [PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

§349-M. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2011, c. 304, Pt. A, §1 (NEW).]

1. Compliance management system. "Compliance management system" means a system implemented by a regulated entity appropriate to the size and nature of its activities to prevent, detect and correct violations of environmental requirements through all of the following:

A. Compliance policies, standards and procedures that identify how employees and agents of the regulated entity are to meet environmental requirements and the conditions of permits, enforceable agreements and other sources of authority for environmental requirements; [PL 2011, c. 304, Pt. A, §1 (NEW).]

B. Assignment of overall responsibility within a regulated entity for overseeing compliance with policies, standards and procedures and assignment of specific responsibility for ensuring compliance at each facility or operation of the regulated entity; [PL 2011, c. 304, Pt. A, §1 (NEW).]

C. Mechanisms for systematically ensuring that compliance policies, standards and procedures of the regulated entity are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system and a means for employees or agents of the regulated entity to

report violations of environmental requirements without fear of retaliation; [PL 2011, c. 304, Pt. A, §1 (NEW).]

D. Procedures to communicate effectively the regulated entity's standards and procedures to all employees and agents of the regulated entity; [PL 2011, c. 304, Pt. A, §1 (NEW).]

E. Appropriate incentives to managers and employees of the regulated entity to perform in accordance with the compliance policies, standards and procedures of the regulated entity, including consistent enforcement through appropriate disciplinary mechanisms; and [PL 2011, c. 304, Pt. A, §1 (NEW).]

F. Procedures for the prompt and appropriate correction of any violations and any necessary modifications to the regulated entity's compliance management system to prevent future violations. [PL 2011, c. 304, Pt. A, §1 (NEW).]

[PL 2011, c. 304, Pt. A, §1 (NEW).]

2. Environmental audit program. "Environmental audit program" means a systematic, documented, periodic and objective review by a regulated entity of facility operations and practices that are related to meeting environmental requirements.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

3. Environmental audit report. "Environmental audit report" means the documented analysis, conclusions and recommendations resulting from an environmental audit program, but does not include data obtained in, or testimonial evidence concerning, the environmental audit.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

4. Environmental requirement. "Environmental requirement" means any law or rule administered by the department.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

5. Gravity-based penalty. "Gravity-based penalty" means the punitive portion of a penalty for a violation of an environmental requirement that exceeds the economic gain from noncompliance with the requirement; and

[PL 2011, c. 304, Pt. A, §1 (NEW).]

6. Regulated entity. "Regulated entity" means an entity subject to environmental requirements.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

§349-N. Incentives

Subject to section 349-Q, and notwithstanding any other provision of law relating to penalties, the department may adjust or mitigate penalties for violations of environmental requirements in accordance with this section. [PL 2011, c. 304, Pt. A, §1 (NEW).]

1. No gravity-based penalties. If the department determines that a regulated entity satisfies all of the conditions of section 349-O, the department may not impose in any administrative proceeding or seek in any civil action any gravity-based penalty for a violation that is discovered and disclosed by the regulated entity.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

2. Reduction of gravity-based penalties by 75%. If the department determines that the regulated entity satisfies the conditions of section 349-O, subsections 2 to 9, the department shall reduce by 75% gravity-based penalties that would otherwise be associated with violations discovered and disclosed by the regulated entity.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

3. No recommendation for criminal prosecution. If the department determines that the regulated entity satisfies the conditions of section 349-O, subsections 2 to 9, the department may not recommend that criminal charges be brought against the regulated entity if the department determines that the violation is not part of a pattern or practice that demonstrates or involves:

- A. A prevalent management philosophy or practice that conceals or condones environmental violations; or [PL 2011, c. 304, Pt. A, §1 (NEW).]
- B. High-level corporate officials' or managers' conscious involvement in, or willful blindness to, violations of state or federal environmental laws. [PL 2011, c. 304, Pt. A, §1 (NEW).]

Whether or not the department recommends the regulated entity for criminal prosecution under this section, the department may recommend for prosecution the criminal acts of individual managers or employees under existing policies guiding the exercise of enforcement discretion.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

4. No routine request for environmental audit reports. The department may not request an environmental audit report in connection with a routine inspection of a regulated entity. If the department has reason to believe that a violation by a regulated entity of an environmental requirement has occurred, the department may seek any information relevant to identifying violations or determining liability or the extent of harm resulting from the violation.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

§349-O. Conditions of discovery

The incentives established in section 349-N apply to a violation of an environmental requirement only if: [PL 2011, c. 304, Pt. A, §1 (NEW).]

1. Systematic discovery. The violation was discovered through:

- A. An environmental audit program; or [PL 2011, c. 304, Pt. A, §1 (NEW).]
- B. A compliance management system that demonstrates the regulated entity's due diligence in preventing, detecting and correcting violations. The regulated entity shall notify the department when it has a compliance management system in place and shall make available to the department upon request a copy of the system components. The regulated entity shall provide accurate and complete documentation to the department describing how its compliance management system meets the criteria specified in section 349-M, subsection 1 and how the regulated entity discovered the violation through its compliance management system. The department may require the regulated entity to make publicly available a description of its compliance management system; [PL 2011, c. 304, Pt. A, §1 (NEW).]

[PL 2011, c. 304, Pt. A, §1 (NEW).]

2. Voluntary discovery. The violation was discovered by the regulated entity. Incentives under section 349-N do not apply to violations discovered through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order or consent agreement, including:

- A. Emissions violations detected through a continuous emissions monitor or an alternative monitor established in a permit where any such monitoring is required; [PL 2011, c. 304, Pt. A, §1 (NEW).]
- B. Violations of National Pollutant Discharge Elimination System discharge limits established under the federal Clean Water Act, 33 United States Code, Section 1342 (2010) detected through required sampling or monitoring; [PL 2011, c. 304, Pt. A, §1 (NEW).]

C. Violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement, unless the audit is a component of agreement terms to implement a comprehensive environmental management system; and [PL 2011, c. 304, Pt. A, §1 (NEW).]

D. Violations discovered by a department inspection; [PL 2011, c. 304, Pt. A, §1 (NEW).]
[PL 2011, c. 304, Pt. A, §1 (NEW).]

