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LEGISLATIVE
COMMISSION
ON
GOVERNMENT
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LAND AND WATER RESOURCES COUNCIL

1998 Annual Report

to

Angus S. King, Jr.
Governor

and the
119th Maine Legislature

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January 1999

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EXECUTIVE SUMMARY

This annual report, required by 5 M.R.S.A. §3331, sub-§4, describes matters that the Land and Water Resources Council addressed during 1998 and matters that the Council intends to address in 1999.

Matters Assigned by the Legislature

In accordance with legislative mandates, the Council provided the Legislature with policy recommendations, including proposed legislation as appropriate, on the following matters:

- **Labeling and collection of mercury-added products (PL 1997, c. 722)**

The Council has recommended legislation that requires:

- after July 1, 1999, disclosure to consumers of the mercury content of mercury-added products;
 - the seller of mercury-added lamps and the party contracting to dispose such lamps to provide certain notices regarding mercury content and applicable waste disposal laws;
 - after July 1, 2000, labeling of mercury-added products;
 - provision of a material safety data sheet in connection with sales of elemental mercury and purchaser certification regarding intended use of the mercury purchased;
 - a ban on sale of toys, games, and certain apparel containing mercury; and
 - a Council study during 1999 regarding manufacturer take-back of mercury added products.
- **State regulation of large concentrated animal feeding operations (CAFOs) (P.L. 1997 c. 642, § 8)**

The Council has agreed to recommend enactment of a new statute that would require a joint permit, issued by the Department of Agriculture, Food, and Rural Resources (DAFRR) and the Department of Environmental Protection (DEP), for new livestock operations with more than 1000 animal units and certain new livestock operations with 300 to 1000 animal units that may have a significant environmental impact or generate significant public interest. The Council has also recommended that the current moratorium on permitting swine feeding operations with 500 or more animals be extended for an additional year until May 1, 2000 and that during this time a scientifically oriented study be undertaken to identify the best available technologies to address

environmental issues associated with swine CAFOs. Thus, under the proposal, new swine feeding operations with 500 or more swine could not be permitted, constructed, and operated until completion of the scientific study and subsequent legislative consideration of whether new or additional standards are necessary for swine CAFOs.

In December, 1998, the Council submitted to the Legislature the report of the working group that studied and made recommendations to the Council on permitting large CAFOs. In January 1999, the Council intends to submit its final report and legislation to implement the recommendations discussed above.

- **Statewide standards to minimize the impact of timber harvesting on non point source pollution (P.L. 1997 648).**

As of the date of this report, the Maine Forest Service intends to submit timely draft recommendations on behalf of the Council which intends to finalize its recommendations on this matter at its February 1999 meeting. The Forest Service's draft recommendations are summarized in this report.

For each of the legislative mandates discussed above, the Council's recommendations were informed by a stakeholder process and study involving public and private stakeholders for which one or more Council member agencies served as lead agencies. The Council offers its thanks to all involved in these studies for their insights and hard work.

- **Other statutory responsibilities**

Pursuant to 5 M.R.S.A. §3331, sub-§7, the Council oversaw development of a comprehensive **State watershed program**. Lead by DEP, this interagency effort identified State waters to receive priority for planning and funding purposes related to non-point source pollution control and abatement through development of a Non-Point Source Priority List and, for federal funding purposes, the State's Unified Watershed Assessment. The Council also produced the report and assessment of the State's **Land Use Mediation Program** required by 5 M.R.S.A. §3331, sub-§5.

Matters Assigned by the Executive Order

Pursuant to Executive Orders, the Council provided oversight and monitored the efforts regarding implementation of the **Atlantic Salmon Conservation Plan for Seven Maine Rivers** ("Salmon Plan") and oversaw initiatives by the **Council on Environmental Monitoring and Assessment** to coordinate professional and volunteer monitoring efforts statewide. The State Planning Office published the Salmon Plan's annual report in January 1999. The Council anticipates that continued work on the Salmon Plan will be among the Council's priorities in 1999. This report summarizes the notable progress made on each of these interagency initiatives.

Council Initiatives

In response to requests from natural resources agencies and in accordance with its statutory charge to facilitate coordinated State natural resources policy, the Council reviewed and endorsed or served as a sounding board on recommendations regarding the following:

- dredging policy regarding environmental review of federal projects and ocean disposal;
- southern Maine beach management;
- wetlands conservation policy; and
- patterns of development.

Each of these initiatives is summarized by this report.

During 1998, work on several projects highlighted the need for funds that the Council may use to support studies and research on matters assigned to the Council. In 1999, the Council intends to discuss and develop a recommendation regarding options for enabling Council funding of targeted research efforts.

