STATE OF MAINE

LEGISLATIVE RESEARCH COMMITTEE

# SECOND SUMMARY REPORT

TO THE

# ONE HUNDRED AND FIFTH LEGISLATURE

VOLUME TWO

JANUARY, 1971

STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE
STATE HOUSE
AUGUSTA, MAINE 04330

December 28, 1970



TO THE MEMBERS OF THE 105TH LEGISLATURE:

The Legislative Research Committee hereby has the pleasure of submitting to you Volume II of its report on activities for the past two years.

This volume relates to all remaining matters except for State Government Reorganization H.P. 1468, which was undertaken by the Committee in conjunction with the State Planning Office and previously published and released by that office under separate cover on December 2, 1970.

We of the Committee gratefully acknowledge our indebtedness to the many individuals, organizations and agencies for their valuable contributions to the work of the Committee and it is our hope that the information contained in this report will be of assistance to the Members of the 105th Legislature and the people of the State of Maine.

Respectfully submitted,

William E. Dennett
Chairman
Legislative Research Committee

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STATE OF MAINE

LEGISLATIVE RESEARCH COMMITTEE

# REPORT ON

# ENVIRONMENTAL IMPROVEMENT COMMISSION

to the

ONE HUNDRED AND FIFTH LEGISLATURE

January, 1971

Committee Publication 105-9

ENVIRONMENTAL IMPROVEMENT COMMISSION

WHEREAS, the preservation and improvement of the Maine environment is of paramount concern to the Legislature; and

WHEREAS, the Legislature has delegated to the Environmental Improvement Commission primary authority and responsibility for such preservation and improvement, and has during recent sessions greatly expanded the scope of the commission's duties in this regard; and

WHEREAS, the commission has functioned as a part-time regulatory commission since its inception in 1941; and

WHEREAS, there is concern whether the part-time structure and the present organization of the commission is best suited to carry out its expanded responsibilities with respect to preservation and improvement of the Maine environment; now, therefore, be it

ORDERED, the Senate concurring, that the Legislative Research Committee be directed to study the operations and organization of the Environmental Improvement Commission, such study to include but not limited to the following areas of concern:

1. Should the commission, in view of the increased environmental responsibilities delegated to it by the Legislature, be decreased in size and its members appointed to serve on a full-time basis?

2. Should the commission conduct its license-issuing and enforcement hearings through hearing examiners?

3. Should one or more Assistant Attorneys General be detailed full-time to the commission?

4. Are commission pay scales sufficient to attract and retain competent staff personnel?

5. Is the commission staff properly organized and trained to carry out its responsibilities? and be it further

ORDERED, that the Legislative Research Committee report its findings and recommendations, including any proposed legislation, to the next regular session of the Legislature; and be it further

ORDERED, that the Committee is authorized to employ such professional and clerical assistance as it deems necessary within the limits of funds provided; and be it further

ORDERED, that there is appropriated to the Committee from the Legislative Appropriation the sum of $1,000 to carry out the purpose of this Order.

| | | |
|---|---|---|
| HP 1460 | House of Representatives | In Senate Chamber |
| Richardson | Read and Passed | Read and Passed |
| Cumberland | February 3, 1970 | February 6, 1970 |
| | Sent up for concurrence | In concurrence |

SUBCOMMITTEE ON ENVIRONMENTAL IMPROVEMENT COMMISSION

CHAIRMAN - Harrison L. Richardson

VICE CHAIRMAN - Richard W. Logan

Ethel B. Baker

Albert E. Cote

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# PART I: THE ENVIRONMENTAL IMPROVEMENT COMMISSION

## 1. HISTORY OF ENVIRONMENTAL IMPROVEMENT COMMISSION

Prior to 1941 no agency in Maine government was charged with responsibility for the regulation and abatement of water pollution in the State. However, rather harsh (and consequently unenforceable) statutory relief against pollution activities had been provided for. Early in the 19th century, an 1841 statute prohibited:

> The erecting, continuing or using any building or other place for the exercise of any trade, employment or manufacture which, by occasioning noxious exhalations, offensive smells or other annoyances, become injurious and dangerous to the health, comfort or property of individuals or the public ... the obstructing or impeding, without legal authority, the passage of any navigable river, harbor or collection of water or the corrupting or rendering unwholesome or unpure, the water of any river, stream or pond or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

Such activities were deemed public or common nuisances punishable by 1) a fine not to exceed one hundred dollars, 2) a court order for the discontinuance or abatement of said

nuisance and 3) possible court action charging violators with responsibility for removal of said nuisances.[1]

Later an 1891 statute barred all parties from "knowingly and willfully poisoning, defiling or in any way corrupting a water supply used for domestic purposes for man or beast," penalizing such action by a fine not to exceed $1,000 or by imprisonment up to one year.[2]

In 1941 the Sanitary Water Board was created, partly in response to public concern about the polluted condition of the Androscoggin River.[3] The Board consisted of the Commissioners of Health and Welfare, Agriculture, Inland Fisheries and Game and the Public Utilities Commission in addition to one representative each from the manufacturing and municipal interests in the State.[4] The members of the Board, who served without compensation, elected their chairman. The Board was directed to study and investigate pollution in the State and to recommend methods of preserving Maine's waters to those causing water pollution within the State. The Chief Sanitary Engineer of the Department of Health and Welfare served as technical secretary to the Board. The Board was authorized to cooperate with other state and federal agencies in the performance of its duties.[5]

1. R.S. 1841, c. 164
2. Maine Marine Law, Vol III, p. 424
3. Ibid., p. 425
4. P.L. 1941, c. 209, §1
5. op. cit. §2

However, the Legislature rendered the Board innocuous since 1) only $400 was appropriated to the Board and 2) no effective control machinery was vested in the Board.[6]

Four years later the Board was authorized to license any person, firm or corporation discharging waste, refuse or effluent from manufacturing, processing or industrial plants or establishments into state streams, rivers, ponds, lakes or other bodies so as to constitute a new source of pollution. A grandfather clause in the authorizing legislation exempted "any manufacturing, processing or industrial plant or establishment, now or heretofore operated, for any such discharge at its present general location"[7] from the licensing requirements, such license being statutorily granted, although the Board was permitted to deny a license request for a new source of pollution if such discharge increased pollution in a manner "inconsistant with the public interest". Such authority was meaningless due to: a) the ambiguity of the term "public interest", b) lack of specific guidelines relative to water quality standards for receiving waters and c) crucial staff and appropriations shortages.[8]

During the same year (1945) the Attorney General was authorized to initiate injunctive procedures against all parties violating statutes and regulations administered by the Board.

6. Maine Marine Law, Vol. III, p. 425

7. P.L. 1945, C. 345, §3

8. Maine Marine Law, Vol. III, P. 426, P.L. 1945, C. 345, §1

Furthermore the Board was permitted to select its technical secretary, provided that he be a sanitary engineer employed by the Bureau of Health within the Department of Health and Welfare.[9]

In 1947 the deposition of potatoes and any potato parts (except the potato pulp resulting from the manufacture of potato starch) into streams, ponds, lakes and other bodies of water or on the ice thereof or on the banks of the same was prohibited.[10] Significantly, industries already holding licenses from the Board were exempted from the provisions of this chapter. Likewise, although the deposition of slabs, edgings, sawdust, chips, bark, mill waste, shavings or fibrous materials created in the manufacture of wood and wood products and oil, regardless of its source into the inland waters of the State or banks thereof inconsistent with the public interest,[11] was prohibited, the legislation contained so many loopholes it could hardly be described as an effective pollution control measure. Two years later the prohibition against deposition of wood slabs, etc. was extended to the tidal waters of the State.

The first significant pollution control legislation was passed in 1951 based on the 1950 Report on Water Pollution in

9. P.L. 1947, C. 158

10. P.L. 1947, c. 266, §6. The law did not affect any licenses previously granted by the Board and several major rivers were exempted from the provisions of the Act including Salmon Falls River, Saco River, Presumpscot River, Androscoggin River, Kennebec River, Penobscot River, St. Croix River and St. Johns River.