3. Prompt disclosure. The regulated entity fully discloses the specific violation in writing to the department within 21 days after the entity discovered that the violation has, or may have, occurred, unless the amount of time to report the violation is otherwise prescribed in statute, rule or order. The time at which the regulated entity discovers that a violation has, or may have, occurred begins when a person authorized to speak on behalf of the regulated entity has an objectively reasonable basis for believing that a violation has, or may have, occurred. Persons authorized to speak on behalf of the regulated entity must be listed in the management audit by position title. The department's response to a violation disclosed by a regulated entity under this subsection must be made in writing to the regulated entity within 3 months of the disclosure of the violation by the entity;
[PL 2011, c. 304, Pt. A, §1 (NEW).]

4. Discovery and disclosure independent of government or 3rd-party plaintiff. The regulated entity discovers and discloses to the department the potential violation prior to:

A. The commencement of an inspection or investigation related to the violation. If the department determines that the regulated entity did not know that it was under investigation and the department determines that the entity is otherwise acting in good faith, the department may determine that the requirements of this paragraph are met; [PL 2011, c. 304, Pt. A, §1 (NEW).]

B. The regulated entity's receipt of notice that it is the subject of a lawsuit; [PL 2011, c. 304, Pt. A, §1 (NEW).]

C. The filing of a complaint by a 3rd party; [PL 2011, c. 304, Pt. A, §1 (NEW).]

D. The reporting of the violation to the department or other state agency by an employee other than the person authorized to speak on behalf of the regulated entity under subsection 3; or [PL 2011, c. 304, Pt. A, §1 (NEW).]

E. The imminent disclosure of the violation by a regulatory agency. [PL 2011, c. 304, Pt. A, §1 (NEW).]

For regulated entities that own or operate multiple facilities, the fact that one facility is the subject of an investigation, inspection, information request or 3rd-party complaint does not preclude the department from exercising its discretion to apply the regulated entity's compliance management system to other facilities owned or operated by that regulated entity;
[PL 2011, c. 304, Pt. A, §1 (NEW).]

5. Correction and remediation. The regulated entity corrects the violation within 60 days from the date of discovery, unless the amount of time to correct is otherwise prescribed in statute, rule or order, certifies in writing to the department that the violation has been corrected and takes appropriate measures as determined by the department to remedy any environmental or human harm due to the violation. The department retains the authority to order an entity to correct a violation within a specific time period shorter than 60 days whenever correction in a shorter period of time is feasible and necessary to protect public health and the environment adequately. If more than 60 days will be needed to correct the violation, the regulated entity shall so notify the department in writing before the 60-day period has passed. To satisfy conditions of this subsection and subsection 6, the department may require a regulated entity to enter into a publicly available written agreement, administrative consent order or judicial consent decree as a condition of obtaining relief under this subchapter, particularly when

compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required;

[PL 2011, c. 304, Pt. A, §1 (NEW).]

6. Prevent recurrence. The regulated entity agrees in writing to take steps to prevent a recurrence of the violation, which may include improvements to its environmental audit program or compliance management system;

[PL 2011, c. 304, Pt. A, §1 (NEW).]

7. No repeat violations. The specific violation, or a closely related violation, has not occurred within the past 3 years at the same facility and has not occurred within the past 5 years as part of a pattern at multiple facilities owned or operated by the same regulated entity. For the purposes of this subsection, a violation or closely related violation is any violation previously identified in a judicial or administrative order, a consent agreement or order, a complaint, letter of warning or notice of violation, a conviction or plea agreement or any act or omission for which the regulated entity has previously received penalty mitigation from the United States Environmental Protection Agency or the department;

[PL 2011, c. 304, Pt. A, §1 (NEW).]

8. Other violations excluded. The violation did not result in serious actual harm, or present an imminent and substantial endangerment, to human health or the environment, did not violate the specific terms of any judicial or administrative order or consent agreement or was not a knowing, intentional or reckless violation; and

[PL 2011, c. 304, Pt. A, §1 (NEW).]

9. Cooperation. The regulated entity cooperates as requested by the department and provides such information requested by the department to determine the applicability of this subchapter.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

§349-P. Economic benefit

1. Department discretion. In order to ensure that regulated entities that violate environmental requirements do not gain an economic advantage over regulated entities that comply with environmental requirements, this subchapter may not be construed to limit the discretion of the department to recover any economic benefit gained as a result of noncompliance by a regulated entity.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

2. Waiver; insignificant economic benefit. The department may waive the entire penalty, including any penalty for economic benefit gained as a result of noncompliance, for a regulated entity that meets all the requirements of section 349-O when, in the department's opinion, the violation does not merit any penalty due to the insignificant amount of any economic benefit.

[PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

§349-Q. Application

This subchapter does not limit any authority of the department to adjust or otherwise mitigate any penalty imposed or sought by the department for a violation when the regulated entity responsible for the violation does not receive an incentive under this subchapter for the same violation. [PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

§349-R. Rules

The board may adopt rules to implement the regulation of environmental audit programs established in this subchapter. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 304, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. A, §1 (NEW).

SUBCHAPTER 2

MAINE ENVIRONMENTAL PROTECTION FUND

§351. Maine Environmental Protection Fund

The Maine Environmental Protection Fund, referred to in this subchapter as "the fund," is established as a nonlapsing fund to supplement licensing programs administered by the Department of Environmental Protection. Except as otherwise provided in this section, all fees established under this subchapter must be credited to the fund, and administrative expenses directly related to licensing programs must be charged to the fund. [PL 2011, c. 653, §8 (AMD); PL 2011, c. 653, §33 (AFF).]

All fees related to metallic mineral mining applications and permits under section 352, subsection 4-A must be credited to the Metallic Mining Fund, Other Special Revenue Funds account, which is established as a subaccount of the Maine Environmental Protection Fund to provide for prompt and effective planning, oversight and implementation of metallic mineral mining operations. [PL 2011, c. 653, §9 (NEW); PL 2011, c. 653, §33 (AFF).]

Money in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities under its licensing programs shall be deposited with the Treasurer of State to the credit of the fund and may be invested in as provided by statute. Interest on these investments shall be credited to the fund. [PL 1983, c. 574, §1 (NEW).]

Allowable expenditures include Personal Services, All Other and Capital Expenditures associated with prelicense or permit activities such as application reviews, public hearings and appeals, the actual license or permit processing activities and associated post-license or permit compliance activities required to assure continued licensee or permittee compliance and enforcement activities as a result of license or permit noncompliance. [PL 2019, c. 343, Pt. WW, §1 (AMD).]

