

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1558

H. P. 1291

House of Representatives, April 5, 1979

Referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Tozier of Unity.

Cosponsor: Mr. Laffin of Westbrook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Redistribute the Powers of the Department of Environmental Protection to Localities to the Maximum Extent Possible.

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

Sec. 1. 10 MRSA § 2202, sub-§ 2, as last amended by PL 1973, c. 537, § 8, is repealed.

Sec. 2. 10 MRSA § 2202, sub-§ 2-A is enacted to read:

2-A. Commissioners. "Commissioners" means the county commissioners.

Sec. 3. 10 MRSA § 2203, as amended by PL 1977, c. 78, § 35, is repealed and the following enacted in its place:

§ 2203. Administration

The county commissioners in each county shall administer this chapter.

The commissioners shall employ such personnel as may be necessary to properly administer this chapter, including naming engineers and personnel experienced in land management and reclamation.

Sec. 4. 10 MRSA § 2204, as last amended by PL 1977, c. 300, § 1, is repealed.

Sec. 5. 10 MRSA § 2204-A is enacted to read:

§ 2204-A. Powers of the commissioners

The commissioners shall have and exercise the following powers:

1. **General supervision.** To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder; and

2. **Research.** To conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to reclamation of lands and waters affected by mining.

Sec. 6. 10 MRSA §§ 2205 to 2210, as amended, are further amended to read:

§ 2205. Approval of mining plan required; contents of mining plan; fee; bond

1. **Approval of mining plan.** No operator shall engage in mining without first having obtained from the ~~board~~ **commissioners** approval of his mining plan designating the area of land to be affected by the operation. An operator shall not be required to provide, in a mining plan, for the reclamation of land affected by mining operations prior to October 1, 1969, but shall be required to provide for the reclamation of land affected by a mining operation subsequent to October 1, 1969.

2. **Mining plan.** An operator shall file a mining plan in such form as shall be determined by the ~~board~~ **commissioners** containing such information as the ~~board~~ **commissioners** shall require as set forth in ~~its~~ **their** rules and regulations. Except however, no mining plan with respect to a surface quarry in bedrock shall be required to provide for reclamation of said quarry, but the ~~board~~ **commissioners** may require appropriate safety measures to be carried out and may require revegetation to screen such quarries from the public view.

3. **Plans.** In addition to the information required in subsections 1 and 2, each mining plan shall be accompanied by plans or proposals showing the physical characteristics of the mining operation, an approximate time schedule and a reclamation plan for the affected area in such detail as the ~~board~~ **commissioners** may by rule and regulation require. Said mining plan shall meet all requirements of this chapter and rules and regulations adopted pursuant thereto.

4. **Fee; bond.** The operator shall file with the ~~board~~ **commissioners** a bond payable to the State of Maine with sureties satisfactory to the ~~board~~ **commissioners** or such other security as the ~~board~~ **commissioners** may determine will adequately secure compliance with this chapter, in an amount ~~to be determined by the director of~~ not less than \$100 nor more than \$1,500 for each acre or fraction thereof of the affected area, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the ~~board~~ **commissioners**. In determining the amount of the bond or the security within the limits, the ~~commissioner~~ **commissioners** shall take into consideration the character and nature of the overburden, the future suitable use of the land

involved and the cost of grading and reclamation to be required. All proceeds of forfeited bonds or other security shall be expended by the ~~board~~ **commissioners** for the reclamation of the area for which the bond was posted, and any remainder shall be returned to the operator.

5. Regulations. The ~~board~~ **commissioners** shall issue regulations applicable to the filing of mining plans and of operator's bonds or other security, for the filling of large, permanent and unsightly test mining pits, exploration pits, exploration shafts and trenching. No operator's bond or mining plan shall be required for exploration related thereto.

6. Effective date. Notwithstanding subsection 1, no operator shall be required to file a mining plan or operator's bond until the ~~board~~ **commissioners** shall have issued the regulations, required by this section, applicable to such plans and bond.

The ~~board~~ **commissioners** may issue rules and regulations to encourage the hobby collecting of minerals of rock-hounding, so called.

§ 2206. Procedure

1. Approval of plans. The ~~board~~ **commissioners** shall examine all plans and supporting data submitted by the operator and shall within 20 working days after receipt of the mining plan, notify the applicant of his mining plan is approved. Failure of the ~~board~~ **commissioners** to notify the applicant of approval within 20 working days shall be deemed a rejection of the plan, and if the plan is rejected, the ~~board~~ **commissioners** shall within 5 days notify the applicant setting forth the reasons for the rejection. The ~~board~~ **commissioners** may propose modifications or may approve the mining plan in part only. Should the applicant disagree with the approval or rejection, he may by written notice, request a hearing before the ~~board~~ **commissioners**, which hearing shall be held within 20 days of the receipt of the written notice. Following the hearing, the ~~commissioner~~ **commissioners** shall notify the applicant of ~~its~~ **their** decision by registered mail within the required 20 days of hearing. Any person aggrieved by the decision of the ~~board~~ **commissioners** may appeal as provided in section 2214.

2. Amended mining plan. The applicant may file an amended mining plan, which shall be approved or rejected by the ~~board~~ **commissioners** as in the case of an original mining plan. No additional fee or bond or other security shall be required, unless warranted by a material change in the mining plan.

3. Reports. The ~~board~~ **commissioners** may require reports in such form and in such detail as shall be determined by the ~~board~~ **commissioners** to show the compliance with the mining plan.

4. Revocation and suspension. The ~~Administrative Court~~ **commissioners** may, ~~upon complaint of the board and~~ after notice and hearing, suspend or revoke approval of a mining plan for noncompliance by the operator with the terms thereof or for violation by the operator of regulations in force when the plan was approved.

5. **Procedure for increase or decrease of acreage affected by mining plan.** An operator may, at any time, apply to the **board commissioners** for an amendment of his mining plan to increase or reduce the acreage affected by it. The operator shall file an amended plan in such form as shall be determined by the **board commissioners** and shall pay a fee and post a bond or other security for any additional area affected as in the case of an original mining plan. If the **board commissioners** approve a reduction in the acreage covered by the original or amended mining plan, ~~it~~ **they** shall release the bond or other security for each acre reduced.

6. **Time limits.** As determined by rules and regulations of the **board commissioners**, time limits shall be established requiring reclamation projects to be kept current with the time schedule provided in the mining plan.

7. **Bond released.** When reclamation of a portion of the area of land affected has been completed and approved by the **board commissioners**, the **board commissioners** shall release the bond or other security which was filed for that portion of such operation. The remaining amount of the bond shall not be released until such time as the reclamation is done according to law and approved by the **board commissioners**.

§ 2207. Time for commencement and completion of reclamation; deferred planting

It shall be the duty of an operator to commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of the mining of that area in accordance with plans previously approved by the **board commissioners**. If it appears that planting to provide vegetative cover of an affected area may not be successful, the **board commissioners** may authorize the operator to defer such planting until the soil has become suitable for such purposes and a yearly report shall be filed with the **board commissioners** indicating the soil conditions until a successful planting or seeding has been completed.

§ 2208. Partial release of bond when planting deferred; payment in lieu of forfeiture

If the **board commissioners** authorizes an operator to defer planting to provide vegetative cover for an area of land and if the operator has carried out on that area of land the method of operation, and the reclamation approved by the **board commissioners** other than the planting, the **board commissioners** shall issue to the operator and to his surety a release of his surety bond or other securities held on deposit for each acre of land for which such reclamation has been carried out, less revegetation costs as determined by the **board commissioners**. This amount of the bond or other securities for each acre of land affected shall remain in the possession of the **board commissioners** until a satisfactory planting plan has been carried out, or until it has been forfeited by the operator. If the remainder is forfeited, it shall be expended by the **board commissioners** in a planting program

for the area of land for which it has been posted. If the operator does not meet the planting requirements but does not want his bond forfeited, he may pay to the ~~board~~ **commissioners** a sufficient sum to cover the remaining reclamation costs as determined by the ~~board~~ **commissioners** and the bond or other security filed by him as a surety may then be released by the ~~board~~ **commissioners**.

§ 2209. Report on expiration of mining plan, contents

Within 60 days after the date of completion of reclamation provided in the mining plan, the operator shall file with the ~~board~~ **commissioners** a final report containing such information as shall be determined by the ~~board~~ **commissioners**. Upon the filing of the final report and upon determination that this chapter has been complied with, the ~~board~~ **commissioners** shall release the bond.

§ 2210. Additional powers

The ~~board~~ **commissioners** may acquire in the name of the **State county** land by gift or purchase which has been affected by mining operation for the purpose of carrying out reclamation work. Upon completion of reclamation, the land may be sold at public auction, conveyed to the municipality or may remain the property of the **State county**. The ~~board~~ **commissioners** may accept funds from private or other sources, to be used for reclamation purposes, whether in conjunction with appropriated funds of the ~~State of Maine county~~ or otherwise.

1. Cooperation. The ~~board~~ **commissioners** shall cooperate with federal, state and local government, with natural resource and conservation organization, and with any public or private entities having interests in any subject within the purview of this chapter.