11. P.L. 1949. C. 332

the State of Maine. Citing the general poor quality of major rivers and streams within the State, the authors of the report[12] recommended the implementation of an effective pollution control program and a classification according to the highest common use of each river, stream and coastal area within the State.[13] The 95th Legislature responded by creating the Water Improvement Commission in 1951. The Commissioner of Health and Welfare was the only holdover from the old Sanitary Water Board on the newly created Commission, joined by two representatives each from the manufacturing interests, municipalities and the public at large within the State.[14] The Commission was duly authorized to employ consultants subject to the provisions of the personnel law[15] while technical services were to be performed by the Department of Health and Welfare and other appropriate state departments. In addition to assuming the powers and duties of the Sanitary Water Board, the Commission was authorized to "make recommendations to the Legislature with respect to the classification

12. The report was prepared by the Department of Health and Welfare, Division of Sanitary Engineering, the Department of Agriculture, the Department of Sea and Shore Fisheries and the Sanitary Water Board.

13. Maine Marine Law, Vol. III, p. 427

14. P.L. 1951, c. 383, §1

15. The legislative allocation for staff personnel was a modest $15,000 for 1951-52. P. & S. L. 1951, c. 192

of the rivers, waters and coastal flats and parts thereof within the State, based upon reasonable standards of quality and use."[16]

The groundwork for a statewide water pollution control program having been established, substantial revisions in the Water Improvement Commission's powers were approved by the Legislature in 1953. Four water classification standards were established and the Commission was directed to make appropriate recommendations to each Legislature relative to classifications for rivers, streams, lakes and tidewater areas within the State.[17] The Commission was required to hold public hearings before submitting proposed classifications to the Legislature. The new legislation required municipalities to provide information to the Commission concerning their present method of sewage collection and disposal and brought municipal pollution activities directly under the jurisdiction of the Commission:[18]

> "... it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other wastes,..in such a manner as will lower the quality of the said waters, tidal flats or section thereof, below the minimum requirements of such classification,...notwithstanding any

16. Ibid.

17. P. L. 1953, c. 403, § 1-2

18. Supplemental Report on Pollution in the State of Maine, Water Improvement Commission, 1954, P. 5.

licenses which may have been granted or issued (by the Commission)."[19]

The Commission was further instructed to conduct surveys on the State's waters and to initiate appropriate legal action to secure compliance with the statutes and regulations under its control.[20]

Two representatives of the conservation interests in the State were added to the Commission in 1955.[21] The same legislation designated the Commission as the state agency responsible for accepting federal funds relating to water pollution control and water resources protection. Authorized Commission personnel were granted authority to enter any land or establishment in the performance of their official duties.[22] The 97th Legislature also revised and upgraded the water quality standard classifications which had been established during the last legislative session.[23] Maine also entered into the New England Interstate Water Pollution Control Commission in 1955 along with

19. Furthermore the exemption of the Salmon River, Saco River, Presumpscot River, Androscoggin River, Little Androscoggin River, Kennebec River, Penobscot River, St. Croix River and St. Johns River from the provisions of the wood slab deposition section would expire Sept. 1, 1955. (see footnote 11).

20. P. L. 1953, C. 403

21. P. L. 1955, C. 425, §1

22. op. cit., §7

23. Op. cit., §4. Statutory provision was further made for the classification of all great ponds as B-1 (2nd highest classification) unless the Commission determined, after public hearings, that a different classification was preferable.

the States of Connecticut, Massachusetts, New Hampshire, New York and Rhode Island.[24]

The Legislature in 1957 authorized the Commission to consult with and advise municipalities, persons or corporations relative to proper drainage and sewage systems and water pollution control methods. Municipalities and sewage systems were required to submit plans and specifications of proposed systems of drainage, sewage disposal and sewage treatment to the Commission for its advice.[25] The same legislation directed the Commission to establish standards for the operation of municipal treatment facilities. In this year the Commission undertook responsibility for subsidizing municipal and quasi-municipal pollution abatement construction programs. An amendment to the Revised Statutes authorized the Commission "to pay up to 20% of the total cost or two-thirds of the total federal contribution under P.L. 660, 84th Congress, whichever is less, to the expense of a municipal or quasi-municipal pollution abatement construction program which has received federal approval and federal funds for construction."[26]

Two years later the Legislature encouraged further water pollution control efforts by municipalities in authorizing the

24. For a description of the Commission see description infra pp. 51-53.

25. P. L. 1957, C. 365. Purely storm water systems and alterations in existing facilities were exempted from the provisions of the legislation.

26. P. L. 1957, C. 429, §75

Commission to pay up to 50% or $2,500, whichever is less, of the expenses of a sewage survey for a municipal or quasi-municipal corporation which has met prior approval as to purpose, necessity and priority.[27] A licensing procedure for the discharge of manufacturing and industrial wastes which would constitute a new source of pollution into the classified and unclassified waters of the State was established, the Commission being directed to hold public hearings on such proposed discharges within 45 days from the date of the filing of the license application.[28] However, exempted from the licensing requirement were:

1) municipalities, sewer districts and other quasi-municipal corporations which disposed sewage from outfalls or facilities of municipal sewers by September 1, 1959 and
2) manufacturing, processing or industrial plants or establishments operated prior to August 8, 1953 for any discharges at their present general location.[29]

Statutory provision was made for appeal of Commission licensing decisions by aggrieved parties to any justice of the Superior Court.[30]

27. P. L. 1959, C. 294, §1. The Legislature did not anticipate a deluge of requests since it appropriated only $25,000 for this purpose. Id., §2

28. P. L. 1959, C. 295, § 8-9

29. op. cit.

30. op. cit., § 6

In 1961 the State subsidization of municipal or quasi-municipal pollution abatement programs was revised to permit the Commission to match federal funds for such projects.[31] Furthermore the provisions for state aid to municipal and quasi-municipal corporations engaged in sewage surveys were extended to include regional planning commissions.[32]

During this year the Commission's control over sewage treatment plants was expanded. Municipalities and sewer districts were required to obtain from the Commission approval of the plans and specifications for proposed new drainage, sewage disposal or sewage treatment facilities.[33] Moreover the Commission was authorized to enforce reasonable standards for the operation and maintenance of municipal treatment facilities.[34]

Perhaps the most significant legislation passed by the 100th Legislature was an amendment to the statutory restriction relative to discharge of industrial and other wastes which would "lower the quality of said waters." The amendment read: "It shall be unlawful...to dispose of any sewage, industrial or other waste...in such a manner as will, after reasonable dilution and mixture, lower the quality of any significant segment of said waters, tidal flats or section thereof, affected by this discharge..."[35] According to the University of Maine Law School's

31. P.L. 1961, C. 299

32. P.L. 1961, C. 311

33. P.L. 1961, C. 305, §2. Prior to 1961 municipalities and sewer districts were only required to consult the Commission for advise pertaining to their proposed sewage systems.

34. op. cit.

35. op. cit., § 4

study, Maine Law Affecting Marine Resources, Regulation of the Coast: Land and Water Uses

> "(The underlined phrases) were probably intended to make it possible for the downgrading of a relatively small portion of a stream rather than making it necessary to have the pollutant lower the quality of the whole stream, but to preclude prosecution for a condition existing only at the discharge outlet. As a practical matter, the indefiniteness of these phrases has made it virtually impossible to determine when there has been a classification violation."[36]

Four classifications for marine and tidal waters within the State were legislatively prescribed in 1963. At the same time the Legislature proceeded to classify the major tidal waters in Maine.[37] The Legislature also provided for review of Commission decisions relating to water classifications and applications for deposition of wood slabs, etc. into waters within the State on appeal by the State Administrative Hearing Officer.[38]

The 102nd Legislature made no substantive revisions in the statutory powers and responsibilities of the Water Improvement Commission.[39]

36. Maine Marine Law, Vol. III, P. 429

37. P.L. 1963, C. 274, § 1-2. An analysis of water pollution statutes in other states reveals that Maine's practice of legislative prescription of water body classifications is relatively unique.