The commissioner may, subject to the approval of the Governor, apply for, accept on behalf of the State and deposit to the fund funds, grants, bequests, gifts or contributions from any person, corporation or governmental entity. The funds must be expended consistent with the purposes of the department as established in section 341-A. [PL 2019, c. 343, Pt. WW, §2 (AMD).]

SECTION HISTORY

PL 1983, c. 574, §1 (NEW). PL 1987, c. 192, §8 (AMD). PL 1987, c. 787, §5 (AMD). PL 1991, c. 9, §E27 (AMD). PL 2011, c. 653, §§ 8, 9 (AMD). PL 2011, c. 653, §33 (AFF). PL 2019, c. 343, Pt. WW, §§1, 2 (AMD).

§352. Fees

1. Fees established. The commissioner shall establish procedures to charge applicants for costs incurred in reviewing license and permit applications. For the purposes of this subchapter, costs may include, but are not limited to, personnel costs, travel, supplies, legal and computer services. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §10 (AMD).]

2. Fee categories. Fees shall be assessed for the following.

A. Except for those fees assessed under sections 353-A and 353-B, processing fees must be assessed for costs incurred in determining the acceptability of an application for processing and in processing an application to determine whether it meets statutory and regulatory criteria. [PL 1997, c. 794, Pt. B, §1 (AMD).]

B. [PL 1987, c. 419, §5 (RP).]

C. Except for those fees assessed under sections 353-A and 353-B, licensing fees must be assessed for direct costs incurred in monitoring, inspecting and sampling to ensure proper compliance by a licensee. [PL 1997, c. 794, Pt. B, §2 (AMD).]

D. Certification fees shall be assessed for direct costs incurred in issuing a certification. [PL 1985, c. 746, §13 (NEW).]

E. The air emission license fees assessed under section 353-A for those facilities licensed under section 590 must be assessed to support activities for air quality control including licensing, compliance, enforcement, monitoring, data acquisition and administration. [PL 2013, c. 300, §9 (AMD).]

F. Waste discharge license fees assessed under section 353-B for facilities licensed under Title 36, section 656 and sections 362-A, 413, 418, 451 and 1101 must be used to support activities for water quality control operations, including licensing, compliance evaluation, monitoring, data acquisition, data management and administration. [PL 1997, c. 794, Pt. B, §3 (AMD).]

G. The total amount of fees due for acceptance of a license, notice, registration and certification administered by the department under this Title must be doubled at the time an application is submitted if it is received after the date on which submission is required by law. This increase may be reduced at the commissioner's discretion with a showing of mitigating circumstances. [PL 2007, c. 292, §15 (AMD).]

[PL 2013, c. 300, §9 (AMD).]

2-A. Fee adjustment. The commissioner may adjust the fees established in this subchapter on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics. These adjustments may be compounded and assessed at an interval greater than one year if the commissioner determines that such periodic increases lower administrative costs for the department and continue effective public service. [PL 1999, c. 243, §1 (AMD).]

3. Maximum 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. 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. The maximum fee for processing an application may not exceed \$250,000, except that the maximum fee for processing an application under chapter 3, subchapter 1, article 9 is as provided for in subsection 4-A. All staff of the department, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Department of Marine Resources who have worked on the review of the application, including, but not limited to, preapplication consultations, shall submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the costs of any appeals filed by the applicant and, after taking into consideration the interest of fairness and equity, any other appeals if the commissioner finds it in the public interest to do so. Any appeal filed by the applicant of an application fee must be to the agency of jurisdiction of the application. The costs associated with assistance to the board on an appeal before

the board may be separately charged. The processing fee for that application must be the actual cost to the department, the Department of Inland Fisheries and Wildlife, the Department of Agriculture, Conservation and Forestry and the Department of Marine Resources. The processing fee must be distributed to each department that incurs a cost to be deposited in the account in which the expenses were incurred in that department to reimburse the actual cost to that department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit. At the time of the quarterly billing by the department, the commissioner shall review the ongoing work of the department to identify, prevent and mitigate undue delays or vague requirements of the application processing. Nothing in this section limits the commissioner's authority to enter into an agreement with an applicant for payment of costs in excess of the maximum fee established in this subsection.

[PL 2011, c. 653, §10 (AMD); PL 2011, c. 653, §33 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

4. Accounting system.

[PL 1991, c. 499, §11 (RP).]

4-A. Fees for metallic mineral mining. Metallic mineral mining permit applications under chapter 3, subchapter 1, article 9 are subject to the following fees. Fees under this subsection must be deposited in the Metallic Mining Fund, Other Special Revenue Funds subaccount.

A. The initial processing fee is \$500,000. [PL 2011, c. 653, §11 (RPR); PL 2011, c. 653, §33 (AFF).]

B. Preapplication and processing fees are special fees subject to subsection 3. The maximum fee for processing an application must be discussed by the department and the applicant during preapplication meetings. If the applicant does not agree to the maximum fee as determined by the commissioner, the refund provisions of paragraph F apply. [PL 2011, c. 653, §11 (RPR); PL 2011, c. 653, §33 (AFF).]

C. The costs associated with the department's preparation for and attendance at any application proceeding held by the board, including the costs associated with assistance to the board, must be paid by the applicant. [PL 2011, c. 653, §11 (RPR); PL 2011, c. 653, §33 (AFF).]

D. The costs associated with the department's assistance to the board on an appeal by the applicant before the board must be paid by the applicant and may be separately charged to the applicant by the department. The costs associated with the department's assistance to the board on an appeal by a person other than the applicant before the board may not be charged to the applicant. [PL 2011, c. 653, §11 (NEW); PL 2011, c. 653, §33 (AFF).]

E. The annual license fee must be at least \$20,000 and may not exceed \$50,000 and must be set by the department prior to the issuance of the permit. [PL 2011, c. 653, §11 (NEW); PL 2011, c. 653, §33 (AFF).]

F. If at any time the application is withdrawn by the applicant, the department shall calculate the portion of the processing fee that was expended or committed by the department or the department's agents or contractors for processing the application prior to the withdrawal and the remainder of the processing fee not expended or committed must be refunded to the applicant. [PL 2011, c. 653, §11 (NEW); PL 2011, c. 653, §33 (AFF).]

[PL 2011, c. 653, §11 (RPR); PL 2011, c. 653, §33 (AFF).]