The ~~board is~~ **commissioners are** designated the public agency of the ~~State of Maine county~~ for the purpose of cooperating with appropriate departments and agencies of the Federal Government concerning reclamation of lands in connection with development and mining of minerals in the State, and for the purpose of cooperating and consulting with federal agencies in carrying out this chapter. For these purposes the ~~board~~ **commissioners** may accept federal funds which may be made available pursuant to federal law, and may accept such technical and financial assistance from the Federal Government as the ~~board~~ **commissioners deem** advisable and proper for purposes of this chapter.

The ~~board is~~ **commissioners are** further designated the public agency of the ~~State of Maine county~~ for the purpose of meeting requirements of the Federal Government with respect to the administration of such federal funds, not inconsistent with this chapter.

All fees collected by and other funds received by the ~~board~~ **commissioners** pursuant to this chapter shall be placed in a reclamation fund to carry out the purposes of this chapter, which fund shall not lapse.

Sec. 7. 30 MRSA c. 13 is enacted to read:

CHAPTER 13
ENVIRONMENTAL PROTECTION
SUBCHAPTER I
GENERAL PROVISIONS

§ 1701. County commissioners to protect and improve quality of natural environment

The county commissioners, hereinafter referred to as the “commissioners” shall protect and improve the quality of our natural environment and the resources which constitute it and shall enhance the public’s opportunity to enjoy the environment by directing growth and development which will preserve for all time an ecologically sound and aesthetically pleasing environment.

§ 1702. Definitions

As used in this chapter, unless the context otherwise indicates the following terms shall have the following meanings.

1. **Certificate.** “Certificate” shall mean a certificate of competency issued by the commissioner stating that the applicant has met the requirements for the specified operator classification.
2. **Commissioners.** “Commissioners” shall mean the county commissioners of the respective counties.
3. **Multiple unit housing.** “Multiple unit housing” shall mean a structure or structures located on a single lot, which structures are designed or used to house 2 or more families.
4. **Operator.** “Operator” shall mean the person who has direct responsibility for the operation of any wastewater treatment plant serving a public purpose. The person who shall be certified shall be the person who has management responsibility over the plant. Shift operators or other employees under the supervision of the manager need not be certified.
5. **Other land use activity.** “Other land use activity” includes any commercial industrial uses or combination of such uses.
6. **Person.** “Person” shall mean any individual, corporation, firm, partnership, municipality, quasi-municipal corporation, state or federal agency or any other legal entity.
7. **Single family residential unit.** “Single family residential unit” shall mean any structure of any kind, including mobile homes, used or designed to house a single family, and shall include those structures used permanently and seasonally.
8. **Subsurface waste disposal.** “Subsurface waste disposal” shall mean any system for disposing of wastes or waste waters on or beneath the surface of the earth including, but not limited to, holding ponds, surface spraying, septic tanks,

drainage fields and wells, but shall not include any discharge or the waste treatment system related thereto licensed under section 1752, or any discharge into a municipal or quasi-municipal sewer system.

9. Waste. "Waste" shall mean any liquefied sewage, garbage, sewage sludge, chemical, biological or radiological materials, human body wastes or any other refuse or effluent in a liquid form generated from domestic, commercial or individual activities, except any wastes containing insufficient liquid to be free flowing and wastes generated from agricultural activities or animal husbandry.

10. Wastewater treatment plant. "Wastewater treatment plant" shall mean the facility or group of units provided for the treatment of wastewater, either or both sewage and industrial wastes, and for the reduction and handling of sewage removed from such wastes.

§ 1703. County commissioners; powers and duties

The commissioners shall have the following powers and duties:

1. Hire employees. They may hire employees to fulfill the duties of this chapter.

2. Grant licenses, permits, etc. They may grant licenses and permits, review pollution abatement plans, initiate enforcement actions pursuant to law, negotiate and enter into agreements with federal, state, county and municipal agencies and exercise other duties to accomplish the purposes of this chapter.

§ 1704. Regulations

1. Regulations. The commissioners may, after public hearing, adopt, amend and repeal reasonable rules and regulations necessary for the proper administration, enforcement, implementation and interpretation of any provision of law that they are charged with the duty of administering. Rules duly promulgated shall have the full force and effect of law.

2. Effective date. Regulations adopted by the commissioners shall become effective upon filing with the County Records Board, unless a later date is required by statute or specified in the rule.

3. Petitions. Any interested person may petition the commissioners requesting the adoption, amendment or repeal of any rule or regulation. Within 90 days of receipt of a petition, the commissioners shall either notify the petitioner in writing of its denial, stating the reasons therefor, or initiate appropriate rulemaking proceedings.

Any petition requesting the adoption, amendment or repeal of any rule or regulation filed pursuant to this subsection shall contain a statement of the reasons and facts in support of such requests.

4. Emergency regulations. If the commissioners find that immediate adoption, amendment or repeal of a regulation by procedures other than those set

forth in section 1706 is necessary to avoid an immediate threat to public health, safety or general welfare, it may modify those procedures to the minimum extent necessary to enable the adoption, amendment or repeal or regulations necessary to mitigate or alleviate the threat found. Procedures requiring the approval of the Attorney General as to form and legality or filing with the County Records Board may not be thus waived. Any emergency, regulation shall include the commissioner's findings with respect to the existence of an emergency, and such findings shall be subject to judicial review. Any emergency regulation shall be effective only for 90 days or any lesser period of time specified in the emergency regulation.

The commissioner shall give public notice of the adoption of the emergency regulation in one or more daily newspapers of general circulation in the affected area at least once within 4 days after their adoption. The notice shall include the time and location of a public hearing on the emergency regulations which shall be held no later than 7 days following the adoption of the emergency regulations.

§ 1705. Processing of applications

1. **Time limit processing application.** Whenever the commissioners receive a properly completed application for any license, permit, approval or certificate under any of the statutes which they administer, they shall make a final decision as expeditiously as possible, but in no case shall such final decision be later than 180 days after acceptance of the application.

2. **Exceptions.** The commissioners may waive the 180-day requirement of subsection 1:

A. At the request of the applicant; or

B. After consultation with the applicant, if 2/3 of the commissioners eligible to vote do so vote.

3. **Notification to applicant.** The commissioners shall, within 10 working days of receipt of an application, notify applicants of the official date on which the application was accepted or return the application to the applicant specifying in writing the reasons for returning the application.

The commissioners shall give reasonable notice to the applicant of the date they will act on the application and that a draft order relating to the application is available in the county court. Draft orders shall be available to any persons at the county court prior to the date the commissioners act on the application.

All correspondence notifying the applicant of the commissioners decision shall be by registered mail, return receipt requested.

4. **Reconsideration.** Within 30 days of the applicant's receipt of the commissioners' decision, any person aggrieved by the decision may petition the commissioners in writing, for correction of any part of the decision which the petitioner believes to be in error and not intended by the commissioners or for an

opportunity to present new or additional evidence to secure reconsideration of any part of the decision or challenge any facts of which official notice was taken. Such petition shall set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of the relief requested and the nature of any new or additional evidence to be offered.

The commissioners shall, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or part, order a public hearing or dismiss the petition. Any public hearing held under this section shall be held within 45 days of the commissioner's decision to hold such hearing and the commissioner shall provide reasonable notice to interested persons. The time for appeal of a final decision of the commissioners on any application shall be computed from the date of receipt by petitioner of the commissioner's decision pursuant to this subsection.

The running of the time for appeal, as provided in section 1707, is terminated by a timely petition for reconsideration filed pursuant to this subsection, and the full time for appeal, as provided in section 1707, commences to run and is to be computed from the date upon which notice is received of any administrative action denying the petition or any order or decision of the commissioners as a result of the petition; provided that the filing of a petition for reconsideration shall not be deemed an administrative or judicial prerequisite for the filing of appeal pursuant to section 1707.

5. Fees. The commissioners may establish reasonable fees for the reproduction of materials in its custody, including all or part of any application submitted to them. All such fees may be retained by the county to reimburse expenses incurred in reproducing such materials.

§ 1706. Hearings

1. Hearings. Except as provided in section 1708, whenever the commissioners are required or empowered to conduct a hearing pursuant to any provision of law, such hearing may be held and conducted by any one or more of the commissioners or any employee or representative of the county so authorized by the commissioners.

2. Notification. Prior to any hearing conducted by them, the commissioners shall:

A. Publish notice of the hearing twice in a newspaper of general circulation in the area affected. The date of the first publication shall be no more than 21 days nor less than 14 days prior to the date of the hearing and the 2nd publication shall be at least 7, but no more than 10 days, prior to the date of the hearing. In addition, the notice may be published in any other trade, industry, professional or interest group publication which the commissioners deem necessary to reach persons affected;

B. Provide notice of the hearing to any applicant by registered mail at least 10 days before the date of the hearing; and

C. Provide notice of the hearing at least 10 days before the date of the hearing by regular mail to persons who have filed with the commissioners within the calendar year a written request to receive notification of hearings.

3. Contents of notice. The public notice of hearing to applicant and others shall contain:

A. A reference to the statutory authority for conduct of the hearing;

B. A statement of the purpose of the hearing, including, for hearings involving the adoption, repeal or modification of a regulation, a concise description of the regulation proposed;

C. A statement of the time, date and place of the hearing and the manner in which views may be submitted for consideration by the commissioners; and

D. A statement of the place and time where relevant material may be examined, and the name, address and telephone number of the person from whom further information may be obtained.