In addition to matters that may be or have been assigned by the Governor and Legislature, the Council intends to review and develop recommendations regarding patterns of development and management of great ponds, among other natural resources policy issues.

INTRODUCTION

The Land and Water Resources Council ("Council") submits this annual report to the Governor and the Maine Legislature's Joint Standing Committee on Natural Resources pursuant to 5 M.R.S.A. §3331, sub-§4. This report describes the Council's activities in 1998 and activities the Council anticipates for 1999.

In 1993, the Maine Legislature established the Council to advise the Governor, the Legislature, and State agencies in the formulation of State policy regarding natural resources management to achieve State environmental, social, and economic objectives. The Legislature has conferred on the Council, originally established by Executive Order, broad authority to consider natural resources issues of statewide significance and to counsel the Governor and Legislature on policy options for management and protection of natural resources. 5 M.R.S.A. §3331, sub-§2. The Council's agenda includes matters assigned to the Council by the Legislature or the Governor, as well as projects initiated by the Council itself or at the request of a State agency.

The Council addressed a number of challenging issues in 1998. This report provides a brief summary of each of the major matters on which the Council focused its efforts in 1998.

During 1998, the Council continued to develop its role as a recognized and increasingly sought after forum for interagency discussion on State policy for appropriately balancing environmental protection, conservation, and economic development objectives. In addition, the Council has increasingly become a mechanism for managing State programs that require coordination among multiple agencies. The Council has also proven an effective mechanism for development and communication of consistent State positions to the federal government regarding federal policies or proposed actions with statewide natural resources implications.

The Council's work on the Atlantic Salmon Plan, dredging policy, and several additional matters has highlighted the need for funds that the Council may use to support studies and research on matters assigned to the Council. Lacking such funding, the Council has had to decline financial support for modest, targeted study efforts that would have furthered development of informed environmental policy relating to Atlantic salmon recovery, mitigation of dredging impacts, and other issues. For this reason, in 1999 the Council intends to discuss and develop a recommendation regarding options for enabling Council funding of such targeted research efforts.

The Council looks forward to a challenging agenda in 1999 as the Legislature, Governor, and State agencies make use of this forum to develop and refine State natural resources policy.

1998 COUNCIL MATTERS

Atlantic Salmon Conservation Plan for Seven Maine Rivers

By Executive Order, Governor King assigned the Land and Water Resources Council responsibility for implementing the Atlantic Salmon Conservation Plan for Seven Maine Rivers ("Atlantic Salmon Plan" or "Plan") and monitoring its progress. The Plan is designed for the protection and recovery of Atlantic salmon populations in the Sheepscot, Ducktrap, Naraguagus, Pleasant, Machias, East Machias, and Dennys Rivers. The Executive Order directs all State agencies to implement the Plan fully. All the activities prescribed in the Plan fall into one of four categories: fish management, species protection, habitat enhancement, and habitat protection.

Council oversight has strengthened institutional responsibility across State government and allows local conservation groups a single point of contact to express their concerns and needs. The Council established an *ad hoc* Atlantic Salmon Committee comprised of the Commissioners of Marine Resources, Environmental Protection, Inland Fisheries and Wildlife, Agriculture, Food and Rural Resources, and Conservation, the chair of the Atlantic Salmon Authority, the State Planning Office Director, and representatives from each of the local watershed councils.

While several State agencies share responsibility for protecting habitat by applying existing water quality and land use laws, the Plan calls for regional and local conservation groups and landowners to play an active and significant stewardship role. Designated lead agencies or organizations are responsible for deciding how specific actions are implemented with the help of partner organizations. In certain instances, the Council will help a watershed council by directing staff support and advocating for a particular need. Actual on-the-ground work is accomplished by State and federal agency field staff, conservation groups, and local volunteers.

In 1998, the first full year of Plan implementation, the significant and varied contributions of many people and organizations have successfully launched the Plan. The foundation of the Plan's implementation rests on the partnerships and the cooperation of many organizations and individuals committed to work toward a shared goal.

The aims of the Plan are ambitious and complex. Under the terms of the Plan, much work lies ahead in 1999 and subsequent years both for the Council in its role as coordinator of this multi-agency public-private effort as well as the many professionals and volunteers involved. The Council is confident that the Plan will prove to be a model for achieving the goals of the Endangered Species Act and protection of valuable river systems through direct involvement of those that use and depend on the resource.