5. Maximum fees after 1991.

[PL 1991, c. 824, Pt. A, §82 (RP).]

5-A. Accounting system. In order to determine the extent to which the functions set out in this section are necessary for the licensing process or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions keep accurate and regular daily time records. These records must describe the matters worked on, services performed and the amount of time devoted to those matters and services, as well

as amounts of money expended in performing those functions. Records must be kept for a sufficient duration of time as determined by the commissioner to establish to the commissioner's satisfaction that the fees are appropriate.

TABLE I

MAXIMUM FEES IN DOLLARS

TITLE 36 SECTION	PROCESSING FEE	CERTIFICATION FEE
656, sub-§1, ¶E, Pollution Control Facilities		
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760, sub-§29, water pollution control facilities	\$250	\$20
B. Air pollution control and §1760, sub-§30, air pollution control facilities	250	20
TITLE 38 SECTION	PROCESSING FEE	LICENSE FEE
344, sub-§7, Permit by rule	\$250	\$0
413, Waste discharge licenses	See section 353-B	
420-D, Storm water management		
A. If structural means of storm water control are used	\$400 for the first acre of disturbed area, plus \$200 for each additional whole acre of disturbed area	\$100 for the first acre of disturbed area, plus \$50 for each additional whole acre of disturbed area
B. If solely vegetative means of storm water control are used	\$200 for the first acre of disturbed area, plus \$100 for each additional whole acre of disturbed area	\$50 for the first acre of disturbed area, plus \$25 for each additional whole acre of disturbed area
C. When a permit by rule is required	\$55	none
If a project described in paragraph A or B is reviewed and approved by a professional engineer at a soil and water conservation district office that has a memorandum of understanding with the department concerning review of projects pursuant to this section, the total applicable fee is reduced to a processing fee of \$100 for the first acre of disturbed area, plus a license fee of \$50 for each additional whole acre of disturbed area.		
480-E, Natural resources protection		
A. Any alteration of a protected natural resource, except coastal wetlands and coastal sand dunes, causing less than 20,000 square feet of alteration of the resource	140	50
B. Any alteration of a coastal wetland causing less than 20,000 square feet of alteration of the resource	240	60

	.015/sq. ft. alteration	.005/sq. ft. alteration
C. Any alteration of a protected natural resource, except coastal sand dunes, causing 20,000 square feet or more of alteration of the resource		
C-1. Significant groundwater well	4,577	1,961
C-2. Activity within a community public water supply primary protection area	183	64
D. Any alteration of a coastal sand dune	3,500	1,500
E. Condition compliance	84	0
F. Minor modification	184	0
485-A, Site location of development		
A. Residential subdivisions		
1. Affordable housing	50/lot	50/lot
2. On public water and sewers	175/lot	175/lot
3. All Other	250/lot	250/lot
B. Industrial parks	460/lot	460/lot
C. Mining	1,500	1,000
D. Structures	4,000	2,000
E. Other	1,000	1,000
543, Oily waste discharge	40	160
560, Vessels at anchorage	125	100
587, Ambient air quality or emissions standards variances	5,050	50
590, Air emissions licenses	See section 353-A	
633, Hydropower projects		
A. New or expanded generating capacity	450/MW	50/MW
B. Maintenance and repair or other structural alterations not involving an increase in generating capacity	150	150
33 United States Code, Chapter 26, Water Quality Certifications, in conjunction with applications for hydropower project licensing or relicensing		
A. Initial consultation	1,000	0
B. Second consultation	1,000	0
C. Application		
1. Storage	1,000	0
2. Generating	300/MW	50/MW
1304, Waste management		
A. Septage disposal		
1. Site designation	50	25
B. Land application of sludges and residuals program approval		
1. Industrial sludge	400	400
2. Municipal sludge	300	275
3. Bioash	300	275
4. Wood ash	300	75

5. Food waste	300	75
6. Other residuals	300	175
C. Landfill		
1. Closing plans for secure landfills	1,500	1,500
2. Closing plans for attenuation landfills	500	500
3. Post-closure report	175	175
4. Preliminary information reports	175	175
5. License transfers	500	175
6. Special waste disposal		
a. One-time disposal of quantities of 6 cubic yards or less	50	50
b. One-time disposal of quantities greater than 6 cubic yards	100	100
c. Program approval for routine disposal of a special waste	300	300
7. Minor revision for secure landfills	600	100
8. Minor revision for attenuation landfills	100	100
9. Public benefit determination	175	175
D. Incineration facility		
2. License transfer	175	175
E. License transfer other than for landfills and incinerators	100	100
F. Minor revision for septage facilities and solid waste facilities other than landfills	100	100
G. Permit by rule for one-time activities	100	100

TABLE II

WASTE MANAGEMENT FEES - ANNUAL LICENSE

MAXIMUM FEES IN DOLLARS

TITLE 38 SECTION	PROCESSING FEE	ANNUAL LICENSE FEE
1278, Asbestos abatement		
A. Asbestos abatement contractor	\$0	\$650
B. Asbestos abatement worker	0	50
C. Asbestos consultant	0	650
D. Asbestos analytical laboratory	0	400

E. Training provider	0	500
F. Other categories of asbestos professionals except asbestos abatement workers	0	100
G. Notification		
1. Project size greater than 100 square feet or 100 linear feet and less than 500 square feet or 2,500 linear feet	100	0
2. Project size 500 square feet or 2,500 linear feet, or greater, and less than 1,000 square feet or 5,000 linear feet	150	0
3. Project size 1,000 square feet or 5,000 linear feet, or greater	300	0
1304, Waste management		
A. Septage disposal		
1. Landspreading	\$550	\$250
2. Storage	50	75
B. Residuals compost facility		
1. Type I	150	150
3. Type II and Type III less than 3,500 cubic yards	700	500
5. Type II and Type III 3,500 cubic yards or greater	1,400	850
C. Land application of sludges and residuals		
1. Sites with program approval		
a. Industrial sludge	150	250
b. Municipal sludge	75	200
c. Bioash	75	200
d. Wood ash	50	125
e. Food waste	50	125
f. Other residuals	50	125
2. Sites without program approval		
a. Industrial sludge	300	550
b. Municipal sludge	150	250
c. Bioash	150	250
d. Wood ash	75	200
e. Food waste	75	200
f. Other	75	200
1310-N, Solid waste facility siting		
A. Landfill		
1. Existing, nonsecure municipal solid waste landfills accepting waste from fewer than 15,000 people	3,500	1,000
2. Existing, nonsecure municipal solid waste landfills accepting waste from more than 15,000 people	3,500	3,500
3. New or expanded for secure landfill	5,000	8,500
5. Nonsecure wood waste or demolition debris landfills, or both, if less than or equal to 6 acres	700	750
B. Incineration facilities		
1. New or expanded for the acceptance of municipal or special wastes, or both	3,500	5,000
2. Municipally owned and operated solid waste incinerators with licensed capacity of 10 tons per day or less	3,500	1,000
C. Transfer station and storage facility	750	175