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

5. Record. A full and complete record shall be kept of all hearings.

6. Written decisions. Every decision of the commissioners, other than those concerning the adoption, repeal or modification of regulations, shall be in writing and shall include findings of fact and conclusions of law. A copy of the decision shall be delivered personally or by registered mail, return receipt requested, to each party of record to the hearing as recognized by the commissioners' hearing regulations. Written notice of the party's rights to review or appeal of the decision, by the commissioners or by the court, as the case may be, and of the action required and the time within which the action must be taken in order to exercise the right of review or appeal, shall be given to each such party with the decision.

§ 1707. Judicial appeals

1. Appeals to Superior Court. Except as provided in section 1708, subsection 2, any person aggrieved by any order or decision of the commissioners resulting from a hearing before the commissioners of which a transcript is available may appeal therefrom to the Superior Court by filing a notice of appeal with the court stating the points of appeal within 30 days after receipt of such order or decision by the person or other legal entity to whom it is directed. The appellant shall send a copy of the notice of appeal to the applicant or licensee. The appeal shall be heard by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcript of the hearing, the exhibits

thereto and the decision of the commissioners. The court's review shall be limited to questions of law and to whether the commissioners acted regularly and within the scope of their authority and the commissioners' decision shall be final so long as supported by substantial evidence. The court may affirm or reverse the commissioners' decision or remand the matter to the commissioners for further proceedings.

2. Other appeals. Appeals from all other orders or decisions of the commissioners, unless otherwise specified by statute, shall be taken pursuant to the Maine Rules of Civil Procedure, Rule 80B.

3. Limitation. No riparian or littoral owner on any body of water shall have a cause of action either at law or in equity against any licensee licensed under section 1753 to discharge into the same body of water nor be deemed an aggrieved person under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensee nor be deemed an aggrieved person under this section based on the fact that such licensed discharge will prevent the owner from having the reasonable use and enjoyment of such body of water, provided that such licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of such body of water, nor cause actual damages to such owner.

§ 1708. Violations

1. General procedures. Whenever it appears to the commissioners after investigation, that there is a violation of any provision of the laws or regulations which it administers, or of the terms or conditions of any of its orders, which does not create a substantial or immediate danger to public health or safety, the commissioners may notify the Attorney General or schedule a hearing thereon. If a hearing is scheduled, the commissioners shall give at least 30 days' written notice to the alleged violator of the date, time and place of such hearing. The notice shall specify the act done or omitted to be done which is claimed to be in violation of law.

At such hearing, the alleged violator may appear in person, or by attorney, and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by him to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the commissioners shall, as soon thereafter as practicable, make findings of fact based on the record and, if they find that a violation exists, they shall issue an order aimed at ending the violation.

2. Emergency procedures. Whenever it appears to the commissioners, after investigation, that there is a violation of any provision of the laws or regulations which they administer or of the terms or conditions of any of their orders, which is

creating or is likely to create a substantial and immediate danger to public health and safety, they may order the person or persons causing or contributing to such a hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioners' findings and orders issued under this emergency procedure shall be made by the sheriff or a deputy sheriff within the county where the person, to whom the order is directed, operates or resides. In the event such persons are so numerous that the specified method of service is a practical impossibility or the commissioners are unable to identify the person or persons causing or contributing to such a hazard, the commissioners shall make their order known through prominent publication in news media serving the affected area.

The person to whom such order is directed shall comply therewith immediately. Such order may not be appealed to the Superior Court in the manner provided in section 1707, but such person may apply to the commissioners for a hearing on such order, which hearing shall be held by the commissioners within 48 hours after receipt of application therefor. Within 7 days after such hearing, the commissioners shall make findings of fact and continue, revoke or modify the order. The decision of the commissioners may be appealed to the Superior Court in the manner provided by section 1707.

3. Revocation, modification or suspension of license. After written notice to the licensee of at least 14 days and opportunity for hearing, the commissioners may revoke, suspend or modify, in whole or in part, any license or issue an order prescribing necessary corrective action, whenever the commissioners find:

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresentation or failure to disclose fully all relevant facts;
- C. There has been a change in any condition or circumstances that requires revocation, suspension or a temporary or permanent modification of the terms of the license; or
- D. The licensee has violated any provision of the laws administered by the commissioners.

For the purpose of this subsection, the term "license" and "licensee" shall include respectively any license, permit, approval or certification issued by the commissioners and the holder thereof.

4. Oaths. Any member, authorized employee or representative of the county presiding at any hearing under this section may administer oaths and affirmations to any witness appearing at such hearing.

5. Subpoenas. The commissioners may issue subpoenas to compel the production of books, records and other data related to the matters in issue at any such hearing. If any person served with a subpoena demonstrates to the satisfaction of the commissioners that the production of such information would,

if made public, divulge methods or processes which are entitled to protection as trade secrets, such information shall be disclosed only at a nonpublic portion of such hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the commissioners may apply to any Justice of the Superior Court for an order compelling such person to comply with the subpoena. The Superior Court may issue such an order and may punish failure to obey the same as civil contempt.

6. Enforcement orders. All orders of the commissioners shall be enforced by the Attorney General. If any order of the commissioners is not complied with within the time period specified, the commissioners shall immediately notify the Attorney General of this fact.

§ 1709. Judicial enforcement

1. General. In the event of a violation of any provision of the laws administered by the commissioners of any order, regulation license, permit, approval or decision of the county commissioners or decree of the court, as the case may be, the Attorney General may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the commissioners.

2. Restoration. The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the commissioners or of any order, rule, regulation, license, permit, approval or decision of the commissioners or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible.

3. Injunction proceedings. If the commissioners find that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger of the health, safety or general welfare of any person, persons or property they shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 1708.

§ 1710. Penalties

1. Criminal penalties. Notwithstanding Title 17-A, section 4-A, any person who violates any provision of the laws administered by the commissioners, or the terms or conditions of any order, regulation, license, permit, approval or decision of the county commissioners shall be subject to a fine, payable to the State, of not more than \$25,000 for each day of such violation.

2. Civil penalties. Any person who violates any provision of the laws administered by the commissioners under this chapter, or any order, regulation, license, permit, approval or decision of the county commissioners shall be subject to a civil penalty, payable to the State, of not more than \$10,000 for each day of such violation.

3. **Falsification and tampering.** Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the commissioners, or by any rule, regulation, license, permit, approval or decision of the commissioners, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any rule, regulation, license, permit, approval or decision of the commissioners shall, upon conviction, be subject to a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or both.

§ 1711. **Authority to accept federal funds**

The commissioners are designated the public agency of the State for the purpose of accepting federal funds in relation to water pollution control, water resources and air pollution studies and control. The commissioners are authorized, subject to the approval of the Governor, to accept federal funds available for water pollution control, water resources and air pollution studies and control and meet such requirements with respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving federal funds. The Treasurer of State shall be the appropriate fiscal officer of the State to receive federal grants on account of water pollution control, water resources and air pollution studies and control, and the State Controller shall authorize expenditures therefrom as approved by the board.

§ 1712. **Assessment for environmental protection**

The commissioners are authorized to enter into contracts or such terms as they deem fit with one or more persons, or to take such other steps as they deem advisable, to protect the environment. The commissioners shall annually assess upon the townships in their respective counties an amount sufficient to provide for such services and protection. This assessment shall be certified and transmitted by the county treasurer to the State Tax Assessor not later than April 1st each year. The State Tax Assessor shall determine the amount of tax due, in accordance with Title 36, section 1142, and shall include such amount in the statements referred to in Title 36, section 1145. Collection of such tax shall be enforced in the same manner as provided for the enforcement of collection of county taxes.

SUBCHAPTER II
PROTECTION OF AIR

§ 1726. **Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Air contaminant.** "Air contaminant" includes, but is not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.

2. **Air contaminant source.** "Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores; heating and power plants and stations; building and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings; garages and vending and service locations and stations, railroad locomotives, ships, boats and other water borne craft; portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles; and all machinery, equipment, stack, conduit, flue, duct, vent, chimney or other apparatus leading out of any of the foregoing.

3. **Air pollution.** "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interfere with the enjoyment of life and property throughout the State or throughout such areas of the State as shall be affected thereby; excluding, all air conditions subject to the requirements of employer-employee contracts, and state or local labor laws and industrial codes insofar as these excluded air conditions are confined to and exist solely within the property boundaries of the person giving rise to such air conditions.

4. **Air pollution control apparatus.** "Air pollution control apparatus" means and includes any means, method, process or equipment which removes, reduces or renders less noxious the emission of air contaminants into ambient air.

5. **Ambient air.** "Ambient air" means all air outside of buildings, stacks or exterior ducts.

6. **Best practical treatment.** "Best practical treatment" means that method which controls or reduces emissions or air contaminants to the lowest possible level considering.

A. The then existing state of technology;

B. The effectiveness of available alternatives for reducing emissions from the source being considered; and

C. The economic feasibility for the type of establishment involved.

7. **Emission.** "Emission" means a release of air contaminants into ambient air.