38. P.L. 1963, C. 412, §20

39. The Legislature did, however, classify certain waters within the State (see P.L. 1967, C. 42, 83, 84, 153, 179, 336, 337 and 425)

However, in 1967 the Legislature served notice that it intended to mold the Commission into a major state environmental agency. The Commission was retitled (to become the Water and Air Environmental Improvement Commission) and was directed to study methods of air pollution abatement and to make a report of its findings, including recommendations for future action, to the 104th Legislature.[40] Furthermore, two members knowledgeable in matters relating to air pollution were added to the Commission.[41] The Commission was further charged with providing encouragement to local air pollution agencies to solve air pollution problems and was instructed to provide information and technical assistance upon request to industries and political subdivisions attempting to curb air pollution. The new WAEIC was granted $19,000 for fiscal year 1967-68 and $17,000 for fiscal year 1968-69 to administer its new air pollution control duties.[42]

The Legislature also tightened the State water purity statutes, revising the fresh water and tidal or marine water classifications to become more precise and demanding. The Commission was authorized to raise the classification of any surface water within the State after: 1) public hearings and 2) consultations with appropriate state and federal agencies, municipalities and industries, such classification to be effective until 90 days after the end of the next regular legislative session.[43] Furthermore, the State contribution to pollution abate-

40. P.L. 1967, C. 475, & 12

41. op. cit., §1

42. op. cit. §13

43. op. cit., §6-A

ment programs was expanded, authorizing the Commission to pay up to 35% of the expense of a sewage treatment system project designated to serve 2 or more municipalities not eligible for federal assistance under P.L. 660, 84th Congress.[44]

The appeals procedure from Commission decisions was amended to permit appeals to go directly to the Superior Court in a civil action (rather than to the State Administrative Hearing Officer as had been provided for earlier).[45]

The Legislature set up a comprehensive timetable for classified and unclassified waters within the State in an effort to expedite Maine's clean water program. The time schedule read as follows:

> Time schedule. A municipality, sewer district, person, firm, corporation or other legal entity shall not be deemed in violation of any classification or reclassification adopted on or after January 1, 1967, at any time or times prior to October 1, 1976, with respect to those classifications if by such time or times he or it with respect to any project necessary to achieve compliance with the applicable classification shall have completed all steps required to then be completed by the schedules set forth in this subchapter.

44. op. cit., §9-A

45. op. cit., & 10. See footnote 37

A. Preliminary plans and engineer's estimates shall be completed and submitted to the Water and Air Environmental Improvement Commission on or before October 1, 1969.

B. Arrangements for administration and financing shall be completed on or before October 1, 1971. This period, in the case of municipalities, shall encompass all financing including obtaining of state and federal grants.

C. Detailed engineering and final plan formulations shall be completed on or before October 1, 1972.

D. Review of final plans with the Water and Air Environmental Improvement Commission shall be completed and construction commenced on or before October 1, 1976.

E. Construction shall be completed and in operation on or before October 1, 1976.

Notwithstanding the foregoing timetable, if the Commission shall determine that any municipality, sewer district, person, firm corporation or other legal entity can reasonably complete any or all of the foregoing steps at an earlier date or dates than herein provided, the Commission, after notice and hearing, may

order completion of such steps according to an accelerated time schedule.[46]

A glaring loophole in this timetable permitted pollutors in operation prior to August 8, 1953 to discharge their wastes into the waters of the State freely until 1976 since the previous classification of waters had been appealed.[47] The 104th Legislature ameliorated this defect.[48]

The structure of the Commission was revised in 1969. The Commissioner of Health and Welfare was no longer a member ex officio of the Commission. The Commission was authorized to employ a director who would serve at the pleasure of the Commission and carry out the administrative duties prescribed to him by the Commission.[49] The Legislature assisted the State's pollution abatement efforts by:

1) permitting the Governor and Council to authorize the Commission to advance planning funds not in excess of $50,000 for pollution abatement facilities to municipalities and quasi-municipal corporations when the Legislature is not in session and
2) authorizing the Commission to pay up to 30% of the costs of planning a pollution abatement construction program incurred by a municipality or quasi-municipal corporation.[50]

46. 38 M.R.S.A. 451 as amended by P.L. 1967, C. 475

47. Maine Marine Law, Vol. III, P. 431. A prosecution against a pollutor could only be maintained if said pollutor's discharges could be proven to constitute "a new source of pollution" in relation to the pollution load existing on his waters on August 8, 1953.

48. Ibid., P. 432

49. 38 M.R.S.A. 411

50. op. cit.

Recognizing that the Commission was harried with license applications to discharge comparatively minor quantities of sanitary sewage, the Legislature authorized the Commission to grant such licenses for proposed discharges of less than 1,000 gallons of sanitary sewage per day without public hearings, if it so desired, provided the Commission determined the proposed discharge would not lower the quality of the receiving body of water.[51]

Additional revisions in the State's water pollution control statutes included:

A. A revision and upgrading of the purity standards for fresh waters and tidal or marine waters within the State.[52]

B. The discharge of grease, oil, gasoline, kerosene or related products into the inland waters or into the marginal sea of the State was prohibited.[53]

C. The deposition of potatoes or any part thereof (but not potato starch resulting from the manufacture of potato starch) into the State's streams, ponds, lakes and other bodies of water was prohibited.[54]

51. op. cit. §414

52. op. cit., §§363-364

53. op. cit., §416. This provision does not affect any party presently holding a license from the Commission.

54. op. cit., §451. This section does not apply to industries licensed under this subchapter.

D. The Commission was authorized to establish mixing zones as a condition of discharge licenses granted to any person, corporation, municipality or other legal entity.[55]

Acting in response to a study of the State's air resources,[56] the 104th Legislature empowered the Commission to establish air quality regions, wherein air quality studies would be conducted.[57] The Commission was authorized to establish ambient air quality standards and emission standards after appropriate public hearings within the above mentioned air quality regions of the State. The Commission was granted further authority to:

1) require the registration with it of those persons and air contaminant sources over whom the Commission has jurisdiction and to require the same to file reports with the Commission regarding the rate and length of their air contaminants,
2) after ambient air quality standards and emission standards have been established, to license all persons operating additional sources of air contaminants and/or emitting additional air contaminants, and
3) to grant variances to any person owning or operating a plant, building structure,

55. op. cit.

56. Preliminary Study of the Air Resources of the State of Maine, submitted to the WAEIC by the University of Maine, December, 1968.

57. 38 M.R.S.A. §581

> process or equipment exempting the same from the air quality standards and Commission standards established by the Commission if, after public hearing, the Commission determines: a) the emissions do not endanger human health or safety and b) compliance with Commission standards would produce a serious hardship upon the applicant.[58]

An emergency clause permits the Commission to order any party creating a condition of air pollution endangering the public health or safety to immediately reduce or cease such activity.[59]

The 1970 Special Session of the Legislature enacted a major land use control measure designed to control the location of those developments having a "substantial affect on the environment."[60] The Act requires "any person intending to construct or operate a development which may substantially affect local environment.... before commencing construction or operation (to) notify the Commission in writing of his intent and of the nature and location of

58. op. cit., §§587, 589, 590

59. op. cit., §593

60. 38 M.R.S.A. 481-488 as added by P.L. 1969, c. 571. King Resources of Denver, Colorado is presently challenging, among other matters, the constitutionality of the Act as a result of an adverse decision it received from the Commission on July 10, 1970. King is arguing the Commission is denying it the only feasible use of its property which amounts to a denial of its constitutional right to reasonable use of property without due compensation. Portland Press Herald, August 13, 1970.

such development." The term "development which may substantially effect environment" is defined as follows:

A. Any commercial or industrial development which requires a license from the Environmental Improvement Commission.

B. A land area in excess of 20 acres.

C. A development which "contemplates drilling for or excavating natural resources, excluding borrow pits for sand, fill or gravel, regulated by the State Highway Commission and pits of less than 5 acres" and

D. A development which occupies on a single parcel a structure or structures in excess of 60,000 square feet.

The Commission has statutory authority to approve or reject[61] proposed site locations, basing its decision on: 1) financial capacity, 2) local traffic movement, 3) possible adverse effect on the natural environment and 4) the suitability of soil types.

The Legislature also prohibited the discharge of oil, petroleum products, or their byproducts into or upon any coastal waters, estuaries, tidal flats, beaches and lands which adjoin the Maine seacoast or into any waters which drain into the coastal waters of the State.[62] To aid the Commission in enforcing this legislation

61. The Commission has authority to order developers to restore the area affected by such operations to its prior condition or as near as may be. 38 M.R.S.A. 485

62. 38 M.R.S.A. 541-557

the Legislature extended the jurisdiction of the Commission to a distance 12 miles from the coastline of the State. All persons operating an oil terminal facility[63] were required to obtain licenses from the Commission annually.[64] The regulatory powers of the Commission include:

A. inspection of oil terminal facilities

B. establishment of procedures and methods for the reporting and removal of oil discharges and

C. development and implementation of oil pollution control plans.

Furthermore, persons who discharge oil or petroleum products in violation of this chapter are responsible for its removal and the expenses incurred therein.