D. Tire storage facility	400	450
F. Processing facility other than municipal solid waste composting	700	700
G. Beneficial use activities other than agronomic utilization		
3. Fuel substitution	700	500
4. Beneficial use without risk assessment	700	200
5. Beneficial use with risk assessment	1,400	500
H. Permit by rule for ongoing activities	100	100
[PL 2021, c. 186, §3 (AMD).]		

5-B. Accounting system.

[PL 1995, c. 462, Pt. A, §73 (RP).]

6. Reporting requirements.

[PL 2011, c. 120, §3 (RP).]

SECTION HISTORY

PL 1983, c. 574, §1 (NEW). PL 1983, c. 743, §5 (AMD). PL 1985, c. 746, §§13,14 (AMD). PL 1987, c. 180, §1 (AMD). PL 1987, c. 419, §§4-7 (AMD). PL 1987, c. 787, §§6-10 (AMD). PL 1989, c. 405, §1 (AMD). PL 1989, c. 502, §A167 (AMD). PL 1989, c. 874, §2 (AMD). PL 1989, c. 890, §§A40,B10-12 (AMD). PL 1991, c. 384, §§1-4 (AMD). PL 1991, c. 384, §16 (AFF). PL 1991, c. 499, §§11-13 (AMD). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 528, §§U1,2 (AMD). PL 1991, c. 591, §§U1,2 (AMD). PL 1991, c. 824, §§A82,C4 (AMD). PL 1993, c. 356, §§3,4 (AMD). PL 1993, c. 370, §2 (AMD). PL 1993, c. 378, §§2,3 (AMD). PL 1993, c. 410, §G1 (AMD). PL 1993, c. 410, §G2 (AFF). PL 1993, c. 632, §§1,2 (AMD). PL 1993, c. 632, §3 (AFF). PL 1993, c. 735, §13 (AFF). PL 1995, c. 173, §1 (AMD). PL 1995, c. 462, §A73 (AMD). PL 1995, c. 493, §1 (AMD). PL 1995, c. 642, §3 (AMD). PL 1995, c. 704, §A1 (AMD). PL 1995, c. 704, §C2 (AFF). PL 1997, c. 374, §§1,2 (AMD). PL 1997, c. 624, §1 (AMD). PL 1997, c. 794, §§B1-4 (AMD). PL 1999, c. 243, §§1,2 (AMD). PL 1999, c. 385, §§1,2 (AMD). PL 1999, c. 468, §3 (AMD). PL 1999, c. 731, §Z1 (AMD). PL 2001, c. 212, §2 (AMD). PL 2005, c. 330, §6 (AMD). PL 2007, c. 292, §15 (AMD). PL 2007, c. 399, §9 (AMD). PL 2007, c. 558, §1 (AMD). PL 2007, c. 661, Pt. B, §9 (AMD). PL 2009, c. 160, §1 (AMD). PL 2009, c. 374, §1 (AMD). PL 2009, c. 642, Pt. A, §8 (AMD). PL 2011, c. 120, §3 (AMD). PL 2011, c. 653, §§10, 11 (AMD). PL 2011, c. 653, §33 (AFF). PL 2011, c. 657, Pt. W, §6 (REV). PL 2013, c. 300, §9 (AMD). PL 2019, c. 374, §1 (AMD). PL 2019, c. 526, §2 (AMD). PL 2021, c. 186, §3 (AMD).

§353. Payment of fees

1. Filing fee.

[PL 1987, c. 419, §8 (RP).]

1-A. Preapplication fee for nonferrous metal mining.

[PL 2011, c. 653, §12 (RP); PL 2011, c. 653, §33 (AFF).]

2. Processing fee. Except for annual air emission fees pursuant to section 353-A and annual waste discharge fees pursuant to section 353-B, a processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing the application results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner may not refund the processing fee if the application is denied by the board or the commissioner. Except as provided in section 352, subsection 4-A, if the application is withdrawn by the applicant within 30 days of the start of processing, the portion of the processing fee that was expended or committed by the department or the department's agents or contractors for the

cost of processing the application prior to the withdrawal of the application must be calculated, and the remainder of the processing fee not expended or committed must be refunded.

[PL 2011, c. 653, §13 (AMD); PL 2011, c. 653, §33 (AFF).]

3. License fee. The license fee must be paid at the time of filing the application. Failure to pay the license fee at the time of filing results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner shall refund the license fee if the board or commissioner denies the application or if the application is withdrawn by the applicant. Notwithstanding the provisions of this subsection, the license fee for a subdivision must be paid prior to the issuance of the license.

The license fees for nonferrous metal mining must be paid annually on the anniversary date of the license for the life of the project, up to and including the period of closure and reclamation.

The license fee for a solid waste facility must be paid annually. Failure to pay the annual fee within 30 days of the anniversary date of a license is sufficient grounds for modification, revocation or suspension of the license under section 341-D, subsection 3 or section 342, subsection 11-B.

[PL 2011, c. 304, Pt. H, §21 (AMD).]

3-A. Certification fee. A certification fee must be paid prior to the issuance of any certification. If the certification is withdrawn or denied, the commissioner shall refund the certification fee.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §13 (AMD).]

3-B. Certification fee for asbestos professionals. A person applying for certification as an asbestos professional under more than one category under section 352, subsection 5-A shall pay the highest fee among the categories for which certification is sought and \$50 for each additional category.

[PL 2009, c. 374, §2 (NEW).]

4. Duplicate fees. The commissioner may not assess applicants for direct costs associated with filing, processing or licensing if those costs were previously assessed as the result of the filing, processing or licensing of separate but related applications.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §13 (AMD).]