8. **Emission source.** "Emission source" means any and all sources of emissions of air contaminants, whether privately or publicly owned or operated.

9. **Open burning.** "Open burning" means the burning of any type of combustible material in the open ambient air without being completely enclosed and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct or other device or structure.

10. Waste. "Waste" means refuse, garbage, rubbish, trash or unwanted or discarded materials of any kind and source.

§ 1727. Registration; penalties

The commissioners may require the registration with them of such persons or air contamination sources of the type they may by regulation prescribe engaged in activities which emit air contaminants, and may also require persons operating stationary air contamination sources to install, maintain and use such reasonable emission monitoring devices as the commissioners by regulation may prescribe.

The commissioners may also require such persons to make periodic reports to them containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of air contaminants, location and type of air pollution control apparatus and such other information as the county commissioners may by regulation prescribe.

Failure to register, to install, maintain and use emission monitoring devices or to file reports shall render the failing party liable to the penalties prescribed in Title 38, sections 348 and 349 for violation of commissioners' orders.

§ 1728. Licensing

After ambient air quality standards and emission standards have been established within the region, the commissioners may by regulation provide that no person shall operate or maintain therein any air contamination source or emit any air contaminants therein without an emission license from the commissioners.

Application for such licenses shall be made in such form and contain such information relating to the proposed air contamination source and emission of air contaminants as the commissioners may by regulation prescribe. Within 30 days of receipt of a properly completed application, the commissioners shall either grant the license, deny the license or order a hearing thereon. Within 10 days after notice of the grant or denial of any application under this section, the applicant may request a hearing thereon. All hearings under this section shall be held in some municipality within the region where the proposed emission is to be located within 30 days of receipt of an application where the commissioners order a hearing thereon, or within 30 days of receipt by the commissioners of a request by the applicant for a hearing. At such hearing, the commissioners shall solicit and receive testimony concerning the nature of the proposed emissions; their effect on existing ambient air quality standards within the region; the availability and effectiveness of air pollution control apparatus designed to maintain the emission of which license is sought at the levels required by law; and the expense of purchasing and installing such apparatus. If after hearing the commissioners shall find that the proposed emission will be receiving the best practicable treatment, will not violate applicable emission standards, or can be controlled so as not to violate the same, and that such proposed emission, either alone or in conjunction with existing emissions, will not violate or can be controlled so as not

to violate applicable ambient air quality standards, it shall grant the license, imposing such appropriate and reasonable conditions thereon as may, in the commissioner's judgment, be necessary to secure compliance with such standards.

§ 1729. Open-burning variances

Any municipality maintaining or leasing an open-burning solid waste disposal site may apply to the commissioners for a variance to the open-burning requirements of Title 38, chapter 4. The application shall be accompanied by such information and data as the commissioners may require. The staff of the commissioners shall provide air quality technical assistance to municipal applicants for a variance under this section.

Whenever a municipality shows that compliance with the open-burning requirements of this section would produce undue hardship, the commissioners shall grant a variance, except that no variance shall be granted when the commissioners show that the emissions from the open burning endanger human health and safety.

No variance shall be granted under this section unless the municipality causes to be published a public notice of the intent to grant a variance in a newspaper circulated in the area at least 10 days prior to the meeting at which the commissioners are scheduled to act on the variance. The commissioners shall notify the municipality of their intent to grant a variance 20 days before the meeting scheduled to act on the variance.

The commissioners may conduct a public hearing on any variance application under this section if they determine that there is substantial objection to the granting of the variance. The commissioners, if they determine that they will deny the variance applied for, shall at the request of the municipality conduct a public hearing for the municipality which made application, before the denial becomes effective, to give the town the opportunity to show that the emissions from open burning do not endanger human health or safety and compliance with the open-burning requirements of this subsection would produce serious hardship and that a variance should be granted.

The commissioners, after granting a variance to a municipality under this section, if they determine that the municipal solid waste disposal facility does not violate air quality standards, shall recommend to the Board of Environmental Protection that they remove that facility from the United States Environmental Protection Agency approved State of Maine Air Quality Implementation Plan.

§ 1730 Variances

1. **Application for variance.** Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the commissioners for a variance from ambient air quality standards or emission standards promulgated under Title 38, chapter 4. The application shall be accompanied by such information and data as the commissioners may reasonably require. The commissioners may grant such variance if they find that:

A. The emissions occurring or proposed to occur do not endanger human health or safety; and

B. Compliance with the rules or regulations from which variance is sought would produce serious hardships.

No variance shall be granted except after a public hearing in the municipality where the applicant maintains the building or business in connection with which the variance is sought.

If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be good only until the necessary means for prevention, abatement or control become known and available and subject to the taking of such reasonable substitute or alternate measures as the commissioners may prescribe.

If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the commissioners find is requisite for the taking of the necessary measures.

If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in paragraphs A and B, it shall be only for such time as the commissioners consider reasonable.

Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the commissioners on account of the variance, no renewal thereof shall be granted, unless the following public hearing on the complaint on due notice, the commissioners find that renewal is justified. No renewal shall be granted except on application thereof.

Any person adversely affected by a variance or renewal granted by the commissioners may obtain judicial review thereof by a proceeding in the Superior Court. Judicial review of the denial of a variance or denial of renewal thereof may be had only on the ground that the denial was arbitrary or capricious.

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 1708, subsection 2, to any person or his property.

SUBCHAPTER III.

PROTECTION OF WATER

Article 1. General Provisions

§ 1751. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Coastal streams. "Coastal streams" means those waters of the State which drain directly or indirectly into tidal waters, except portions of streams subject to the rise and fall of the tide and those waters listed and classified in Title 38, sections 368 and 370.

2. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

3. Fresh surface waters. "Fresh surface waters" means all waters of the State other than tidal waters.

4. Municipality. "Municipality" means a city, town, plantation or unorganized township.

5. Person. "Person" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

6. Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic commercial or agricultural wastes of any kind.

7. Surface waste water disposal system. "Surface waste water disposal system" shall mean any system for disposal of waste waters on the surface of the earth, including, but not limited to, holding ponds, surface application and injection systems.

8. Tidal waters. "Tidal waters" means those portions of the Atlantic Ocean within the jurisdiction of the State and all other waters of the State subject to the rise and fall of the tide except those waters listed and classified in sections 368 and 369.

9. Transfer of ownership. "Transfer of ownership" means a sale, a lease, a sale of over 50% of the stock of a corporation to one legal entity or a merger or consolidation where the surviving corporation is other than the original licensee.

10. Waters of the State. "Waters of the State" means any and all surface and subsurface waters which are contained within, flow through or under or border upon this State or any portion thereof, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

§ 1752. Waste discharge licenses

1. License required. No person, shall directly or indirectly, discharge or cause to be discharged pollutant without first obtaining a license therefor from the commissioners.

2. License required for surface waste water disposal systems. No person shall install, operate or maintain a surface waste water disposal system without first obtaining a license therefor from the commissioners.

3. Exemption. No person shall be deemed to be in violation of subsection 1 for any discharge as it existed on Oct. 3, 1973, provided that application has been made for a license for such discharge on or before December 31, 1973. The exemption provided by this subsection shall expire upon final administrative disposition of such application or 180 days after the date of such application, whichever occurs first.

4. Exemptions; pesticide permits. The commissioners may by regulation exempt holders of a pesticide permit, issued by the Board of Pesticides Control, from the need to obtain a license under this section for the activity covered by the regulation, when it finds that the exempted activity would leave no significant adverse effect on the quality of the waters of the State.

5. Transfer of ownership. In the event that any person possessing a license issued by the commissioners shall transfer the ownership of the facility or structure which is the source of such licensed discharge, the license granted by the commissioners shall upon such transfer be extinguished and void and the new owner thereof shall be required to obtain a license in the manner required by this subchapter.

6. Unlicensed discharge. If after investigation the commissioners find any unlicensed discharge they may notify the Attorney General of the violation without recourse to the hearing procedures of section 1706. The Attorney General shall proceed immediately under section 1707.

7. Tidal waters and subtidal lands. In connection with a license under this subchapter, whenever issued, the commissioners may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of such license in, on, above or under tidal waters or subtidal lands of the State. Such permit may be issued upon such terms and conditions as the commissioners deem necessary to insure that such facilities create minimal interference with existing uses, including a requirement that the licensee provide satisfactory evidence of financial capacity, or in lieu thereof, a bond in such form and amount as the board may find necessary, to insure removal of such facilities. In the event that such facilities are no longer necessary in order for such licensee or successor thereof to comply with the terms of its license, the commissioners may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of such facilities from the tidal waters or subtidal lands. Such removal may be ordered if the board determines that maintenance of such facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of such removal will not create an undue economic burden on such licensee or successor.

§ 1753. Application for licenses

1. **Terms and conditions of licenses.** Licenses shall be issued by the commissioners for a term of not less than 3 years nor more than 5 years. With respect to licenses granted by the Water Improvement Commission or the Board of Environmental Protection which have been in effect and the rights of which have been exercised for more than 3 years, the commissioners may upon 60 days' notice to the licensee order the licensee to reapply for a new license under this subchapter.

2. **Inspection and records.** Authorized representatives of the commissioners 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 commissioners 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 that they deem necessary.