The Commission was further charged with utilizing the Maine Coastal Protection Fund[65] in administering the state oil pollution control statutes. The Legislature was authorized to allocate up to $100,000 from the fund toward the research and development of oil pollution control methods.[66]

63. An oil terminal facility is defined as a facility in which more than 500 barrels are transferred, processed, refined or stored.

64. 38 M.R.S.A. 542

65. The Fund is limited to $4,000,000. All license fees, penalties and other monies collected pursuant to this chapter are credited to the Fund. 38 M.R.S.A. 551.

66. op. cit.

## 2. STRUCTURE AND OPERATION

The 104th Legislature in regular and special session adopted legislation which has sharply increased the duties and responsibilities of the Environmental Improvement Commission. In less than two years the old Water Improvement Commission, charged with administering the water pollution laws, is now, as the Environmental Improvement Commission, concerned with the additional fields of air pollution, oil handling and site selection.

This expansion of powers, duties and responsibilities has caused concern regarding the structure, composition, workings and budgetary requirements of the Environmental Improvement Commission. Accordingly, this Subcommittee of the Legislative Research Committee was charged under the foregoing legislative order with scrutinizing the Commission to consider what changes might be indicated or appropriate at this time in the interests of obtaining the most effective administration of the laws for which it is responsible.

The Subcommittee has held a number of hearings to solicit the views of Governmental officials and the public, including business, industrial and conservation leaders regarding changes that might be made. Further, it has considered some of the various approaches followed by the Governments of other states, and finally it has conducted intensive interviews with the staff of the Environmental Improvement Commission, its Chairman and members.

The Subcommittee has concluded, perhaps with a mixture of surprise and reluctance, that generally, the present structure of the Environmental Improvement Commission is better than any of the alternatives suggested; that generally, and in view of the novelty of its responsibilities and the speed with which they have been thrust upon the Commission, it is operating both responsively and responsibly.

The Environmental Improvement Commission consists of ten members appointed by the Governor who are designed to reflect a wide range of interests. Two represent manufacturing interests, two act as representatives of municipalities, two represent the public generally, two represent conservation interests and two are expected to be knowledgeable in matters relative to air pollution. This makes the Environmental Improvement Commission considerably larger than other regulatory agencies of the State, such as the Highway Commission, the Liquor Commission or the Public Utilities Commission, each of which consist of a Chairman appointed by the Governor and two other members who are also salaried.

Although the present ten-man "amateur" commission appears awkward and unwieldy, the members and staff do not find it so. In fact, the members were unanimous in recommending that the present ten-man commission be retained and cited a number of advantages. The three principal advantages seem to be first, that the size of the Commission allows for a wide diversity of skills and backgrounds which have been useful to the Commission in making the broad policy decisions with which the Commission is

often charged. Second, because of the number of hearings that are held throughout the State and because the law provides that three members of the Commission shall constitute a quorum, it is possible for the Commission members to share the work load and "cover" for one another at hearings held between Fort Kent and Kittery. Third, since the members of the Commission are generally lay people, making decisions based upon the assistance and advice of a technical and professional staff, it was felt that a large number of Commission members would be less subject to domination by the staff than would a Commission made up of only three or five members.

The Commission is presently holding between ten and twenty public hearings per month and is meeting regularly for most of a day each month. Considering that at least three members are present for each hearing with larger attendance at particularly important hearings, and considering that attendance at the monthly meetings is usually complete, the pay received by members of the Commission ($10 per day at hearings or meetings, plus travel expenses) is not, to put it mildly, exactly in line with their efforts and responsibilities. The Commission members themselves pointed out to the Subcommittee that, first, the State would not be able or willing to compensate them on an ordinary basis--a fact which they recognize without rancor; second, that the above-mentioned advantages of size would be lost if the membership of the Commission were reduced to three or possibly five persons simply in order to realistically compensate them; and third, the fact that the Commission members serve on what amounts to an unpaid basis enables them to retain an independence of spirit which

insulates them from potential industrial or conservation pressures.

The Subcommittee gave considerable attention to the question of whether the Chairman should serve full time and be paid a salary commensurate with his duties and responsibilities. Here again, members of the Commission, including the present Chairman himself, made the following points which the Subcommittee endorses.

A full time, fully paid Chairman would have to be appointed by the Governor, rather than simply be elected by and from the membership of the Commission. It would be easier for such a Chairman to dominate the Commission in the same way that the Highway Commissioner presently dominates the Highway Commission or the Chairman of the Liquor Commission dominates the Liquor Commission. He would tend to take away a sense of responsibility from the other Commission members. Furthermore, he might be more susceptible to pressures if his income depended upon his re-appointment.

In conclusion, the Subcommittee recommends that the make-up and structure of the Environmental Improvement Commission remain as it is for at least another two years on the grounds that the members of the Commission take their heavy responsibilities very seriously, considering their efforts to be more a service to the State of Maine than a job. The Subcommittee feels that the Governor will be able to continue to fill vacancies on the Commission with people of similar quality and dedication in spite of, and perhaps even because of the fact that they are grossly underpaid for their efforts. Any further extension of EIC responsibilities by the Legislature will require further legislative review of this problem.

PART II. REVISIONS OF WATER POLLUTION LAWS ADMINISTERED BY E.I.C.

The Subcommittee recognizes that laws dealing with protection of the environment and regulating those actions of man which are capable of harming the environment are generally in a state of infancy. Laws and regulations in this field must, because of the nature of the subject matter they are trying to control, be occasionally imprecise or novel. Often the experience of dealing for a year or two with a particular law or regulation points up the need for changes or adjustments in the law. The Subcommittee, on the basis of hearings, interviews and discussions recommends herewith a number of revisions which are designed to improve the administration of environmental laws in the State of Maine. Not included are a number of suggestions made by E.I.C. members or staff or by the Attorney General's Department which the Subcommittee thought should wait for the results of further experience. The Subcommittee recognizes that the field of environmental regulation is far less static and settled than other fields of Governmental regulation and accordingly acknowledges that Legislative review should be made on a continuing and regular basis.

Nevertheless, the following recommendations are those which, in the judgment of the Subcommittee, have particular and pressing merit at this time. They are separated into the categories of Water Pollution and Site Location.

1. Section 363, Standards of Classification of Fresh Waters. The definition of Class A water, both fresh and salt, presently forbids absolutely the introduction into it of any wastes or sewage of any kind, no matter how adequately they are treated. Therefore, the

definition of Class A waters should be amended to allow the E.I.C. to license the discharge of wastes into Class A waters when, because of the nature of the discharge and character of the waters, no degradation of existing quality will occur. Appendix, p. 43, sec. 2.

2. Section 413, New Purchase Clause. The Subcommittee recommends a substantial revision of section 413.

(1) New purchase clause. The "new purchase" clause of the general grandfather clause (Sec. 413) now applies only to industrial or manufacturing plants. The effect of the new purchase clause is to limit the special privileges of the grandfather clause to those owners who were operating the discharging plant as of August 8, 1953, and to eliminate it when the plant changes ownership, thereby forcing new owners to come in and apply for their own license. It does not apply to residential and other commercial or non-industrial polluters with the effect that these presently exempted facilities may continue to pollute indefinitely without making application for a license. The Subcommittee recommends that the new purchase clause be amended to affect all grandfathered polluters equally so that an individual purchasing a "grandfathered" home with a straight pipe discharging untreated sewage be then required to install discharge facilities or a septic system. Appendix,p.44,sec.4.

(2) Grandfather clause. With respect to the grandfather clause itself, the Subcommittee considered, but rejected, the possibility of eliminating or phasing it out prior to 1976. Instead, the Subcommittee recommends making two changes with respect to the grandfather clause:

First, to limit its protection to the quality or quantity that was, in fact, being discharged as of or prior to August 8, 1953, and

Second, to make it clear that the license granted under the grandfather clause totally expires on October 1, 1976, thereby putting those grandfathered facilities on notice that they will be required to apply for and receive a discharge license for any discharge on October 2, 1976 and thereafter. Appendix, p. 44, ¶B.

In making the changes outlined above, it seems logical for the purposes of simple clarity to rewrite section 413 and add to it, in addition to the changes discussed above, four new concepts not presently included in the Water Pollution Laws: a non-degradation clause, a standard of "best practicable treatment", a registration of grandfathered discharges, and direct enforcement of unlicensed and therefore unlawful discharges.