The Council's progress to date in implementing the Plan is presented by the Atlantic Salmon Conservation Plan for Seven Maine River's 1998 Annual Progress Report (January 6, 1998).

lead State agency staff: Henry Nichols, State Planning Office

Council on Environmental Monitoring and Assessment

The Council on Environmental Monitoring and Assessment (CEMA) was created by an April 1997 Executive Order to promote improved communication and coordination among volunteer monitoring programs, State agencies, and other professional organizations, including the University of Maine, involved in environmental data collection. CEMA delivered a progress report to the Council in August of this year summarizing work during 1997 and 1998 on CEMA's four main activity areas:

- Establishment of a database of environmental monitoring efforts;
- Outreach through presentations on environmental monitoring in Maine;
- Identification and implementation of Quality Assurance/Quality Control for volunteer monitoring; and
- Increased publicity for citizen monitoring.

During the Fall of 1998, four CEMA subcommittees were created to further develop the ideas contained in the August report for improving data gaps and supporting citizen monitoring. The lakes, coastal, and terrestrial habitat subcommittees met during the fall, and completed draft reports outlining their top three to five ideas and projects. The lakes group recommends the creation of partnerships to monitor remote lakes. The coastal group's recommendations focus on improving technical support for 25 citizen monitoring groups. The terrestrial habitat group calls for an improved program for shorebird and wetland monitoring. The rivers and streams subcommittee will be convened in January of 1999. All subcommittee reports will be presented to Council by the winter or spring of 1999.

CEMA intends to prepare a 1999 work program based on the above noted subcommittee reports. CEMA will work and consult with the Council on items that require interagency coordination. In 1999, CEMA intends to present to the Council recommendations for new program and policy changes.

lead State agency staff: Kathleen Leyden, State Planning Office; Roy Bouchard, Department of Environmental Protection

Watershed Protection Program

Due to the large number of State and federal agencies, as well as non-government organizations, that play a role in watershed management, the Maine Department of Environmental Protection ("DEP") and State Planning Office ("SPO") convened an interagency group, the Maine Watershed Management Committee ("MWMC") to help coordinate these activities and to provide input on watershed management decisions at the State level. Subsequently, the Legislature provided specific authorization for the Council develop and oversee a comprehensive State watershed program. *See* 5 M.R.S.A. §3331, sub-§7. The Maine Watershed Management Program managed by the MWMC under the aegis of the Council focuses on improving and protecting water quality through activities to reduce or eliminate nonpoint source pollution.

In 1998, the MWMC's major accomplishments included:

- Development of recommendations for a Nonpoint Source ("NPS") Priority Watershed list to be used in setting priorities for investing State and federal resources on NPS problems. This list was sent to the Council and was approved in October 1998.
- Provision of recommendations to the DEP on waters listed in the Unified Watershed Assessment ("UWA"), a report prepared for U.S. Environmental Protection Agency ("EPA") as part of the Federal Clean Water Action Plan. The UWA, presented to the Council for review, was jointly issued by DEP and the U.S. Department of Agriculture's Natural Resource Conservation Service in October 1998. Priorities listed in the UWA will receive preference for Federal funds in 1999 under the Nonpoint Source ("319") Program.
- Review of applications for federal 319 grant funds and State bond money for watershed planning and implementation work. In selecting projects for funding, consideration was given to whether or not a project is listed on the NPS priority list .

One important aspect of the State's watershed management effort is the Coastal Nonpoint Program. Under Section 6217 of the Coastal Zone Act Reauthorization and Amendments of 1990, coastal states are required to establish enforceable management measures to address significant sources of nonpoint source pollution in the coastal zone. Lack of compliance with the 6217 requirements could result in a loss of federal funding under the Coastal and Nonpoint Programs. In February 1998, the State received conditional approval from EPA and National Oceanic and Atmospheric Administration ("NOAA") for its proposed Coastal Nonpoint Management Program. Time frames varying between one and three years were established for the State to meet various conditions of approval.

State agencies reviewed the conditions of approval and found that a number of them lack clarity or are considered infeasible in Maine at this time. As a result, a letter was sent by the Council to EPA and NOAA on May 1, 1998 explaining the State's position on these issues. A

written response to this letter has not yet been received. However, staff from EPA and NOAA met with State agency staff on November 18, 1998 to clarify and discuss the status of the State's efforts to address the conditions of approval. Additional guidance was provided, although many of the issues raised by the Council's letter remain as concerns. State agency staff continue to work on these issues.