3. **Unlawful to violate license.** After the issuance of a license by the commissioners 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.

4. **Conduct of hearings.** The commissioners may establish reasonable fees for the reproduction of materials in its custody, including parts of an application submitted to the board and parts of the records of a hearing held by the commissioners under this section. All such fees collected by the commissioners may be retained by them to reimburse expenses incurred in reproducing such materials. Any records, reports or information obtained under this subchapter shall be available to the public, except that upon a showing satisfactory to the commissioners by any person that such records, reports or information, or particular part thereof, other than effluent data, to which the commissioners have access under this subchapter would, if made public, divulge methods or processes of such person which are entitled to protection as trade secrets. Such records, reports or information shall be confidential and not available for public inspection or examination. Such records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any such terms as the commissioners may prescribe in order to protect such confidential records, reports and information, provided that such disclosure is material and relevant to any issue under consideration by the commissioners.

§ 1754. Conditions of licenses

1. **Generally.** The commissioners shall issue a license for the discharge of any pollutants only if they find that:

A. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

B. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the commissioners expect to adopt in accordance with this subchapter;

C. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless upon an affirmative showing by the applicant the commissioners find that such lowering is a result of necessary economic and social development; and

D. The discharge will be subject to effluent limitations which require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents which are discharged into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of waste, including process methods, for a category or class of discharge sources which the commissioners determine are best calculated to protect and improve the quality of the receiving water. In determining best practicable treatment for each such category or class, the board shall consider the then existing state or technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives.

2. Federal law. At such time as the Administrator of the United States Environmental Protection Agency determines to cease issuing permits for discharges of pollutants to waters of this State pursuant to his authority under the Federal Water Pollution Control Act, Section 402, (c) (1), as amended, the commissioners shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after such determination shall contain such provision, including effluent limitations, which the board deems necessary to carry out the purposes of this subchapter and any such federal laws or regulations.

§ 1755. Publicly-owned treatment works

1. Definition. "Publicly-owned treatment works" means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

2. Pretreatment standards. The board may establish toxic effluent and pretreatment standards for the introduction into publicly-owned treatment works of pollutants which interfere with, pass through or otherwise are incompatible with such treatment works.

3. User charges. The board may impose as a condition in any license for the discharge of pollutants from publicly-owned treatment works appropriate

measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

§ 1756. Log driving and storage

1. Prohibitions. No person, firm, corporation or other legal entity shall place logs or pulpwood into the inland waters of this State for the purpose of driving the same to pulp mills, lumbermills or any other destination.

No person, firm, corporation or other legal entity shall place logs or pulpwood on the ice of any inland waters of this State.

No person, firm, corporation or other legal entity shall place logs or pulpwood into the inland waters of this State for the purpose of storage or curing the same, or for other purposes incidental to the processing of forest products, without a permit from the commissioners as described in subsection 2.

2. Storage; permit. Whoever proposes to use the inland waters of this State for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, shall apply to the commissioners for a permit for such use. Applications for such permits shall be in such form and require such information as the commissioners may determine.

Within 45 days of receipt of an application, the commissioner shall either grant the application or hold a public hearing thereon as provided.

If the commissioners are able to find, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct such use will impose undue economic hardship on the applicant, they shall grant the permit for a period not to exceed 3 years, with such terms and conditions as, in their judgment, may be necessary to protect such quality, standards and rights. In the event the commissioners deem it necessary to solicit further evidence regarding the proposed use, they shall schedule a public hearing on the application.

At such hearing the commissioners shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of such use. If after hearing the commissioners determine that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct such use will impose undue economic hardship on the applicant, they shall grant the permit for a period not to exceed 3 years, with such terms and conditions as in their judgment may be necessary to protect such quality, standards and rights.

Article 2**Certification of sewage treatment operators****§ 1761. Classification**

The commissioners shall classify all wastewater treatment plants actually used or intended for use by the public with due regard to the size, type, character of wastewater to be treated and other physical conditions affecting such treatment plants and shall specify the qualifications the operator in responsible charge must have to supervise successfully the operation of the facilities so as to protect the public health or prevent nuisance conditions or unlawful pollution.

§ 1762. Certification

The commissioners shall certify persons as to their competency to supervise successfully the operation of wastewater treatment plants. No certification shall be required of an operator who is a registered professional engineer.

§ 1763. Examination; criteria; standards

The commissioners shall hold at least one examination each year for the purpose of examining candidates for certification at a time and place designated by them. Additional meetings may be called by the commissioners as may be necessary to carry out this Article.

The commissioners shall establish the criteria and conditions for the classification of wastewater treatment plants or systems, using as a basis the standards established by the New England Water Pollution Control Association.

The commissioners shall establish by regulation the qualifications, conditions and licensing standards and procedures for the certification of individuals to act as operators.

§ 1764. Certificates

The commissioners shall issue certificates attesting to the competency of individuals to act as operators. The certificate shall indicate the classification level of the system or plants for the operation of which the individual is qualified to act as an operator.

Certificates shall continue in effect unless revoked by the commissioners.

The commissioners may revoke the certificate of an operator, following a hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable properly to perform his duties.

Operators whose certificates are invalidated under this section may be issued new certificates of a like classification provided appropriate proof of competency is presented to the board.

This Article shall not be construed to affect or prevent the practice of any other legally recognized profession.

§ 1765. Without examination; other states

The commissioners, upon application therefor, may issue a certificate, without examination, in a comparable classification, to any person who holds a certificate in any state, territory or possession of the United States or any country, providing the requirements for certification of operators under which the person's certificate was issued do not conflict with this Article and are of a standard not lower than that specified by regulations adopted under this chapter.

§ 1766. Without examination; other owners

Certificates may be issued without examination to the person or persons certified by the governing body or owner to have been in direct responsible charge of a wastewater treatment plant on October 1, 1969. A certificate so issued will be valid only for that particular classification level or treatment plant or system.

§ 1767. Application

This Article shall apply only to conventional wastewater treatment plants which are separate and apart from other facilities.

§ 1768. Rules and regulations

The commissioners shall make rules and regulations which include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 1761 and provisions establishing requirements for certification and procedures for examination of candidates.

§ 1769. Penalty

It shall be unlawful for any person, firm or corporation, both municipal and private, operating a wastewater treatment plant to operate same, unless the competency of the operator only is certified by the commissioners under this Article. It shall be unlawful for any person to perform the duties of an operator, as defined, without being duly certified under this Article. The commissioners may further grant a waiver for a period not exceeding one year for the operation of a wastewater treatment plant serving not more than 500 services in the event that the certification requirements cannot be met.

§ 1770. Violation of law or rules and regulations

Any person, firm or corporation, both municipal and private, violating any provision of this Article or the rules and regulations adopted thereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules and regulations adopted thereunder shall constitute a separate offense.

Article 3
Great Ponds

§ 1781. Prohibitions

No person shall perform or cause to be performed any of the following activities without first obtaining a permit from the commissioners: Dredging or removing materials from below the normal high-water line in a great pond; constructing or repairing any permanent structure below the normal high-water line in a great pond; or depositing any dredged spoil or fill below the normal high-water line in a great pond or on the land adjacent thereto in such a manner that the material may fall or be washed into the great pond, or bulldozing or scraping on land adjacent to a great pond in such a manner that the material or soil may fall or be washed into a great pond. Any action taken in violation of the terms or conditions of a permit issued by the commissioners is also prohibited.

§ 1782. Definitions

As used in this Article, unless the context otherwise indicates, the following words shall have the following meanings.

1. Great pond. "Great pond" shall include any inland body of water which in its natural state has a surface area in excess of 10 acres, and any body of water artificially formed or increased which has a surface area in excess of 30 acres, the shore of which is owned by 2 or more persons.

2. Normal high water line. "Normal high water line" shall mean that line which is apparent from visible markings, changes in the character or soils due to prolonged action of the water or from changes in vegetation from predominantly aquatic to predominantly terrestrial. All land below the normal high-water line shall be considered the bottom of the great pond for the purposes of this Article.

3. Permanent structure. "Permanent structure" shall mean any structure, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings, which is fixed in the water for a period exceeding 7 months each year.

§ 1783. Permit; standards

1. Criteria. The commissioners shall grant a permit upon proper application and upon such terms as it deems necessary to fulfill the purposes of this subchapter when it finds that a proposed activity will not unreasonably:

- A. Interfere with existing aesthetic, recreational, navigational or scenic uses;
- B. Harm the natural environs of the great pond or of any stream flowing into or out of the great pond;
- C. Cause soil erosion;
- D. Harm any aquatic or wildlife habitat;

E. Interfere with the natural flow of any waters; or

F. Lower the quality of the water.

2. Notice. The commissioners shall issue no permit without first causing the municipality in which the proposed alteration is to occur to be notified of the application and without considering any comments filed within a reasonable period by the municipality.

3. Winter conditions. When winter conditions prevent the board from evaluating a permit application, the commissioners may, upon notifying the applicant, defer action on the application for a reasonable period.