4-A. Hydropower projects; refile for certification.

[PL 2021, c. 186, §4 (RP).]

5. Renewals or amendments. As set forth in sections 353-A and 353-B, except for renewals or amendments issued under sections 413 and 590, the processing fee for renewals or amendments is equal to direct costs up to 1/2 the processing fee for initial applications. The license fee for renewals is identical to the initial license fee. The license fee for amendments may not exceed the initial license fee.

[PL 1997, c. 794, Pt. B, §6 (AMD).]

6. Application determined unacceptable for processing. An application determined unacceptable for processing that has been returned to the applicant may be resubmitted to the commissioner within 60 days of the date the application was returned. If the application is resubmitted after the 60-day period has transpired, the resubmitted application is considered a new application and the appropriate processing fees are assessed.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §13 (AMD).]

7. Fees for minor revisions. All fees assessed for the costs of processing permits issued in accordance with section 344, subsection 7, must be paid in full when the notification is submitted to the commissioner. All fees for any minor license or permit revision must be paid in full when the request for the revision is submitted to the commissioner.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §13 (AMD).]

8. Processing fee for certification. The processing fee for certification must be assessed on the actual direct costs incurred by the department, but may not be greater than the processing fee found in Table I, section 352. The processing fee is due according to subsection 2. Upon completion of processing, when direct costs are less than the processing fee found in section 352 in Table I, a refund must be made to the applicant.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §13 (AMD).]

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

SECTION HISTORY

PL 1983, c. 574, §1 (NEW). PL 1983, c. 743, §§6, 7 (AMD). PL 1985, c. 162, §4 (AMD). PL 1985, c. 746, §§15,16 (AMD). PL 1987, c. 419, §8 (AMD). PL 1987, c. 787, §11 (AMD). PL 1989, c. 874, §§3-5 (AMD). PL 1989, c. 890, Pt. A, §§40,B13 (AMD). PL 1991, c. 66, Pt. A, §§4, 5 (AMD). PL 1991, c. 384, §§5-7 (AMD). PL 1991, c. 384, §16 (AFF). PL 1993, c. 332, §1 (AMD). PL 1993, c. 410, Pt. G, §§3, 4 (AMD). PL 1993, c. 735, §7 (AMD). PL 1995, c. 462, Pt. A, §74 (AMD). PL 1997, c. 624, §2 (AMD). PL 1997, c. 794, Pt. B, §§5, 6 (AMD). PL 2007, c. 187, §1 (AMD). PL 2007, c. 655, §1 (AMD). PL 2009, c. 374, §2 (AMD). PL 2011, c. 304, Pt. H, §21 (AMD). PL 2011, c. 653, §§12, 13 (AMD). PL 2011, c. 653, §33 (AFF). PL 2015, c. 124, §2 (AMD). PL 2021, c. 186, §4 (AMD).

§353-A. Annual air emissions license fees

1. Fees assessed. After the effective date of this section, a licensee must pay an annual fee assessed on the sum of all licensed allowable air pollutants, except for carbon monoxide, as follows:

Annual licensed emissions in tons	Per ton fee
1 - 1,000	\$5
1,001 - 4,000	\$10
over 4,001	\$15

[PL 1993, c. 412, §1 (AMD); PL 1993, c. 412, §10 (AFF).]

1-A. Annual fee surcharge. Beginning November 1, 2008, a licensee shall pay an annual fee surcharge of \$2 per every 1,000 air quality units as defined in section 582, subsection 11-E. The minimum revenue threshold for the annual fee surcharge is established at \$1,250,000 per year. The commissioner may increase the annual fee surcharge to up to \$4 per every 1,000 air quality units if the annual revenue derived from this annual fee surcharge is less than \$1,250,000 per year. The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2010 and every 2 years thereafter on any fee adjustment and the justification for the fee adjustment and the adequacy of the minimum revenue threshold and its ability to support the long-term sustainability of state air quality protection and improvement activities.

[PL 2007, c. 589, §1 (AMD); PL 2007, c. 589, §9 (AFF).]

2. Fee adjustment. The commissioner may adjust the per ton fees, the annual fee surcharge set forth in subsection 1-A and the maximum and minimum fees set forth in subsection 4 on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics.

[PL 1997, c. 374, §3 (AMD).]

3. Schedule. The effective date of a license is deemed to be the anniversary date. The license fee for a license with an anniversary date in January, February or March must be paid by the end of February. The license fee for a license with an anniversary date in April, May or June must be paid by the end of May. The license fee for a license with an anniversary date in July, August or September must be paid by the end of August. The license fee for a license with an anniversary date in October, November or December must be paid by the end of November. The annual fee for new applications must be estimated and paid at the time of filing the application. When the processing of the application is complete, the final annual fee is determined. Any additional amount is due prior to the issuance of the license. Any overpayment must be refunded. If the application is denied, 50% of the initial annual fee must be refunded.

[PL 2007, c. 589, §2 (AMD); PL 2007, c. 589, §9 (AFF).]

4. Maximum and minimum fees. The minimum annual fee is \$250 per year. The maximum annual fee is \$150,000 per year. Beginning November 1, 1994, the minimum annual fee surcharge is \$100 per year and the maximum annual fee surcharge is \$50,000 per year. The commissioner may reduce any fee required under the federal Clean Air Act Amendments of 1990 to take into account the financial resources of a small business stationary source, which for the purposes of this subsection means a source that meets the eligibility requirements of 42 United States Code, Section 7661f.

[PL 2021, c. 36, §23 (AMD).]

5. Transition for existing licenses. A licensee of a source in existence on the effective date of this section may request a revision to that license to reduce the sum of the licensed allowable air pollutants.

[PL 1991, c. 384, §8 (NEW); PL 1991, c. 384, §16 (AFF).]

6. Electrical generating facilities.

[PL 1999, c. 657, §22 (RP).]

7. Renewals and amendments. There are no additional fees assessed for license renewals or amendments.

[PL 1991, c. 384, §8 (NEW); PL 1991, c. 384, §16 (AFF).]

8. Nonpayment of fee. Failure to pay the annual fee within 60 days of the anniversary date of a license is sufficient grounds for revocation of the license under section 342, subsection 11-B.

[PL 2015, c. 124, §3 (AMD).]

9. Funds used solely for air pollution control activities. The money collected from the annual air emission fees must be used solely for air pollution control activities.