Pursuant to PL 1997 c. 748, with the aid of a stakeholder process DEP also studied several additional non-point source pollution control issues - riparian buffers, subsurface waste disposal system review and upgrade, and strategies to increase use of non-phosphorous fertilizers. DEP consulted with and received Council endorsement of its recommendations to the Legislature on these issues.

lead state agency staff: Don Witherill, Department of Environmental Protection

Impact of Timber Harvesting on Nonpoint Source Pollution

PL 1997 c. 648, Section 8 requires the Maine Forest Service ("MFS"), in consultation with DEP and the Maine Land Use Regulation Commission ("LURC"), to develop a report with "recommendations for a set of statewide standards to minimize the impact of timber harvesting on nonpoint source pollution." Having reviewed the MFS's recommendations, the Council is obligated to submit recommendations to the Legislature's Agriculture, Conservation, and Forestry Committee. The MFS, with the Forestry Advisory Team ("FORAT"), an advisory stakeholder group including State agency, industry, and environmental group representatives, met from July to December 1998. Although the group did not develop consensus recommendations, there was general agreement that common statewide timber harvesting standards and increased protection for small streams are desirable.

The MFS presented the following recommendations for the Council's consideration:

- Proposed uniform timber harvesting standards, to be adopted by rulemaking and administered and enforced by the MFS, that:
 - are based on current LURC and DEP shoreland zoning rules;
 - add or extend forested buffers adjacent to mapped 1st and 2nd order streams;
 - establish an unscarified filter strip adjacent to all designated water bodies and wetlands, including unmapped streams; and
 - establish consistent standards for land management roads and skid trails.
- Amendment of natural resources laws to exempt forestry activities if conducted in accordance with new statewide standards.

The MFS also reported that field testing of a procedure for monitoring best management practices ("BMPs") is underway and should be fine-tuned before further reporting on progress by timber harvesting operations in employing BMPs. The MFS does not recommend a statutory change or change in agency policy regarding BMPs.

The Council intends to discuss these recommendations and make a final legislative recommendation following its February 1999 meeting.

lead State agency staff: Don Mansius, Maine Forest Service

Lakes Heritage Fund

The 118th Maine Legislature created this fund and made the Council responsible for its management. See 5 M.R.S.A. §3331, sub-§6. No funds have been provided to the fund since its creation. The Fund had no program activities in 1998.

lead State agency staff: Mark DesMeules, State Planning Office

Patterns of Development

In 1998, SPO, along with other agencies and organizations, moved ahead on several fronts researching, analyzing, and recommending actions to address the fiscal, social, and environmental implications of Maine's patterns of development. This work is a continuation and outgrowth of studies and other policy initiatives related to patterns of development undertaken in 1997, such as SPO's "Cost of Sprawl" report. The Council continues to serve as a policy forum for discussion of this issue.

During the year, a good deal of attention was focused on the impact State policies have on sprawl. This resulted in a number of policy changes, including one that will prevent construction of redundant school capacity by allowing for recovery of capital costs in tuition. Other fiscal policy changes to prevent State subsidization of sprawl are under consideration.

In September 1998, the legislatively established Task Force on Regional Service Center Communities released its report describing the critical role played by the 69 "service center communities" identified by SPO as regional hubs of commerce, employment, and delivery of social services. The proportion of Maine's population living in these service centers has steadily declined over the past 20 years. The Task Force's report cites ways to help service center communities keep and attract development and thus prevent development sprawl. The recommendations address ways to put these communities on an equitable fiscal footing, to encourage investment and develop effective tax policy in these communities, and to enhance the efficiency of municipal service delivery through cooperation.

The ECO/ECO Civic Forum and SPO held eight public workshops titled “Smart Growth for Our Communities” across the State in the fall and early winter of 1998. Over 500 people attended these workshops. The workshops highlighted local activities and initiatives by land trusts, developers, and communities, and also provided a forum for discussing SPO's “Livable Communities: A Proposal for Addressing Suburban Sprawl.” SPO is also undertaking a homeowners survey intended to reveal key considerations for choosing to live in either a rural, suburban, or an urban setting.

lead State agency staff: John DelVecchio, State Planning Office

Mercury in Maine

The 118th Legislature directed the Council to submit to the Legislature's Committee on Natural Resources by January 1, 1999, a report, together with recommended legislation, concerning labeling and collection of mercury-added products. *See An Act to Reduce Mercury Use and Emissions, PL 1997, c. 722, effective July 9.* On December 31, 1998, the Council submitted this report.

Staff at the Department of Environmental Protection, with advice and input from stakeholders, drafted the report, titled *Labeling and Collection of Mercury-Added Products: Report to the Joint Standing Committee on Natural Resources* (January 1, 1999). The report's major policy findings provide that:

- the State should take steps to divert mercury-added products from disposal in the solid waste stream;
- Manufacturers of mercury-added products appear to be in the best position to ensure that appropriate, practical, and cost effective systems are available for end-of-life management of their products;
- If the State adopts legislation requiring manufacturers to provide for end-of-life collection of their products, the State should also prohibit disposal of the products in the municipal solid waste stream;
- Consumer education is critical to success in keeping mercury out of the solid waste stream;
- DEP should review its hazardous waste rules to ensure that they do not inhibit collection and recycling of mercury-added products; and
- the State should ensure that its laws regarding mercury-added products are consistent, to the extent appropriate, with those of the States of Minnesota and Vermont, as well as regional initiatives that address the issue of mercury-added products.