§ 1784. Exemptions and reduced procedures

The commissioners shall promulgate regulations designed to reduce procedural requirements and establish specific standards for those alterations, the proper execution of which are deemed to have no significant impact upon the great ponds and which are not inconsistent with the purposes of this chapter. Such alterations shall include, but not be limited to: The placement of water lines to serve a single family house; the movement of rocks or vegetation by hand over a shorefront length not to exceed 10 feet; the placement of sand above the high water line, when properly stabilized; the construction of rock riprap erosion control devices above the high water line; the installation of anchoring devices for mooring small boats or holding floating structures; and the installation of cables for utilities such as telephone and power. The commissioners shall promulgate such regulations within 90 days of the effective date of this chapter and may thereafter amend them as they deem necessary.

Maintenance and minor repair causing no additional intrusion of an existing structure into the great pond is exempt from this Article.

§ 1785. Penalties

Each day of violation shall be considered a separate offense. A finding that any such violation has occurred shall be prima facie evidence that the activity was performed or caused to be performed by the owner of the property upon which, or immediately adjacent to which, the violation is found to have occurred.

§ 1786. Enforcement

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in Title 12, section 2003, shall have the authority to enforce this subchapter.

Article 4

Coastal Wetlands

§ 1791. Prohibitions

No individual person, firm, corporation, municipality, state agency or other legal entity shall dredge or cause to be dredged, drain or cause to be drained, fill

or cause to be filled or erect or cause to be erected a causeway, bridge, marina, wharf, dock or other permanent structure in, on or over any coastal wetland without first obtaining a permit therefor from the commissioners or a municipality acting under the provisions of sections 1793 and 1794; nor shall any action be taken in violation of the conditions of such permit, once obtained.

§ 1792. Definition

For the purposes of this Article, coastal wetland is defined as all tidal and subtidal lands including all areas below any identifiable debris line left by tidal action, all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water habitat and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

§ 1793. Permit granting authority

1. Delegation of authority. All permits shall be issued by the commissioners, except that a municipality may apply to the commissioners on forms provided by the county, for authority to issue permits. The commissioners shall grant such authority if they find that the municipality has:

- A. Established a planning board;
- B. Adopted a zoning ordinance approved by the board and the Land Use Regulation Commission, pursuant to Title 12, chapter 424;
- C. Made provision by ordinance or regulation for prompt notice to the county commissioners and the public upon receipt of application and written notification to the applicant and the commissioners of the issuance of or denial of a permit stating the reasons therefor; and
- D. The application form shall be the same as that provided by the commissioners.

2. Failure to meet requirements. In the event that the commissioners find that a municipality has failed to satisfy one or more of the criteria listed in this section, it shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

3. Revocation of authority. If at any time the commissioners determine that a municipality may be failing to exercise its permit-granting authority in accordance with their approved procedures or the purposes of this Article as embodied in the standards set forth in section 1794, they shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality to solicit public or official comment thereon. Following such hearing, if they find such deficiencies, they may revoke the municipalities permit-granting authority. The municipality may reapply for authority at any time.

§ 1794. Permits; standards

If the applicant for the permit demonstrates to the satisfaction of the commissioners or municipality, as appropriate, that the proposed activity will not unreasonably interfere with the natural flow of any waters; nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries; nor lower the quality of any waters, the commissioners or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the foregoing standards.

Within 30 days after receipt of a completed application for a permit, the commissioners or municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order for which hearing adequate public notice shall be given. Within 30 days after the adjournment of such hearing, the commissioners or municipality shall either issue the permit or deny the permit setting forth the reasons therefor. In the event that a permit applied for is denied either by the municipality or the commissioners, the applicant may request a hearing before either the commissioners or municipality with reasonable public notice given.

The commissioners shall issue no permit without notifying the municipality in which the proposed alteration is to occur and considering any comments filed within a reasonable period by the municipality.

No permit issued by a municipality shall become effective until 30 days subsequent to its issuance, but if approved by the commissioners in less than 30 days then the effective date shall be the date of approval. A copy of the application for the permit issued by the municipality shall be sent to the commissioners immediately upon its issuance by registered mail. The commissioners shall review such permit and either approve, deny or modify it as they deem necessary. Failure of the commissioners to act within 30 days of the receipt of the permit by the municipality shall constitute their approval and the permit shall be effective as issued.

When winter conditions prevent the commissioners or municipality from evaluating a permit application, the commissioners or municipality, upon notifying the applicant of such fact, may defer action on the application for a reasonable period. The applicant shall not, during the period of deferral, fill or cause to be filled, dredge or cause to be dredged, drain or cause to be drained or otherwise alter such coastal wetland.

§ 1795. Penalties

A violation is defined as any filling, dredging, draining, depositing, altering, erecting or removal of materials which takes place in coastal wetland contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this subchapter or without knowledge of this subchapter undertaken. Any such

filling, dredging, draining, depositing, altering or removal of materials shall be prima facie evidence that it was done or caused to be done by the owner of such coastal wetlands.

§ 1796. Enforcement

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in Title 12, section 2003 shall enforce this subchapter.

§ 1797. Injunction; restoration

In the event of the violation of this subchapter, the Attorney General may institute proceedings to enjoin further violations and to compel restoration of the affected area to its condition prior to the occurrence of the violation.

§ 1798. Exemptions

The commissioners may, by rule or regulation, exempt from this Article certain activities including, but not limited to, repairs and maintenance of existing structures or waive such procedural requirements as it deems not inconsistent with the purposes of this Article. Nothing in this Article shall prohibit the minor repair of existing permanent structures which would require less than a total of one cubic yard of material to be filled, deposited, dredged, moved or removed in any coastal wetland, normal maintenance or repair of presently existing ways, roads or railroad beds or maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255, abutting or crossing the coastal wetlands, provided no watercourse is substantially altered.

SUBCHAPTER IV. REGULATION OF LAND USE

Article 1

Site location of development

§ 1801. Findings and purpose

The Legislature finds that the economic and social well-being of the citizens of the State depend upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in county authority to regulate the location of developments which may substantially affect environment.

The purpose of this subchapter is to provide a flexible and practical means by which the counties, acting through the commissioners in consultation with appropriate state agencies, may exercise the police power of the counties to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

§ 1802. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Development which may substantially affect the environment. "Development which may substantially affect the environment," in this Article called "development," means any state, municipal, quasi-municipal, educational, charitable, commercial or industrial development, including subdivisions, which occupies a land or water area in excess of 20 acres or which contemplates drilling for or excavating natural resources on land or under water where the area affected is in excess of 60,000 square feet or which is a structure; but excluding state highways, state aid highways and borrow pits for sand, fill or gravel of less than 5 acres or when regulated by the Department of Transportation.

No person shall construct or cause to be constructed or operate or cause to be operated, or in the case of a subdivision, sell, offer for sale or cause to be sold, any development requiring approval under section 1803 without first having obtained approval for such construction, operation or sale from the commissioners.

2. Natural environment of a locality. "Natural environment of a locality" includes the character, quality and uses of land, air and water, since the area likely to be affected by such development and the degree to which such land, air and waters are free from nonnaturally occurring contamination.

3. Person. "Person" means any person, firm, association, partnership, corporation, municipal or other local governmental entity, quasi-municipal entity, state agency, educational or charitable organization or institution or other legal entity.

4. Subdivision. A "subdivision" is the division of a parcel of land into 5 or more lots to be offered for sale or lease to the general public during any 5-year period if such lots make up an aggregate land area of more than 20 acres, except for the following:

A. All the lots are at least 10 acres in size;

B. All the lots are at least 5 acres, the municipality has adopted additional regulations governing subdivisions pursuant to Title 30, section 4956, the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each rectangle measuring 200 feet and 300 feet which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access; or

C. All the lots are at least 5 acres, but do not make up a total of more than 100 acres, the lots less than 10 acres are of such dimensions as to accommodate within the boundaries of each rectangle measuring 200 feet and 300 feet which abuts at one point the principal access way or the lots have at least 75 feet of frontage on a cul-de-sac which provides access.

5. **Structure.** A "structure" shall mean:

A. A building or buildings on a single parcel constructed or erected with a fixed location on or in the ground or attached to something on or in the ground which occupies a ground area in excess of 60,000 square feet; or

B. Parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated which causes a total project, including any buildings, to occupy a ground area in excess of 3 acres.

§ 1803. **Notification required; commissioners action; administrative appeals**

Any person intending to construct or operate a development shall, before commencing construction or operation, notify the commissioners in writing of his intent and of the nature and location of such development, together with such information as the commissioners may, by regulation, require. The commissioners shall, within 30 days of receipt of such notification, either approve the proposed development, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed development setting forth the reasons therefor or schedule a hearing thereon in the manner hereinafter provided.

Any person, as to whose development the commissioners have issued an order without hearing, may request, in writing, within 30 days after notice, a hearing before the commissioners. Such request shall set forth, in detail, the findings and conclusions of the commissioners to which such person objects, the basis of such objections and the nature of the relief requested. Upon receipt of such request, the commissioners shall schedule and hold a hearing limited to the matters set forth in such request. Such hearing shall be in accordance with section 1804.

§ 1804. **Hearings; orders; construction suspended**

1. **Hearings.** In the event that the commissioners determine to hold a hearing on a notification submitted to them pursuant to section 1803 they shall hold such hearing within 30 days of such determination and shall cause notice of the date, time and place thereof to be given.