[PL 1993, c. 412, §4 (NEW).]

10. Fees for general permit. Licensees regulated under a general permit from the department are subject to an annual fee not to exceed the minimum license fee established under subsection 4.

[PL 2013, c. 300, §10 (AMD).]

SECTION HISTORY

PL 1991, c. 384, §8 (NEW). PL 1991, c. 384, §16 (AFF). PL 1993, c. 412, §§1-4 (AMD). PL 1993, c. 412, §10 (AFF). PL 1993, c. 500, §3 (AMD). PL 1993, c. 500, §5 (AFF). PL 1997, c. 374, §3 (AMD). PL 1999, c. 657, §22 (AMD). PL 2007, c. 297, §1 (AMD). PL 2007, c. 589, §§1-3 (AMD). PL 2007, c. 589, §9 (AFF). PL 2013, c. 300, §10 (AMD). PL 2015, c. 124, §3 (AMD). PL 2021, c. 36, §23 (AMD).

§353-B. Annual waste discharge license fees

1. Fees assessed. After the effective date of this section, licensees must pay annual waste discharge license fees. Annual waste discharge license fees for existing licensees are determined as set out in subsection 2. Annual waste discharge license fees for new licensees, or licensees that have been

reclassified to a new discharge group, are determined by the discharge group to which the facility is assigned. The fee for a new waste discharge license is the median fee for the selected discharge group, and this fee must be paid at the time of application. If the application for a new license is denied, 50% of the initial annual fee must be refunded.

A. [PL 2011, c. 546, §1 (RP).]

B. [PL 2011, c. 546, §1 (RP).]

C. [PL 2011, c. 546, §1 (RP).]

D. If there are no discharges pursuant to a waste discharge license during an entire year, the fee for that year must be reduced to 25% of the fee amount that would otherwise apply to that license. [PL 2011, c. 546, §1 (AMD).]

E. If a licensee continues to discharge following expiration of the license, the licensee must continue to pay any applicable waste discharge license fees provided for in this section. This paragraph does not authorize the discharge and does not affect the applicability of any penalty or enforcement provision. [PL 2011, c. 546, §1 (AMD).]

[PL 2011, c. 546, §1 (AMD).]

2. Fee amounts. Waste discharge license fees are determined as specified in this subsection.

A. The fees for waste discharge license groups are the 2019 bill amounts increased by a factor of 1.4 as follows.

Discharge group	Basis for annual fee	Median fee for discharge group	Water quality improvement surcharge
Publicly owned treatment facilities, 10,000 gallons per day or less	annual fee 2019 bill amount	\$543	
Publicly owned treatment facilities, more than 10,000 gallons per day to 0.1 million gallons per day	annual fee 2019 bill amount	\$689	
Publicly owned treatment facilities, more than 0.1 million gallons per day to 1.0 million gallons per day	annual fee 2019 bill amount	\$1,063	

Publicly owned treatment facilities, more than 1.0 million gallons per day to 5.0 million gallons per day	annual fee	2019 bill amount	\$2,241
Publicly owned treatment facilities, greater than 5 million gallons per day or with significant industrial waste	annual fee	2019 bill amount	\$7,850
Major industrial facility, process wastewater (based on EPA list of major source discharges)	annual fee	2019 bill amount	\$33,919
Other industrial facility, process wastewater	annual fee	2019 bill amount	\$2,093
Food handling or packaging wastewater	annual fee	2019 bill amount	\$1,135
Fish-rearing facility 0.1 million gallons per day or less	annual fee	2019 bill amount	\$538
Fish-rearing facility over 0.1 million gallons per day	annual fee	2019 bill amount	\$1,368
Marine aquaculture facility	annual fee	2019 bill amount	\$529
Noncontact cooling water	annual fee	2019 bill amount	\$330

Industrial or commercial sources, miscellaneous or incidental nonprocess wastewater	annual fee	2019 bill amount	\$626	
Municipal combined sewer overflow	annual fee	2019 bill amount	\$711	
Sanitary wastewater, excluding overboard discharge	annual fee	2019 bill amount	\$1,268	
Sanitary overboard discharge, commercial sources	annual fee	2011 bill amount	\$446	\$75
Sanitary overboard discharge, residential sources 600 gallons per day or less	annual fee	2011 bill amount	\$231	\$75
Sanitary overboard discharge, residential sources more than 600 gallons per day	annual fee	2011 bill amount	\$313	\$75
Sanitary overboard discharge, public sources	annual fee	2011 bill amount	\$315	\$75
Aquatic pesticide application	annual fee	2019 bill amount	\$1,110	
Snow dumps	annual fee	2019 bill amount	\$550	

Salt and sand storage pile	annual fee	2019 bill amount	\$738
Log storage permit	annual fee	2019 bill amount	\$727
General permit coverage for industrial storm water discharges (except construction)	annual fee	2019 bill amount	\$588
General permit coverage for marine aquaculture facility	annual fee	2019 bill amount	\$230
General permit coverage (other)	annual fee	2019 bill amount	\$283
Experimental discharge license	license fee	2019 bill amount	\$1,550
New or amended mixing zone, in addition to other applicable fees	flat fee	\$9,254	---
Formation of sanitary district	flat fee	\$693	---
Transfer of license for residential or commercial sanitary wastewater	flat fee	\$140	---

On an annual basis, municipalities and publicly owned treatment works whose combined sewer overflows have the potential to affect shellfish harvesting areas as determined by the department by virtue of their locations within estuarine or marine waters of the State must be assessed a surcharge on their wastewater discharge licenses in a total amount of \$12,000. This amount must be allocated among the municipalities and publicly owned treatment works according to their prior 3-year average annual flows as reported to the department.

On an annual basis, publicly owned treatment works whose outfalls licensed for the discharge of treated effluent cause adjacent shellfish growing areas to be closed for the purposes of harvesting shellfish must be assessed a license surcharge in a total amount of \$25,000. This amount must be

allocated among the publicly owned treatment works according to the acreage that each licensed outfall closes. This acreage must be determined by the Department of Marine Resources in consultation with the department. [PL 2019, c. 631, §1 (AMD).]

B. [PL 2011, c. 546, §2 (RP).]
[PL 2019, c. 631, §1 (AMD).]

3. Schedule. The fee for existing licenses must be paid on the anniversary date of the license or another date initially established by the department. This date, once established, remains the scheduled date for paying the annual fee, regardless of future changes of the anniversary date.
[PL 2011, c. 546, §3 (AMD).]