(3) Non-degradation Clause. Both logic and the Federal Government demand that water pollution control laws contain a non-degradation clause. Presently, the Commission must issue a discharge license if the discharge applied for will not in fact lower the statutory classification of the receiving body of water. This does not allow the Commission to protect the existing quality of water which may have improved since its classification by the Legislature because of changes made nearby or, in the case of rivers and streams, upstream. At the same time, however, it would give the Commission the flexibility to allow such a discharge only

upon a showing that it would be receiving the best practicable treatment and was otherwise justifiable as a result of necessary economic or social development. Appendix. P. 46, ¶C.

(4) Best Practicable Treatment. The Subcommittee recommends adoption of the concept of "best practicable treatment" being applied to all licensed discharges. The discharge of waste of any kind into waters of the State is necessarily a contribution of pollution to one extent or another. If there is a practical and reasonably economical way in which to lessen the pollution impact from any particular discharge, it should be required. The effect of not requiring the best practicable treatment of discharges is to actually limit the amount of industry which can locate on any segment of river, to only those industries which presently exist. For instance, if the effluent from a paper mill located on a segment of river classified C is treated so minimally that the quality of water is at the low end of the C classification, any other significant discharge by a proposed new industry in that segment would, if allowed, lower the quality below its statutory classification and therefore prevent the new industry from locating. Appendix, P. 46, ¶D.

(5) Registration of Grandfathered Discharges. The Commission presently has no record whereby it can define and locate those discharges into water bodies which are allowed under the present grandfather clause, since the statute automatically grants the license. The Subcommittee recommends that all grandfathered licensees be required to

register within a reasonable amount of time with the Commission simply to put on record the location, source, nature and amount of the discharge. Appendix. P. 46, sub-§3.

(6) Unlicensed Discharge. Section 413 of the present law has for many years made it unlawful to discharge into any water body without first obtaining a license from the Commission. Because of other language in the statute, the courts have prevented the Attorney General from proceeding directly against unlicensed discharges. Because the Subcommittee can see no reasonable excuse for any person to discharge in violation of the law without a license, it recommends that the Attorney General be allowed to proceed immediately against this type of violation without recourse to the cumbersome hearing provisions presently set forth in section 414. Appendix. P. 47, sub-§4.

3. Section 414; Application for Licenses. The Subcommittee recommends the adoption of a general revision of section 414 of the present law for the following purposes:

(1) Power to license without hearing. The provisions for hearings on a discharge license can be greatly simplified by allowing the Commission to grant certain licenses without the necessity of actually holding a public hearing on them in those situations in which the Commission feels the granting of the license is such a routine matter that the expense of a hearing is unnecessary. Appendix, p. 48, ¶A.

(2) Term of discharge license. Under present law, discharge licenses run for indefinite periods of time and, once granted, are for all practical purposes not subject to change unless the licensed facility changes hands or applies for a new or expanded license to

discharge new or larger quantities of effluent. The effect of this is to allow a continuing discharge into a body of water without respect to any changes which may be taking place in the character of that body of water and wihtout respect to any technological changes that may have occurred permitting improved treatment of the discharge. The Subcommittee accordingly recommends that all discharge licenses be granted for a term of not less than three nor more than ten years, giving the Commission discretion to renew the license for an additional period of time without the formal requirements of another original application hearing. As a corollary to this, the Commission should be allowed for purposes of renewal to call in prior licensees, other than grandfathered licensees whose licenses do not expire until 1976, when such prior licensees have been discharging for more than three years under their prior license. Appendix, P. 49, sub-§2.

(3) Inspection and testing. It may already be implicit under the present law, but the Subcommittee recommends a definite authorization to the Commission and the Attorney General for access to the premises of a licensee for the purposes of inspection and testing. Appendix, P. 49, sub-§3.

(4) License fees. Under the present law, there is a flat requirement of fifty dollars as a fee for license application. The amount is the same for the small homeowner or the large paper company and bears no relation whatever to the costs incurred by the Commission in the handling of licenses or the regulation of licensees. The Subcommittee, therefore, recommends that pursuant to public hearing or hearings, the Commission be

authorized to set a schedule of fees which will bear a more equitable and realistic relationship to the nature of the facilities to be involved and the amount and type of discharge and other factors which relate to the reasonable costs of the Commission for inspection, testing, enforcement and record keeping. It is not by any means the recommendation of the Subcommittee that such license fees attempt to cover the entire costs of these activities by the Commission, but simply be sufficient to reasonably contribute toward such costs. Appendix, P. 49, sub-§4.

(5) Water pollution enforcement provisions. The Subcommittee recognizes a definite and serious weakness in the enforcement provisions of the water pollution laws. Under existing law it is possible for a licensee to willfully ignore with impunity the terms and conditions of its license for a period of months or even years. Under present law, if a violation occurs, even a willful and obvious one, the Commission is empowered only to notify the violator and set a hearing. As a result of the hearing, it may issue orders aimed at ending the violation. The violator is not, however, forced to stop the activity which constitutes the violation. He may take an appeal from the order to the Superior Court. This action is a civil matter and must compete with other civil matters in crowded court dockets. Even after the matter comes on to be heard, in which proceeding the case could be tried all over again, the outcome may be inconclusive.

> "The court, giving due consideration to the practicability and to the physical and economic feasibility of securing abatements of any pollution in violation of this chapter, may enter a judgment affirming or nullifying such order or decision, in whole or in part, or remanding the cause to the Commission upon such terms as the court may direct."

During all of this time, and during the unspecified period of time during which the court may consider the matter before rendering a decision, the licensee may continue to violate his license provisions. The law does include a penalty section providing for fines from $200 to $1,000 per day for violation except that this does not apply to the period during which an appeal is pending. Furthermore, if the court finally makes a decision unfavorable to the violating licensee, he may still draw out the proceedings further by appeal to the law court, which in itself can take over a year. During all of this period, the Attorney General is powerless to enjoin the discharge of materials which is in violation of the license unless the discharge "constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property". In other words, the Attorney General may not enjoin the violating discharge during all of this period if it is simply destroying the quality of the receiving water body, rather than endangering human life.

The Subcommittee, therefore, recommends that the enforcement provisions be amended to reflect the fact that a license to discharge pollution into waters of the State is a privilege

rather than a right, and that, upon a finding of noncompliance, the Commission may suspend a license and prevent the violation from occurring. The amendment would give the licensee the right to appeal such suspension but would prevent him from continuing to violate the terms of the license pending such appeal. Appendix, P. 50, sub-§6.

4. Section 415, Appeals. The Subcommittee feels that the appeals provisions contained in section 415 of the present law are entirely unrealistic inasmuch as they place the Court in the very difficult position of having to substitute the Court's judgment for that of the Commission in requiring that the Court give consideration to all of the factors which make up the "practicability" and the "physical and economic feasibility of securing abatement of any pollution" when an order of the Commission is appealed from. For all practical purposes, the present law requires the Court to have a whole new hearing rather than simply reviewing the record of the proceedings before the Commission to determine whether or not the Commission properly applied the law. The Subcommittee therefore recommends that review be limited to a "clearly erroneous" test of the Commission decision on the basis of the facts before it. Thus, if the court finds that the Commission acted regularly and within the scope of its authority and the order is not clearly erroneous, it shall affirm the decision of the Commission. Appendix, P. 51, Sec. 6.

5. Section 451. Enforcement Generally, Mixing Zone Provisions. The Subcommittee recommends that the mixing zone provisions of section 451 be substantially amended. The language contained in the first paragraph of section 451, "after due consideration for seasonal, climatic, tidal and natural variations," should be

eliminated from the mixing zone provisions and the law made clear that any classification adopted with respect to a particular body of water should apply without regard to seasonal climatic, tidal or other natural variations. Appendix, P. 43, Sec.3. It was the feeling of the Subcommittee that if a particular body or segment of water is classified B, it should be kept at a B standard even during periods of low flow in the summertime, so that the human and biological activities considered appropriate for that body or segment of waters can be maintained. Appendix, P. 51, Sec.7.

Section 451 presently contains a sentence which has been interpreted by the courts in such a way as to effectively negate most of the enforcement provisions in the present law. It says in effect that before issuing any order or commencing any enforcement action to abate a classification violation, the commission must establish a mixing zone. The Subcommittee recommends that this section be deleted on the grounds that the establishment of a mixing zone should be discretionary with the Commission rather than being made a prerequisite to the enforcement of any order. Appendix,P.52, Sec.7.

The Subcommittee also recommends that the purpose of a mixing zone be made explicit, and that the burden of presenting the evidence to justify the establishment of a mixing zone be placed upon the licensee who is requesting of the Commission the enlarged ability to pollute in violation of a classification, which is really what the mixing zone affords. Appendix, P. 53, Sec. 7.