At such hearing the commissioners shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare. The commissioners may at such hearing also receive testimony on the economic effect of such development.

2. **Criteria for approval.** The commissioners shall approve a development proposal whenever they find that:

A. The developer has the financial capacity and technical ability to meet state air and water pollution control standards and has made adequate provision for solid waste disposal, the control of offensive odors and the securing and maintenance of sufficient and healthful water supplies;

B. The developer has made adequate provision for traffic movement of all types out of or into the development area;

C. The developer has made adequate provision for fitting the development harmoninously into the existing natural environment and that the development will not adversely affect existing uses, scenic character or natural resources in the municipality or in neighboring municipalities; and

D. The proposed development will be built on soil types which are suitable to the nature of the undertaking.

3. Transmission lines and gas pipelines. In the case of a transmission line carrying 100 kilovolts or more or a gas pipeline, a permit under this Article may be obtained prior to any acquisition of lands or easements therefor to be acquired by purchase and such permit shall be obtained prior to any acquisition of land by eminent domain.

Any person making application for site location of development approval pursuant to section 1801 for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to section 1803, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or a transmission line by registered mail, postage prepaid, at the land owner's last known address as contained in the applicable tax assessor's records and shall file with the town clerk of each municipality through which the pipeline or a transmission line is proposed to be located, a map demonstrating the intended approximate location of the pipeline or a transmission line within the municipality. The applicant shall not be required to provide notice of his intent to construct a gas pipeline or a transmission line other than as set forth in this paragraph. The commissioners shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of subsection 2, paragraphs A and D, have been met, the commissioners, in the case of such transmission line or pipelines, shall consider whether any proposed alternatives to the proposed location and character of such transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The commissioners may approve or disapprove all or portions of such proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs thereby caused.

In the case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 125 kilovolts or more proposed to be erected within this State by an electrical company or companies, the proposed development, in addition to meeting the requirements of subsection 2, paragraphs A to D, shall also have been approved by the Public Utilities Commission under Title 35, section 13-A.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commissioners that each of the criteria for approval listed in the preceding paragraphs have been met, and that the public's health, safety and general welfare will be adequately protected.

4. **Transcripts.** A complete verbatim transcript shall be made of all hearings held pursuant to this section.

5. **Orders.** Within 30 days after the commissioners adjourn any hearing held under this section, they shall make findings of fact and issue an order granting or denying permission to the persons proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and conditions as the commission may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

6. **Suspension of construction.** Any person who has notified the commissioners, pursuant to section 1803, of his intent to construct or operate a development shall immediately defer or suspend construction or operation with respect to such development until the commissioners have issued their order.

7. **Financial capacity.** Any person securing approval of the commissioners, pursuant to this Article, shall maintain the financial capacity and technical ability to meet the state air and water pollution control standards until he has complied with such standards.

§ 1805. Failure to notify commissioners; hearing; injunctions; orders

The commissioners may, at any time with respect to any person who has commenced construction or operation of any development without having first notified the commissioners pursuant to section 1803, schedule and conduct a public hearing with respect to such development.

§ 1806. Applicability

This Article shall not apply to any development in existence or in possession of applicable state or local licenses to operate or which is under construction on January 1, 1970, to any development the construction and operation of which has been specifically authorized by the Legislature prior to May 9, 1970, to public service corporation transmission lines, except transmission lines carrying 100 kilovolts or more; nor shall it apply to the renewal or revision of leases of parcels of land upon which a structure or structures have been located as of March 15, 1972 or to the rebuilding or reconstruction of natural gas pipelines or transmission lines within the same right-of-way.

§ 1807. Municipal review of subdivisions

1. **Application.** A municipality may apply to the commissioners, on forms provided by the county, for authority to substitute permits pursuant to Title 30, section 4956 for permits required by section 1803 for subdivisions more than 20 acres but less than 100 acres. The commissioners shall grant such authority if they find that the municipality has:

- A. Established a planning board;
- B. Developed a suitable application; and
- C. Made provisions by ordinance or regulation for prompt notice to the commissioners upon receipt of the application, written notification to the applicant and the commissioners of the issuance of a denial of a permit, stating the reason therefor, public notice and satisfactory hearing procedures.

In the event that the commissioners find that a municipality has failed to satisfy one or more of the criteria listed in this section, they shall notify the municipality accordingly and make recommendations through which it may establish compliance. The municipality may then submit a modified application for approval.

If at any time the commissioners determine that a municipality has failed to exercise its permit-granting authority in accordance with their approved procedures or the purposes of this Article as embodied in the standards set forth in section 1804 and Title 30, section 4956, they shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice shall be given, to be held in the municipality to solicit public or official comment thereon. Following such hearing, if they find that such deficiencies will persist, they shall revoke the municipality's permit-granting authority.

In the event that a municipality has the authority granted by this Article revoked by the commissioners, it may reapply to the commissioners for such authority at any time.

2. Action by municipality. Within 30 days after receipt of a completed application for a permit for a subdivision, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order, for which hearing adequate public notice shall be given. Within 30 days after the adjournment of such hearings, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor.

3. Review by commissioners. No permit issued by a municipality shall become effective until 30 days subsequent to its issuance. A copy of the application for the permit, the permit issued by the municipality and its findings on review of the application shall be sent to the commissioners immediately upon its issuance by certified mail. The commissioners shall review such permit and either approve, deny or modify it as they deem necessary. Failure of the commissioners to act within 30 days of the issuance of the permit by the municipality shall constitute their approval and the permit shall be effective as issued.

4. Request for hearing. In the event that a permit applied for is denied either by a municipality or the commissioners, the applicant may request a hearing before either the commissioners or the municipality with reasonable public notice given.

5. **More than one municipality.** If a proposed subdivision is located in more than one municipality, the authority provided in subsection 1 shall not apply.

Article 2

Minimum lot size

§ 1811. Minimum lot size required

1. **Single family residences.** No person shall dispose of waste from any single family residential unit by means of subsurface waste disposal unless such lot of land on which such single family residential unit is located contains at least 20,000 square feet; and if the lot abuts a lake, pond, stream, river or tidal area, it shall further have a minimum frontage of 100 feet on such body of water.

2. **Multiple unit residences.** No person shall dispose of wastes by means of subsurface waste disposal from any multiple unit housing or any other land use activity which may generate wastes in excess of the waste disposal requirements of normal single family residential units, unless such multiple unit housing or other land use activity is located on a lot of size and minimum frontage which is greater than the requirements stated in subsection 1 in the same proportion as the actual waste disposal requirements of the multiple unit housing or other land use activities is greater than that of a single family residential unit. For purposes of computing such proportions, the amount of sewage generated by and the waste disposal requirement of such activities or land uses shall be deemed to be:

- A. Single family residential unit, 300 gallons per day;
- B. Multiple unit housing, 120 gallons per bedroom; and
- C. Other land use activity, actual measurement or computation of waste generated or likely to be generated.

§ 1812. Approval of smaller lots

A lot of less than the size required in section 1811 may be used for subsurface waste disposal if approved in writing by the commissioners. Approval shall be granted if the applicant demonstrates to the commissioners that, based upon the amount and nature of wastes, construction of the subsurface disposal system, soil types and slopes, percolation rates, depth to bedrock and ground water, density of any proposed development and other relevant factors, the proposed subsurface waste disposal will not lower the water quality of or otherwise pose a threat to any lake, pond, stream, river or tidal waters, any underground water supply, or to the public health, safety and general welfare.

§ 1813. Approval of lesser frontage

A lot of less than the frontage required in section 1811 may be used for subsurface waste disposal if approved in writing by the commissioners. Approval shall be granted if the applicant for approval demonstrates to the commissioners

that such frontage will not cause such lot to be of such configuration as to prevent compliance with the standards in section 1812 or otherwise present any harm to public health, safety or general welfare.

§ 1814. Exemptions

This Article, as to the use of lot for single family residential purposes, shall not apply to any lot which prior to January 1, 1970, was specifically described as an identifiable and separate lot either in the instrument conveying such lot to the then owner or in a valid and enforceable agreement for purchase and sale or was shown on a plan recorded in accordance with law, prior to January 1, 1970; provided that contiguous lots in the same ownership on or after October 3, 1973, shall be considered as one lot for the purposes hereof.

This Article shall not apply to any structure in existence and in place on or before October 3, 1973, which then or theretofore disposed of wastes by means of subsurface waste disposal; except that no person shall reduce the size of the lot upon which such structure is located to a size or frontage less than that allowed by section 1811 unless permitted pursuant to section 1812.

Article 3

Solid Waste Facilities

§ 1821. Declaration of policy

The Legislature declares it to be the policy of the State consistent with its responsibility to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent water and air pollution, that it shall encourage solid waste programs, public or private, which will reduce the volume of solid waste production, improve efforts to reuse and recover valuable resources currently being wasted and which will not adversely affect the public health, safety and welfare of the citizens or degrade the environment.

The Legislature also finds and declares that economic, efficient and environmentally sound method of waste disposal is of the highest priority. Municipalities are generating increasing amounts of solid waste with no systematic or consistent methods being used to reduce the volume of waste or to soundly dispose of it. Failure to plan properly for future solid waste may further deplete already taxed natural resources and aggravate environmental and public health problems resulting from present inadequate practices of resource recovery and solid waste disposal.