The Council reviewed the draft at its meeting of December 17, 1998, agreed on changes in the proposed implementing legislation, and unanimously approved the report and implementing legislation, as revised, for submittal to the First Session of the 119th Legislature. The revised legislation calls for further Council study of a program to require manufacturers to collect certain mercury-added products from users.

The report should be viewed as an addendum to the Council's earlier *Mercury in Maine* report, submitted to the Legislature's Natural Resources Committee in January 1997. That report called for action to reduce mercury emissions to the environment. The report on mercury-added products developed this year explores manufacturer take-back of such products as a strategy to achieve reductions in mercury emissions.

lead State agency staff: John James, Department of Environmental Protection

Wetlands Conservation

In 1994, SPO created a Wetlands Conservation Task Force to prepare a Wetlands Conservation Plan for Maine. Staff for this effort are funded by a grant from EPA. This task force is comprised of representatives from a range of development and conservation interests, as well as relevant State and federal agencies. In 1998, SPO requested the Council to review and approve the plan following its completion. Completion of the plan is scheduled for 1999.

Following revisions to the State's wetlands regulatory system aimed at further coordination of State and federal wetlands review and other improvements, the current focus of the effort is on wetlands characterization, using the Casco Bay watershed as a case study. Staff has completed the geographic information system ("GIS") needed for this effort, formulated the GIS computer queries, and generated the first data sets for each wetland function being used in the query process. Field work was done to verify the accuracy and sensitivity of the sites identified through the query process. The field work indicated high degrees of accuracy. Concern has arisen regarding the query for plant and animal habitat; staff, in consultation other public and private project participants, is attempting to refine that query. In addition, staff is working on a GIS query to help identify potential restoration sites. A meeting with State and Federal policy level participants was held in the fall of 1998 to bring these participants up to date and hear their concerns and criticisms. Work toward identifying priorities will take place in early 1999. Sites will be chosen for full-blown functional assessment which will take place in spring of 1999.

lead State agency staff: Liz Brown and Jackie Sartoris, State Planning Office

Southern Maine Beach Management

In 1997, DEP, the Department of Conservation ("DOC"), and SPO convened a group of stakeholders to discuss current beach management issues of concern to Maine citizens. The stakeholder group, comprised of property owners, business interests, environmental interests, municipal officials, and State agencies, met to discuss and develop strategies to address these issues. In April, 1998, the Southern Maine Beach Stakeholder Group released to the Council its recommendations in the form of a report titled *Improving Maine's Beaches*.

Since then preliminary action has been taken to implement several of the recommendations. Most importantly, a beach planner is now working at Southern Maine Regional Planning Commission ("SMRPC") providing assistance to municipalities. The Council endorsed establishment of this position for a three year period. Half of the position's funding is from federal Coastal Program funds and half comes from contributions by the involved municipalities. All the municipalities from Kittery to York were solicited for support. Wells, Kennebunk, Biddeford, Saco, Old Orchard Beach, and Scarborough have contributed support. An outstanding issue is how to involve municipalities that have declined to participate. A Memorandum of Understanding between SMRPC, DEP, SPO, and the involved municipalities is under development. Jon Kachmar, the SMRPC staff person, and a steering committee of representatives from the participating municipalities is initiating preparation of the first local beach management plan, for Saco Bay. A local advisory committee is being pulled together for that specific plan.

The Maine Geological Survey and the University of Maine have received Sea Grant funding to train local volunteers to gather data through beach monitoring. This project involves production of a training video. Training is scheduled for the spring of 1999.

Initial steps are being taken on several other recommendations. Deirdre Mageean at the Margaret Chase Smith Center is doing preliminary research on economic value of beaches. SPO is considering how to make flood risk disclosure requirements more effective. Also, in 1999 Sea Grant plans to hire a person to work in southern Maine on marine and coastal policy issues. Although the specifics of this job are not yet known, it will likely bring a person with a science background and facilitation skills to the region, which could be a help to this beach planning effort.

lead State agency staff: Katrina Van Dusen, State Planning Office; Robert Marvinney, Department of Conservation; Paul Vancott, Department of Environmental Protection

Concentrated Animal Feeding Operations

The Legislature directed SPO to coordinate a study of "federal and state laws and regulations pertaining to large concentrated animal feeding operations ["CAFOs"] and assess the potential impacts of large [CAFOs]." P.L. 1997 c. 642, § 8. P.L. 1997 c. 642, Section 2 defines

a "large CAFO" as "a lot or facility where more than 1,000 animal units are confined and fed for a total of at least 45 days in a 12-month period." The law directs the Council, based on the consideration of the outcome of this study, to make "recommendations for a permit process to regulate new large [CAFOs]" that "include[s] provisions for a public hearing prior to issuing a permit for a new large [CAFO]." The law requires the Council's recommendations to include any necessary legislation.