6. Section 454. Injunctions. The Subcommittee recommends that section 454 be broadened to assure that the Attorney General may bring appropriate civil or criminal action where a violation of the law exists without being held to the hearing provisions set out in section 451 before bringing such action. The intended effect of this

amendment, in conjunction with the other preceding amendments recommended, would be to restrict the effect of the hearing provisions set forth in section 451, subsection 2 to violations occurring under section 451 only. Appendix, P. 53, Sec. 9.

7. RST., 30, Section 4953, Zoning Ordinances. In those municipalities where planning and zoning has been adopted or where building permits are required, a potential conflict exists between the power of the municipality to issue a building permit and the power of the E.I.C. under the water pollution laws to issue a waste discharge license. The Subcommittee, therefore, recommends resolving this potential conflict by limiting the power of a municipality to issue a building permit, where one is required, in those situations where the applicant must eventually apply to the E.I.C. for a discharge license. This is designed to prevent the situation where a commercial or industrial plant requiring a waste discharge license is entirely constructed before application is made to the E.I.C. Alpendix, P. 43, Sec. 1.

## PART III: REVISION OF SITE LOCATION LAWS ADMINISTERED BY THE ENVIRONMENTAL IMPROVEMENT COMMISSION

The Subcommittee considered the site location law separately both with an eye to measuring its effect and usefulness and to recommend those changes that only five months of operation have indicated as appropriate. Between May 19, 1970 and October 10, 1970, the E.I.C. has received 122 applications for approval under the site location law. Of these, 38 were processed by September 23, 1970, with two having been denied and 36 approved, 17 with conditions. With respect to applications for residential subdivisions, the Commission estimates that it now has on file for application requests involving over 140,000 house lots to be built within the State of Maine in the near future, nearly all being oriented toward water bodies.

1. Public service transmission lines. The site location law is designed to regulate the location of developments "which may substantially affect environment." Presently these are defined to cover only commercial and industrial development. Public service corporation transmission lines are specifically exempted, and State, municipal and educational developments are not included. The Subcommittee recognizes that the location of a major highway, the construction of a municipal airport and possibly even the construction of a large educational or medical institution can have as much impact on the environment as a recreational development or an industrial plant. It raises a question of why the location or route of a highway or power company transmission line should not be subjected to the same scrutiny with respect to its impact on the environment as a major shopping center.

2. Section 482. Definition of Vertical Development. The definition of a development which may substantially affect environment includes a structure or structures "in excess of a ground area of 60,000 square feet." With the trend toward high-rise apartments, condominiums and other buildings, the Commission recommends that a building having 60,000 square feet of floor space, even though it may not cover a ground area of 60,000 square feet, is of itself large enough to be considered by the Commission. Appendix,P.54, Sec. 10.

3. Section 482. Definition Extention of Existing Developments. The site location law is unclear with respect to its application to the extension or expansion of an existing development. An existing paper plant, which is already in existence and therefore "grandfathered" is an accomplished fact even though it may have exerted a heavy detrimental effect on the local environment. To double the size of the facility at its present location might be economically attractive to its owners, but certainly should be subjected to the scrutiny of someone other than the owners for its further impact on the environment of the area. Accordingly, the Subcommittee recommends that extensions or expansions of existing developments which are of sufficient size so that they would be covered if they were being built in a new locality should come under the terms of the act. Appendix, P. 54, Sec. 10.

4. Section 482, sub-§5. Subdivisions. Because residential or vacation home subdivisions have been proliferating so rapidly and with such effect in the State of Maine, and because the present definition of a development is inviting evasion by certain developers, the Subcommittee recommends that

residential subdivisions be specifically included and defined in the Act. Appendix, P. 55, Sec. 11.

5. Section 483. Notification Required. Many developments applied for under the site location law are of a nature which poses no threat whatever to the local environment. The law is clear that, in these cases, the Commission may grant approval without holding a hearing. It has become apparent on occasion, however, that although there is no real need to have a hearing the Commission would like to issue approval but couple it with one or more terms or conditions. It cannot presently do this as the law is drafted, and accordingly the Subcommittee recommends that the Commission be authorized to issue approval for developments without a hearing but combine it with terms and conditions. If the applicant did not agree with the terms or conditions, he could request a hearing. Appendix, P. 55, Sec. 12.

6. Section 484, sub-§2. Traffic Movement. One of the criteria to be met by a developer in obtaining approval for site location is to show that "the proposed development has made adequate provision for loading, parking and traffic movement from the development area onto public roads." This language prevents the Commission from making any assessment of traffic conditions or the pressure on roads in the area surrounding the proposed development and gives the Commission no authority to make an assessment of how the development will affect water borne traffic on the waters abutting the development. The Subcommittee therefore recommends that the law be amended to allow the Commission to consider the effect of all types of traffic caused by or affected by the development. Appendix, P. 55, sec. 13.

7. Section 484-A. Certificate of Operation or Occupancy. In municipalities having building inspectors and issuing building permits, a certificate of operation or occupancy is normally withheld until construction is completed and the building is about to commence. Municipalities have found this to be a practical way of preventing an applicant for a building permit to promise one thing to the municipality and do quite another in the course of his construction. The Subcommittee recommends the adoption of the same approach with the site location law, thereby enabling the Commission to take a last look at the project before it is completed to better enable them to require the applicant to stick with the terms of his proposal. Appendix, P. 56, sec. 14.

8. Section 487. Right to Hearing and Judicial Review. Judicial review from a determination of the Commission denying approval of an application is directly to the law court. The court is charged with deciding whether the Commission acted regularly and within the scope of its authority, and "whether the order is supported by substantial evidence." Since the court does not have the advantage of having attended the hearing or having inspected the locality proposed for the development, the legal phrase "substantial evidence" places the court at a distinct legal disadvantage. The Subcommittee recommends that, instead of forcing upon the court the necessity of making a qualitative judgment on the basis of a bare record, it instead be empowered to affirm the decision unless it finds that the decision of the Commission was clearly erroneous. Appendix, P. 56, Sec. 15.

9. Section 488. Applicability. Over half of the new industries which have come into the State of Maine in the last three years,

have, according to the Department of Economic Development, moved into buildings or premises formerly occupied by other industries rather than building a new plant for their own purposes. For this reason it seems advisable to clarify the applicability clause of the site location law to assure that it applies to any development which is the result of putting a previously existing development to a use substantially different than the use to which the previous development was being put at the time the new industry made application. To not do this would be the same as "grandfathering" any industrial plant which went out of business after January 1, 1970, even though an entirely new kind of operation takes its place. Appendix, P. 57, Sec. 16.

10. Section 489. Regulatory Powers of the Commission. The Commission presently is empowered to adopt, amend or repeal rules for the conduct of hearings, but unlike the water pollution, oil handling and air pollution laws, there is no specific grant to the Commission under the site location law of the power to adopt, amend, repeal or enforce appropriate rules and regulations necessary for the general "housekeeping" purposes of the Commission to carry out the intent of the law. The Subcommittee recommends that the implicit power to do so be made explicit. Appendix,P.57,Sec.17.

11. Section 490. Penalities. Water pollution, oil handling and air pollution laws, each carry with them financial penalties which can be applied on a daily basis for the violation of these three separate laws. The Subcommittee recommends that a willful violator of the law or any person or corporation who fails or refuses to obey any lawful order, rule or regulation of the

Commission be punished by a fine of not less than $200 nor more than $1,000 for each day of such violation. This is the same level of penalty as is applied in the water and air pollution laws. Appendix, P. 58, Sec. 17.

# APPENDIX

AN ACT To Revise the Environmental Improvement Commission Laws.

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

Sec. 1. R.S., T. 30, §4953, sub-§9, ¶A, amended. Paragraph A of subsection 9 of section 4953 of Title 30 of the Revised Statutes is amended by adding after the first sentence a new sentence to read as follows:

The building inspector shall not issue any permit for a building or use for which the applicant is required to obtain a license pursuant to Title 38, section 413 until the applicant has obtained such license.

Sec. 2. R.S., T. 38, §363, amended. The 4th paragraph of section 363 of Title 38 of the Revised Statutes, as repealed and replaced by section 4 of chapter 475 of the public laws of 1967, is amended to read as follows:

There shall be no discharge of sewage or other wastes into water of this classification unless specifically licensed by the commission upon finding that no degradation will result to the quality of such waters, and no deposits of such material on the banks of such waters in such a manner that transfer of the material into the waters is likely. Such waters may be used for log driving or other commercial purposes ~~which~~ if such use will not lower its ~~classification~~ quality.