4. Renewals, amendments and modifications. Except for transfers of licenses for discharges of sanitary wastewater from commercial or residential sources as provided for in subsection 2, there are no additional fees assessed for license renewals, amendments or modifications. Upon significant changes in discharge flow, a licensee may apply for modification of the license to change the licensed discharge flow. The percent change in discharge flow must be used to adjust the annual waste discharge license fee by an equivalent percentage.
[PL 2011, c. 546, §3 (AMD).]

5. Nonpayment of fees. Failure to pay an annual fee within 30 days of the anniversary date of a license is sufficient grounds for revocation of the license, permit or privilege under section 342, subsection 11-B.
[PL 2015, c. 124, §4 (AMD).]

6. Initial year fee rates.
[PL 2007, c. 558, §4 (RP).]

7. Revenues derived from surcharge. Revenues derived from a water quality improvement surcharge must be paid to the Treasurer of State, who shall credit those revenues to the Water Quality Improvement Fund established under section 424-B.
[PL 2009, c. 213, Pt. FFFF, §3 (NEW).]

SECTION HISTORY

PL 1997, c. 794, §B7 (NEW). PL 2001, c. 230, §1 (AMD). PL 2003, c. 246, §1 (AMD). PL 2005, c. 602, §1 (AMD). RR 2007, c. 2, §28 (AFF). PL 2007, c. 558, §§2-4 (AMD). PL 2009, c. 213, Pt. FFFF, §§2, 3 (AMD). RR 2011, c. 2, §43 (COR). PL 2011, c. 546, §§1-3 (AMD). PL 2015, c. 124, §4 (AMD). PL 2019, c. 631, §1 (AMD).

§353-C. Borrow pit and mining fees

Fees received under chapter 3, subchapter 1, article 7 and article 8-A must be deposited in the Maine Environmental Protection Fund and are governed by the general provisions of this subchapter.
[PL 2003, c. 673, Pt. GG, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 673, §GG1 (NEW).

§354. Federal programs

Notwithstanding section 352, if the department is required by federal law to issue any certificate, permit or license, the commissioner shall establish a fee schedule identical to the federal program that is most like the state program. If there are no similar state programs, the commissioner shall adopt the appropriate fee schedule based upon identified costs including liaison costs. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §14 (AMD).]

SECTION HISTORY

PL 1983, c. 574, §1 (NEW). PL 1989, c. 890, §§A40,B14 (AMD).

SUBCHAPTER 3

LAKE ENVIRONMENTAL PROTECTION FUND

§355. Lake Environmental Protection Fund

The Lake Environmental Protection Fund, referred to in this subchapter as the "fund," is established as a nonlapsing fund to assist the municipalities of the State in defraying legal expenses which may be incurred as a result of the regulation of land use activities and the enforcement of land use laws and ordinances in lake watersheds. The fund consists of such money as is appropriated to it from time to time by the Legislature. It is administered by the department and the money in it deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §15 (AMD).]

SECTION HISTORY

PL 1987, c. 349, §H28 (NEW). PL 1989, c. 890, §§A40,B15 (AMD).

§356. Disbursements

The fund is available to compensate the municipalities of the State for legal expenses, including court costs, attorneys' fees and expert and other witness fees, incurred in the enforcement of local land use laws and ordinances affecting great ponds and the defense of regulatory actions taken pursuant to such land use laws and ordinances. The State shall provide 75% of a municipality's legal expenses which must be matched with a 25% local share, except that no single municipality may receive more than \$25,000 from the fund in any fiscal year. For purposes of this subchapter, "land use laws and ordinances" means those laws and ordinances enumerated in Title 30-A, section 4452, subsection 5. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §16 (AMD).]

SECTION HISTORY

PL 1987, c. 349, §H28 (NEW). PL 1987, c. 769, §A171 (AMD). PL 1989, c. 890, §§A40,B16 (AMD).

§357. Procedure

Within 90 days of the completion of litigation or settlement for which compensation for legal expenses is available under section 356, a municipality may apply to the commissioner for reimbursement of those expenses that have not been awarded to it by the court and paid pursuant to Title 30-A, section 4452, subsection 3, paragraph D. The commissioner shall make an award of compensation that the commissioner determines to be just under the circumstances. In order to be awarded compensation, it is not necessary that the municipality prevail in the litigation or the settlement, but only that its position be determined by the commissioner to have been reasonable. Awards are made on a first-come first-served basis. [PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §17 (AMD).]

SECTION HISTORY

PL 1987, c. 349, §H28 (NEW). PL 1987, c. 884, §C4 (AMD). PL 1989, c. 890, §§A40,B17 (AMD).

SUBCHAPTER 4

MAINE POLLUTION PREVENTION FUND

§358. Maine Pollution Prevention Fund

1. Fund established. The Maine Pollution Prevention Fund, referred to in this subchapter as the "fund," is established as a nonlapsing fund administered by the commissioner for the purpose of strengthening environmental protection in the State through pollution prevention activities and methods. The money deposited with the Treasurer of State to the credit of the fund may be invested as provided by law. Interest on these investments is credited to the fund.

[PL 1991, c. 520, §2 (NEW).]

2. Fund sources. The fund may receive money from the following sources:

A. Contributions from other entities, both public and private; and [PL 1991, c. 520, §2 (NEW).]

B. Registration and associated fees for pollution prevention workshops held by the commissioner.
[PL 1991, c. 520, §2 (NEW).]

[PL 1991, c. 520, §2 (NEW).]

3. Purposes. Money in the fund may be used to establish and support pollution prevention programs and activities. This fund may:

A. Support the reduction of toxic chemicals under chapter 27; and [PL 2009, c. 579, Pt. B, §8 (AMD); PL 2009, c. 579, Pt. B, §13 (AFF).]

B. Support functions and activities of the Office of Pollution Prevention as outlined in section 342, subsection 4. [PL 1991, c. 520, §2 (NEW).]

[PL 2009, c. 579, Pt. B, §8 (AMD); PL 2009, c. 579, Pt. B, §13 (AFF).]

SECTION HISTORY

PL 1991, c. 520, §2 (NEW). PL 2009, c. 579, Pt. B, §8 (AMD). PL 2009, c. 579, Pt. B, §13 (AFF).

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