SPO, in cooperation with DEP, DAFRR, and LURC, organized a Large CAFO Working Group to carry out the study. The working group was comprised of representatives of the above noted agencies, other federal and State natural resources agencies, farmers, and concerned citizens. The working group conducted this study and made a report of its findings and draft legislation to the Council. On December 15, 1998, the Council in turn submitted the Working Group's report and draft legislation to the Legislature's Joint Standing Committee on Agriculture, Conservation, and Forestry and notified the Committee at that time of its intention to provide its final legislative recommendation following its December 17, 1998 meeting. At its December 17, 1998 meeting, the Council decided to consider the issue further at its January 1999 meeting. At its January 11, 1999 meeting, the Council agreed to recommend enactment of a new statute to require a joint DAFRR - DEP permit for all new livestock operations with more than 1000 animal units and certain new livestock operations with 300 to 1000 animal units that may have a significant environmental impact or generate significant public interest. The Council has also recommended that the current moratorium on permitting swine feeding operations with 500 or more swine be extended for an additional year until May 1, 2000 and that during this time a scientifically oriented study be undertaken to identify the best available technologies to address environmental issues associated with swine CAFOs. In January 1999, the Council intends to provide this recommendation, together with proposed legislation, to the Legislature's Agriculture, Conservation, and Forestry Committee.

lead State agency staff: Peter Mosher, DAFRR; Martha Kirkpatrick, DEP; Todd Burrowes, State Planning Office

State Regulatory Process for the Dredging of Federal Navigational Channels

DEP's interpretation of requirements of the State environmental review process, regarding alternatives analysis and related matters, was expanded as a result of the Board of Environmental Protection's consideration and action on the proposal to dredge Wells Harbor. The United States Army Corps of Engineers ("ACOE"), which is responsible for maintenance of federal navigation projects, has informed DEP and SPO that it is not legally authorized or obligated to meet several of those requirements concerning alternatives analysis and mitigation.

In the summer of 1998, DEP presented an analysis to the Council of the current interagency State regulatory process applicable to the dredging of federal navigation projects.

DEP's presentation outlined a number of options to resolve issues raised by the ACOE. These options included further discussions with representatives of the ACOE to forge agreement on how additional information to meet the requirements could be obtained, amendment of State rules applicable to dredging, and transfer of certain regulatory obligations to the local host community or one or more State agencies. The Council directed State agencies to proceed with further discussions with the ACOE to identify ways to modify the current regulatory process that would be acceptable to both the State and to the ACOE.

Representatives from DEP, the Department of Marine Resources ("DMR"), the Department of Transportation ("MDOT"), and SPO have initiated discussions with the ACOE. The State agencies will continue discussions on devising a formal protocol for this process as well as discussions on how to address the requirements to which the ACOE objects. The State agencies will meet again in early 1999 to follow up on these initial discussions. The Council anticipates review and decision on this protocol in 1999.

The Council played a significant role on two additional dredging related matters in 1998. First, the Council coordinated State agency involvement in the public - private Portland Harbor Dredging Committee, and helped to galvanize federal agency prioritization of and to secure congressional funding for this project. Secondly, at the request of EPA, the Council coordinated development of a uniform State agency position on the future use of the Cape Arundel Ocean Disposal Site ("CADS"). A change in federal law requires EPA to officially designate ocean dump sites or phase out their use over an approximately ten year period. Based principally on concerns about the potential for degradation of high and moderate value lobster habitat, the Council recommended that use of CADS be discontinued after the ten year period provided by federal law (by 2008) and that EPA and the ACOE work with the States of Maine and New Hampshire to identify a more environmentally suitable and economically efficient site to serve the southern Maine region. The Council anticipates additional action on this matter in 1999.