Sec. 3. R.S., T. 38, §364, amended. The last paragraph of section 364 of Title 38 of the Revised Statutes, as repealed and replaced by section 5 of chapter 475 of the public laws of 1967, is amended to read as follows:

The classifications adopted pursuant to this subchapter shall apply without regard to seasonal, climatic, tidal or other natural

variations which may alter the volume, temperature or composition of such surface waters. With respect to all classifications hereinbefore set forth, the commission may take such actions as may be appropriate for the best interests of the public, when it finds that any such classification is temporarily lowered due to abnormal conditions of temperature or stream flow.

Sec. 4. R.S., T. 38, §413, repealed and replaced. Section 413 of Title 38 of the Revised Statutes, as amended by section 9 of chapter 499 of the public laws of 1969, is repealed and the following enacted in place thereof:

§413. New purchase clause

1. License required.

A. No person, firm, corporation, municipality, or quasi-municipal corporation or agency thereof, shall, directly or indirectly, discharge or cause to be discharged any waste, refuse, effluent, or sewage in any waters or watercourses of this State, whether classified or unclassified, without first obtaining a license therefor from the commission.

B. No license from the commission shall be required for any municipality, sewer district or other quasi-municipal corporation, in existence prior to September 1, 1959 for any such discharge into unclassified waters as the same existed on that date, such license being hereby granted. No license from the commission shall be required for any other discharge in existence on August 8, 1953 not significantly different in quality or quantity from that which was discharged immediately prior to that date, such license being hereby granted.

On October 1, 1976 any license granted by this section is extinquished and void and the discharger shall seek a new license under section 414 for any discharge after that date.

In the event that a licensee shall transfer ownership of a facility which is the source of a discharge licensed by this section, the license shall be extinquished and the new owner shall seek a license under section 414.

2. Conditions for license.

A. Classified waters. The commission shall issue a license to an applicant seeking to discharge into classified waters upon a finding that his discharge will be receiving the best practicable treatment and that either of itself or in combination with existing discharges to the waterway, such discharges will not lower the quality of any receiving body of water or tidal waters below classification.

B. Unclassified waters. The commission shall issue a license to an applicant seeking permission to discharge into unclassified waters upon a finding that his discharge will be receiving the best practicable treatment and that either of itself or in combination with existing discharges to the waterway, such discharge will not lower the quality of any receiving body of water or tidal waters below the classification which the commission expects to recommend in accordance with section 365.

C. Waters of higher quality than classification. Where the existing quality of any receiving body of water or tidal waters, or segment thereof, is higher than its classification, the commission shall issue a license for a new discharge which would lower the existing quality of such waters, but not below classification, only upon an affirmative showing that the new discharge will be receiving the best practicable treatment and is justifiable as a result of necessary economic or social development.

D. Best practicable treatment. "Best practicable treatment" as used in this subchapter shall mean the methods of reduction, treatment and handling of waste best calculated to protect or improve the quality of receiving waters. In determining the best practicable treatment for a particular discharge the commission shall consider:

(1) The then existing state of technology.

(2) The effectiveness of the available alternatives for treatment of the type of discharge being considered.

(3) Their economic feasibility for the type of establishment involved.

3. Registration of grandfathered discharge. Any discharge for which no license is required, such license having been granted under the provisions of subsection 1, paragraph B shall be registered with the commission by the owner or maintainer thereof by January 1, 1972 showing the location, source, nature and amount of such discharge. Any discharge not so registered shall be unlawful and shall be

considered an unlicensed discharge under subsection 4.

4. Unlicensed discharge. If after investigation the commission finds any unlicensed discharge, it may notify the Attorney General of the violation without recourse to the hearing procedures of section 451, subsection 2. The Attorney General shall proceed immediately under the provisions of section 454.

Sec. 5. R.S., T. 38, §414, repealed and replaced. Section 414 of Title 38 of the Revised Statutes, as repealed and replaced by section 10 of chapter 499 of the public laws of 1969 and as amended, is repealed and the following enacted in place thereof:

§414 Applications for licenses

1. Applications for licenses shall be submitted to the commission in such form and containing such information as the commission may by regulation require, and shall be signed by the applicant.

The commission may reject applications which are not in accord with applicable law and regulations. In such event, written notice of such rejection shall be given to the applicant within 30 days of receipt of the application, and such notice shall be accompanied by a statement indicating the information deemed necessary by the commission in order for the application to conform to applicable law and regulations. Within 30 days of such notice and statement, or within such other time as the commission may allow, the applicant shall file the required information, otherwise the application shall be deemed withdrawn. Nothing in this section shall be construed to require an applicant to disclose any secret formulae, processes or methods used in any manufacturing operation carried on by him or

under his direction.

Applications found to be in order by the commission shall be dealt with as provided in this section.

A. If the commission determines as a result of its own investigation, that such discharge will meet the requirements of section 413, subsection 3, it may issue a license to the applicant, or hold a public hearing on said application as provided in paragraph B. In the event that either the applicant shall object to terms or conditions of the license, or the commission has knowledge of objection to the granting of such license it shall:

B. Hold a public hearing upon the application as follows: The commission shall set a time and place for a hearing on the application, which hearing shall be held within 45 days of receipt by the commission of the application and shall give notice of the hearing to the applicant by certified mail, return receipt requested, and by publication in a newspaper circulated in the area of the proposed discharge or in a newspaper having state-wide circulation and distribution in the said area once a week for 3 successive weeks, the last publication being at least 3 days prior to the date of hearing. The hearing shall be held by not less than 3 members of the commission. Evidence taken and received, which may include but not be limited to the applicant's financial ability to meet the state's water pollution control standards, shall have the same effect as though taken and received by the full commission and shall authorize action by the full commission as though so taken

and received.

If, after hearing, the commission shall determine that such discharge will meet the requirements of section 413, subsection 2, it shall issue such license to the applicant.

2. Terms and conditions of licenses. Licenses shall be issued by the commission for a term of no less than 3 years nor more than 10 and may contain such terms and conditions as the commission deems reasonably suited to carry out the purposes of this subchapter. With respect to licenses granted by the commission prior to the effective date of this Act which have been in effect for more than 3 years, other than those licenses which have been granted under section 413, subsection 1, paragraph B, the commission may upon 60 days notice to the licensee order him to reapply for a new license under the provisions of this subchapter.

3. Inspection and records. Authorized representatives of the commission and the Attorney General shall have access to the premises of a licensee at any reasonable time for the purposes of inspection, testing and sampling. The commission may order a licensee to produce any records relating to the handling, treatment or discharge of waste and may require any licensee to keep such records relating thereto it deems necessary.

4. Schedule of fees for discharge licenses. The commission shall establish after public hearing a schedule of annual fees for discharge licenses. The fees shall be set in relation to the reasonable costs of inspection, testing, enforcement and record keeping by the commission. In establishing the schedule of fees the commission shall give due consideration to:

A. The nature of the facilities involved.

B. The composition of the discharge.

C. The volume of the discharge, and

D. Any seasonal variations in the volume or composition.

License fees collected hereunder shall be retained by the commission.

5. Unlawful to violate license. After the issuance of a license by the commission it shall be unlawful to violate the terms or conditions of the license whether or not such violation actually lowers the quality of the receiving waters below the minimum requirements of their classification.

6. License violation procedure. If the commission finds a violation of the terms and conditions of a license, it may notify the licensee in writing of the nature of the violation and direct the licensee to appear at a hearing not less than 7 days thereafter to show cause why its license should not be suspended pending compliance. The commission upon a finding of noncompliance may notify the Attorney General of the violation, suspend the license in full or in part and make such other orders as it deems proper to obtain compliance. During suspension of its license, the licensee shall not discharge any waste, refuse, effluent or sewage in violation of the commission's orders. The licensee may appeal such suspension or any order issued in connection therewith as provided in section 415, but the taking of such appeal shall not stay the suspension. Any discharge during such suspension in violation of commission's order shall be treated as an unlicensed discharge under section 413, subsection 2.

7. Conduct of hearings. The commission may make reasonable rules an

regulations relating to the conduct of hearings held under this section. All testimony at such hearings shall be taken by a stenographer and a complete record of the hearing shall be kept.