*lead State agency staff: Jeff Madore, Department of Environmental Protection
Brian Nutter, Department of Transportation*

ANTICIPATED 1999 COUNCIL MATTERS

As explained above, many of the issues and programs described above will require further attention by the Council in 1999. State agencies have also suggested that, in addition to matters assigned by the Legislature and Governor, the Council address the following additional issues in 1999:

- State policy to promote livable communities and fairly allocate the costs to the public of sprawl patterns of development
lead State agency: SPO
- Implications of sprawl for agriculture
lead State agency: DAFRR and SPO
- State policy regarding biotechnology
lead State agency: DAFRR
- Great Ponds Strategic Management Plan (1999 - 2002) (the Great Ponds Task Force intends to present this Plan to the Council with the recommendation that the Council consider establishing a committee to oversee the plan's implementation over a five year period)
lead State agency: SPO
- Mercury initiatives: DEP anticipates further discussion of State policies aimed at progress toward the New England Governors' and Eastern Canadian Premiers' joint goals for reduction of man-made sources of mercury. Appendix A provides an outline of DEP's activities on mercury issues in 1998.
lead State agency: DEP

APPENDIX A

STATUS OF MERCURY STRATEGIES AND PRELIMINARY ACTION PLANS FROM “MERCURY IN MAINE” REPORT¹

Strategy 1:

Reduce air emissions discharges from Maine’s largest mercury sources.

- Passage of PL 1997 Chapter 722 limits mercury emissions from sources to 100 lbs by 2000 and to 50 lbs by 2004. This affects 2 of the municipal waste combustors (MWCs) as well as HoltraChem Manufacturing. In March 1998, the Board of Environmental Protection adopted the standard of .028 mg/dscm for large municipal waste combustors. This will limit emissions from the municipal combustors, MERC in Biddeford, PERC in Orrington and RWS in Portland.
- The DEP’s Bureau of Air Quality is currently proposing rules governing standards for mercury emissions from small municipal waste combustors. These rules would affect Mid Maine Waste Action Corporation (MMWAC). In conjunction with this, the bureau is in the midst of consultation with other states as part of a New England Governors / Eastern Canadian Premiers (NEG/ECP) Mercury Action Plan (MAP) process.
- The DEP’s Bureau of Air Quality is currently participating in discussions with EPA regarding the development of a national mercury emissions MACT (Maximum Achievable Control Technology) standard for chlor-alkali facilities such as Holtrachem Manufacturing Corp. in Orrington. The bureau has asked to be a participant on EPA’s proposed standards development work group when it is formed. Maine air emission limits of 100 pounds per year in year 2000 and 50 pounds in 2004 may be more stringent than federal requirements under MACT.
- In response to EPA’s promulgated rule on medical waste incinerators, many incinerators are shutting down rather than putting on controls. As required by EPA under Section 111 (d) of the Clean Air Act, the Bureau of Air Quality is developing a plan outlining standards of performance, including implementation and enforcement of mercury emissions standards for waste combustors.
- The Bureau of Air Quality is currently participating in a regional initiative with the New England Governor’s Conference, Eastern Canadian Premiers and NESCAUM to identify cost-effective mercury control for emissions from industrial and utility boilers. It should be noted that the construction of natural gas pipelines throughout the State will result in wholesale switching from coal to gas by industries.

¹ The “Mercury In Maine” report was provided to the Legislature as Appendix A to the Council’s 1997 Annual Report.

Strategy 2:

Reduce and eliminate mercury discharges to state waters.

- PL 1997 Chapter 722 prohibits the discharge of mercury from grandfathered sources to State waters after January 1, 2004.
- DEP's Bureau of Water Quality has sampled 78 municipal POTWs and 9 industrial treatment facilities. In addition, the DEP staff have taken 33 samples from Bangor's Waste Water Treatment Plant.
- The Bureau of Water Quality has organized a work group of interested parties to develop a report for the Joint Standing Committee on Natural Resources. The report will outline what was learned from the mercury sampling project and address any subsequent compliance issues concerning the discharge of mercury to the waters of the State.
- The DEP has received interim approval from the Environmental Protection Agency to utilize the proposed "clean hands" sampling and analytical techniques, methods 1669 and 1631 respectively, to monitor effluent from municipal and industrial facilities for discharges of mercury.
- The DEP has provided a training session for wastewater treatment plant operators to learn how to sample using the new "clean hands" techniques.
- The DEP has also developed and begun to distribute guidance documents that will assist treatment plant operators and their customers in identifying possible sources of mercury discharges and some techniques for identifying possible pollution prevention based solutions.

Strategy 3:

Divert mercury from the solid waste stream.

- DEP's Bureau of Remediation and Waste Management distributed and explained the mercury containing lamp policy at 5 regional workshops for small quantity hazardous waste generators. The bureau also distributed and explained the lamp policy during on-site visits with 213 medium quantity hazardous waste generators. The policy covers appropriate disposal options.
- DEP's Bureau of Remediation and Waste Management has drafted a "universal waste" rule that will in effect extend the lamp policy to other types of mercury-added products including thermostats and thermometers.