Sec. 6. R.S., T. 38, §415, amended. The next to the last sentence of section 415 of Title 38 of the Revised Statutes and the last sentence of section 415 of Title 38 of the Revised Statutes, as amended by section 3-B of chapter 431 of the public laws of 1969, are further amended to read as follows:

The proceedings shall not be de novo. The court shall receive in evidence in any proceeding hereunder a transcript of the proceedings before the commission and a copy of the commission's order ~~and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability and to the physical and economic feasibility of securing abatement of any pollution in violation of this chapter, may enter a judgment affirming or nullifying such order or decision, in whole or in part, or remanding the cause to the commission upon such terms as the court may direct~~. If the court finds that the commission acted regularly and within the scope of its authority, and that the order was not clearly erroneous, it shall affirm the decision of the commission.

Sec. 7. R.S., T. 38, §451, amended. The first paragraph of section 451 of Title 38 of the Revised Statutes as repealed and replaced by section 6 of chapter 431 of the public laws of 1969 and the 2nd and 3rd paragraphs of section 451 of Title 38 of the Revised Statutes, as enacted by section 6 of chapter 431 of the public laws of 1969, are amended to read as follows:

After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it shall be

unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other waste, either alone or in conjunction with another or others, in such manner as will, ~~after due consideration for seasonal, climatic, tidal and natural variations and~~ after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere, ~~within mixing zones reasonably established by the commission in the manner provided by this section, lower the quality of said waters, outside such zones, below the minimum requirements of such classification, and~~ lower the quality of said waters below the minimum requirements of such classifications, or where mixing zones have been established by the commission, so lower the quality of said waters outside such zones, notwithstanding any licenses which may have been granted or issued under sections 413 to 415.

The commission may establish a mixing zone with respect to any discharge at the time application for license for such discharge is made pursuant to section 414, and when so established shall be a condition of and form a part of the license issued. The commission may, after 30 days' notice to and a hearing with the affected party, establish by order a mixing zone with respect to any discharge for which a license has heretofore been issued pursuant to section 414, or for which ~~no~~ a license ~~is required~~ has been granted by virtue of ~~the last sentence of~~ section 413, subsection 1, paragraph B. ~~Prior to the issuance of any order, or commencement of any enforcement action to abate a classification violation, the commission shall establish, in the manner above provided, a mixing zone with respect to the discharge sought to be thereby affected.~~

The purpose of a mixing zone is to allow a reasonable opportunity for dilution and diffusion of wastes before the receiving waters below or surrounding a discharge will be tested for classification violations. In determining the extent of any mixing zone to be by it established under this section, the commission ~~shall-solicit and-receive~~ may require from the licensee testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway ~~and-their-effect-upon-the-ability-of-the waterway-to-achieve-its-classification-standards~~; the size of the waterway and the rate of flow therein; any relevant seasonal, climatic, tidal and natural variations in such size, flow, nature and rate ~~and-the-effect-of-such-variations-upon-the-ability-of-the-waterway to-achieve-its-classification-standards~~; the uses of the waterways in the vicinity of the discharge, and such other and further evidence as in the commission's judgment will enable it to establish a reasonable mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof shall vary in order to take into account seasonal, climatic, tidal and natural variations in the size and flow of, and the nature and rate of discharges to, the waterway.

Sec. 8. R.S., T. 38, §451, amended. The 4th paragraph of section 451 of Title 38 of the Revised Statutes, as enacted by section 6 of chapter 431 of the public laws of 1969, is repealed.

Sec. 9. R.S., T. 38, §454, amended. Section 454 of Title 38 of the Revised Statutes is amended to read as follows:

§ 454. Injunctions, civil and criminal actions

In the event of ~~the~~ any violation of any ~~of-the-provisions~~ provision of

this subchapter, or of any order or decision of the commission or decree of the court as the case may be, the Attorney General may institute injunction proceedings to enjoin the further violation thereof, a civil or criminal action under sections 416, 417 or 453 or any appropriate combination thereof.

Sec. 10. R.S., T. 38, §482, sub-§2, amended. Subsection 2 of section 482 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

2. Development which may substantially affect environment. "Development which may substantially affect environment" means any municipal, educational, commercial or industrial development, including real estate subdivisions, which development requires a license from the ~~Environmental Improvement Commission~~ commission, or which occupies a land area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, on land or sea, excluding borrow pits for sand, fill or gravel, regulated by the State Highway Commission and pits of less than 5 acres, or which occupies on a single parcel a structure or structures in excess of a ground area or a floor space of 60,000 square feet. An extension of an already existing development is encompassed within the meaning of "development which may substantially affect environment," when the extension itself otherwise falls within the meaning of "development which may substantially affect environment."

Sec. 11. R.S., T. 38, §482, sub-§5, additional. Section 482 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended by adding a new subsection 5 to read as follows:

5. Subdivision. "Subdivision" means a tract of land in excess of 20 acres partitioned or divided into 10 or more lots for the purpose of sale. Any 2 or more separate parcels shall be considered a single tract if they comprise more than 20 acres and are separated by less than 100 feet.

Sec. 12. R.S., T. 38, §483, amended. Section 483 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

§ 483. Notification required

Any person intending to construct or operate a development which may substantially affect ~~local~~ environment shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development, on a form prescribed by the commission together with such documents as the commission deems necessary. The commission shall, within 14 days of receipt of such notification, either approve the proposed ~~location~~ development, with or without such conditions as it may deem appropriate, or schedule a hearing thereon in the manner hereinafter provided.

Sec. 13. R.S., T. 38, §484, sub-§2, amended. Subsection 2 of section 484 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

2. Traffic movement. The proposed development has made adequate provision or adequate provision exists for loading, parking and ~~traffic~~ movement ~~from-the-development-area-onto-public-roads~~ of all types of traffic, in the area surrounding the development,

resulting from or connected with the development.

Sec. 14. R.S., T. 38, §484-A, additional. Title 38 of the Revised Statutes is amended by adding a new section 484-A to read as follows:

§484-A. Certificate of Operation or Occupancy

No person, whose development has received the approval with conditions of the commission shall operate or sell, lease, rent or otherwise occupy the development until the commission has ascertained that any conditions imposed by it upon the development have been complied with. Upon ascertaining that the conditions have been complied with, the commission shall issue to the developer a Certificate of Operation or Occupancy. The commission shall either issue such certificate or deny its issuance within 7 days of the receipt of notification that the developer has complied with the conditions.

Sec. 15. R.S., T. 38, §487, amended. Section 487 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended to read as follows:

§487. Right to a hearing and judicial review

Any person whose development the commission has approved with conditions pursuant to section 483, may in writing but within 30 days after notice of such approval request a hearing by the commission for the purpose of reviewing said conditions and modifying any of the terms where appropriate. Upon receipt of such request the commission shall schedule a hearing as provided in section 484.

Any person, with respect to whose development the commission

has issued an order after hearing pursuant to this section or section 484 may within 30 days after notice of such order, appeal therefrom to the Supreme Judicial Court sitting as the Law Court. Notice of such appeal shall be given by the appellant to the commission. The proceedings shall not be de novo. Review shall be limited to the record of the hearing before and the order of the commission. ~~The court shall decide whether the commission acted regularly and within the scope of its authority, and whether the order is supported by substantial evidence, and on the basis of such decision may enter judgment affirming or nullifying such determination.~~ If the court shall find that the commission acted regularly and within the scope of its authority, and that the order was not clearly erroneous, it shall affirm the decision of the commission.

Sec. 16. R.S., T. 38, §488, amended. Section 488 of Title 38 of the Revised Statutes, as enacted by section 2 of chapter 571 of the public laws of 1969, is amended by adding at the end thereof the following new sentence.

The exclusion of this section shall not apply to any development, otherwise subject to this subchapter, which is the result of putting a previously existing structure or development to a use substantially different than the use to which the previously existing structure or development was being put at the effective date of this amendment.

Sec. 17. R.S., T. 38, §§489 and 490, additional. Title 38 of the Revised Statutes is amended by adding 2 new sections to read as follows:

§489. Regulatory powers of commission

The commission shall from time to time adopt, amend, repeal and enforce rules and regulations necessary to carry out the intent of this article.

§490. Penalties

Any person who shall violates any provision of this article, or who shall fail, neglect or refuse to obey any order, rule or regulation of the commission lawfully issued, shall be punished by a fine of not less than $200 nor more than $1000 for each day of such violation, failure, neglect or refusal.