- At a planned biomedical workshop in January 1999, DEP's Bureau of Remediation and Waste Management will identify non-mercury alternatives to mercury-added products used in the biomedical industry. The bureau has drafted an issue profile on the use of mercury and mercury-added products by biomedical facilities.
- DEP's Bureau of Remediation and Waste Management arranged for limited-time collection of older mercury-containing batteries "flushed out" by the ice-storm-related power outages in January 1998. About 13 tons of batteries were collected from towns that incinerate their solid waste. The bureau plans to discuss the requirement to recycle mercuric oxide batteries with attendees of the January 1999 workshop on biomedical waste and will survey attendees on their use of the manufacturer battery return system. Lastly, the bureau is drafting an issue profile on batteries to promote appropriate disposal and recycling.
- DEP's Bureau of Remediation and Waste Management convened a stakeholder group to assist with preparation of a report on mercury-added products by the Land and Water Resources Council for submission to the 119th Legislature. The report explores possible bans on non-essential mercury-added products. It has been submitted with draft legislation requiring labeling of mercury-containing products based on existing Vermont and Minnesota laws.
- DEP's Office of Innovation and Assistance has participated in 2 meetings of a national work group organized to examine ways to eliminate toxics, including mercury, in packaging.

Strategy 4:

Complete a Maine inventory and risk ranking

- DEP's Bureau of Remediation and Waste Management hired a consultant to identify mercury-added products in Maine solid waste. A study report has been completed and submitted to the Land and Water Resources Council for submission to the Legislature in January 1999.
- The Department of Administrative and Financial Services will coordinate State government's "Clean State" mercury initiative. The Bureau of Remediation and Waste Management will serve as the DEP's representative on this initiative.
- The DEP's Bureau of Air Quality is using Surface Water Ambient Toxics (SWAT) program money to sample wood for mercury content. The University of Maine will do the analysis. The department has collected samples and will do the sample preparation in January 1999 to facilitate research into mercury emissions from residential wood combustion.
- Risk ranking of mercury sources has not yet been done, however, the Bureau of Land and Water Quality's work in characterizing and quantifying mercury in wastewater discharges will be an integral part of this effort.

- Department staff is unaware of any work currently in progress to undertake an analysis of the economic effects associated with mercury in Maine's environment.

Strategy 5:

Expand fish sampling.

- During the past year, under the SWAT program, the DEP's Bureau of Land and Water Quality implemented a small program designed to identify indicator species that could be used in future years to more precisely define fish consumption advisories.

Strategy 6:

Continue remediation activities at mercury contaminated sites.

- DEP's Bureau of Remediation and Waste Management continues to participate in department efforts to curb mercury emissions from the HoltraChem facility and to clean up the mercury contamination from past spills and practices at that facility.
- No collaborative effort has yet been launched to identify successful methods for remediation of contaminated sediments in lakes, rivers and marine settings.

Strategy 7:

Develop regional and national strategies to further reduce mercury emissions and mercury-containing products.

- Pursuant to a joint resolution by the New England Governors and Eastern Canadian Premiers (NEG/ECP), a mercury action plan was adopted in June 1998.
- DEP's Bureau of Remediation and Waste Management has prepared and submitted a report on mercury-added products to the Land and Water Resources Council. The report suggests that manufacturers should bear some responsibility for proper post-consumer handling of mercury added products.

Strategy 8:

Urge federal agencies to adopt a single health-based dose response standard for mercury contamination in fish.

- Dr. Andy Smith of the State's Bureau of Health has attended a conference on this.

Strategy 9:

Focus biological research on the effects of mercury on the health of loons, fish, and other wildlife with elevated mercury levels.

- During the past year, the DEP's Bureau of Land and Water Quality procured a grant from the Maine Outdoors Heritage Fund to investigate the effects of mercury on the reproduction of loons.

Strategy 10:

Assess and implement strategies to communicate fish consumption advisories to key population segments.

- The Bureau of Health has done the following:
 - 1) developed a new brochure on mercury that is sent out to anyone calling for information;
 - 2) obtained a grant from USEPA to develop new risk communication materials on mercury in fish to be targeted toward sensitive population where a major focus of the Bureau of Health's work will be to look at the literacy level to make risk communication more effective;
 - 3) developed a way to merge the State's databases on fish license holders and birth certificates registry to allow for targeted mailings to the most at-risk population;
 - 4) participated in a joint study with the State of Wisconsin to assess knowledge of fish consumption advisories and sport fish intake by the sensitive population;
 - 5) was an invited observer to a workshop on methylmercury sponsored by the White House Office of Science and Technology; and
 - 6) was an invited observer to a December meeting of the Great Lakes Consortium on risk communication of fish consumption advisories.