§ 1822. Definitions

The following words when used in this Article shall have the following meanings unless the context in which they are used clearly shows a different meaning.

1. Municipality. "Municipality" means a city or town.

2. **Person.** "Person" means an individual, firm, corporation, partnership, association, municipality, quasi-municipal corporation, state agency or any other legal entity.

3. **Recoverable resources.** "Recoverable resources" means materials that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

4. **Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including, by way of example and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

5. **Solid waste disposal facility.** "Solid waste disposal facility" means any land area or structure or combination of land area and structures, including dumps, used for storing, salvaging, processing, reducing, incinerating or disposing of solid wastes.

6. **Solid waste management.** "Solid waste management" means purposeful, systematic and unified control of the collection, storage, transportation, processing, salvaging and disposal of solid waste.

§ 1823. Commissioners; powers and duties

1. **Rules and regulations.** The commissioners may adopt, amend and enforce such rules and regulations as they deem necessary governing solid waste management, including the location, establishment, construction and alteration of solid waste facilities. Such regulations shall be designed to encourage logical utilization of recoverable resources to minimize pollution of the state's air, land and water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting such regulations, the board shall also consider economic impact, technical feasibility and such differences between municipalities as are created by population, waste volume and geographic location. The municipal officers of all municipalities shall be notified, in writing, at least 30 days prior to any hearing.

2. **Site location.** The commissioners may provide by regulations that no person may locate, establish, construct, alter or operate any solid waste disposal facility unless approved by the commissioners under sections 1801 to 1808.

3. **Municipal status reports.** The commissioners shall review reports submitted by municipalities as required by section 1824. Report forms shall be prepared and distributed by the county commissioners. Required information shall include, but not be limited to, the following:

A. Location of solid waste disposal facility sites within the municipality, whether publicly or privately owned or operated, their mode of operation and anticipated useful life;

- B. Ordinances or regulations adopted by or proposed for the municipality which regulate the use of waste disposal facilities within the municipality;**
- C. All legal arrangements established by municipalities for providing a solid waste disposal facility for solid waste generated within the municipality; and**
- D. Any plan for solid waste management officially adopted by the municipality.**

4. Technical assistance. The commissioners are authorized to establish guidelines for effective solid waste management, to provide technical assistance to persons planning, constructing or operating solid waste disposal facilities and to conduct applied research activities in the field of solid waste management, including methods of recycling solid waste items.

5. Planning grants. The commissioners are authorized to receive funds, public and private, and to use such funds for the administration of this chapter and to make grants from such funds to municipalities and regional planning agencies or their agents as designated by the municipality, for the purpose of planning and implementing solid waste management activities and solid waste disposal facilities pursuant to guidelines established by the commissioners.

§ 1824. Municipalities; powers and duties

1. Disposal facilities. Each municipality shall provide a solid waste disposal facility for domestic and commercial solid waste generated within the municipality and may provide such a facility for industrial wastes and sewage treatment plant sludge.

2. Ordinances. This chapter shall not be construed as limiting the authority of any municipality to enact ordinances for the regulation of solid waste disposal, provided that such ordinances are not less stringent than or inconsistent with the provisions of this chapter or the regulations adopted thereunder.

3. Contracts. Municipalities may contract with any person for the collection, transportation, storage, processing, salvaging or disposal of solid wastes.

4. Municipal status reports. The municipal officers of each municipality shall, on or before November 1, 1973, and on or before June 1st each year thereafter, submit on forms prepared by the commissioners information relating to solid waste management within the municipality.

5. Municipal permits. All permits issued pursuant to Title 30, sections 2451 to 2460 shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules and regulations adopted by the commissioners concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality shall be submitted to the commissioners within 30 days of issue.

§ 1825. Prohibited acts

It shall be unlawful for any person to establish, construct, alter or operate any waste water disposal facility or to store, collect, transport, process or dispose of solid waste contrary to regulations promulgated by the commissioners.

§ 1826. Exemptions

Rules and regulations adopted pursuant to this chapter concerning the location, establishment and construction of solid waste disposal facilities, but not concerning alteration or operation, shall not affect such facilities in existence prior to October 3, 1973. Landscape refuse and fill disposal sites established in connection with public works projects and commonly known as "stump dumps" are exempt from this Article.

Article 4**Septic Tank and Cesspool Waste and Other Waste Materials****§ 1831. Septic tank and cesspool waste and other waste materials**

1. **Site required.** Each municipality shall provide for the disposal of all waste, refuse, effluent, sludge and any other materials from all septic tanks and cesspools located within the municipality. In addition, any person may provide a site for disposal of such waste or any other fluid hazardous waste. Before making application to the commissioners for any approval of any site, such person shall first have a written approval for the site location from the municipality in which it is located. The municipality or the municipal officers authorized to act for the municipality, after hearing, shall approve any such private site if it finds that the site does not constitute a hazard to the health or safety of the residents of the municipality.

2. **Commissioners approval.** The location, operation and maintenance of any facility or site used for the disposal of septic tank or cesspool waste or fluid hazardous waste shall be subject to the approval of the commissioners in order to insure that disposal of wastes at such sites will not contaminate any bodies of water, water supplies or ground water, constitute a hazard to health or safety or create a nuisance to any person. Any sewage treatment plant receiving septic tank or cesspool waste on or before the effective date of this section shall not be subject to the prohibition of section 1832 until 180 days after the effective date of this section.

§ 1832. Disposal of certain materials prohibited

1. **Prohibition.** No person shall dispose of any waste, refuse, effluent, sludge or any other material from any septic tank, cesspool or other treatment process or dispose of any fluid hazardous waste on any land or soil or at any other site or place within the State other than sites approved in accordance with section 1831, except that any person may bury, plow under or otherwise suitably dispose of on his own land such waste, refuse, effluent, sludge or any other material removed from a septic tank or cesspool serving his residence. This section shall not be

construed to prohibit or regulate fluid effluents discharged to leaching fields installed in accordance with the Maine Plumbing Code or discharges licensed under subchapter III.

2. Definitions. For the purpose of this section and section 1831, "fluid hazardous waste" shall mean wastes which contain sufficient liquid content to be free flowing and which contain or are composed of any element, compound, substance or material designated by the commissioners after opportunity for public hearing, as being a hazard to the public health, safety or welfare.

§ 1833. Emergency

If the commissioners find after investigation that the disposal of any waste with sufficient liquid content to be free flowing, whether or not containing substances designated as hazardous under section 1832, has created or is likely to create a substantial and immediate danger to public health or safety, the commissioners may order the person or persons causing the disposal of such waste to immediately cease or prevent the disposal and to remove any such waste already disposed from the disposal site.

Any order issued under this section shall contain findings of fact describing, insofar as possible, the waste being disposed, the site of the disposal and the danger to public health or safety.

Service of the commissioners' findings and order shall be made by the sheriff or some deputy within the county in which the person against whom the order runs resides or maintains a place of business.

The person to whom such an order is directed shall comply therewith immediately. The order may not be appealed to the Superior Court, but any person to whom it is directed may apply to the board for a hearing on the order, which hearing shall be held by the commissioners within 48 hours after receipt of application therefor. Within 7 days after such hearing, the commissioners shall make findings of fact and continue, revoke or modify the order. The decision of the commissioners may be appealed to the Superior Court.

§ 1834. Solid waste disposal areas; location

No boundary of any public or private solid waste disposal area shall lie closer than 300 feet to any classified body of water.

If the commissioners shall determine that soil conditions, ground-water conditions, topography or other conditions indicate that any boundary of any such area should be further than 300 feet from any classified body of water, they may, after notice to and a hearing with the affected party, order the relocation of such boundaries and the removal of any solid waste, previously deposited within the original boundaries, to the confines of the new boundaries.

Any person, corporation, municipality or state agency establishing a solid waste disposal area may apply to the commissioners for a determination that the boundaries of the proposed area are suitably removed from any classified body of water.

Notwithstanding this section, if the commissioners determine from an examination of soil conditions, ground-water characteristics, climatic conditions, topography, the nature and amount of solid waste and other appropriate factors, that the deposit of solid waste within an area less than 300 feet from any classified body of water, will not result in an unlicensed direct or indirect discharge of pollutants to such body of water, they may, after notice and hearing, permit the deposit of solid waste within such area, upon such terms and conditions as they deem necessary. Permits issued pursuant to this section shall be for a term of not more than 2 years but may be renewed for successive 2-year terms after reexamination pursuant to this chapter.

Sec. 7-A. 32 MRSA c. 62, as enacted by PL 1969, c. 237 and as amended, is repealed.

Sec. 8. 38 MRSA §§ 391 to 396, as enacted by PL 1977, c. 123, § 2, and as amended, are repealed.

Sec. 9. 38 MRSA §§ 413 to 414-B, as amended, are repealed.

Sec. 10. 38 MRSA § 418, as amended, is repealed.

Sec. 11. 38 MRSA §§ 481 to 485 and §§ 488 and 489, as amended, are repealed.

Sec. 12. 38 MRSA §§ 587 to 590, as amended, are repealed.

Sec. 13. 38 MRSA § 591, 2nd ¶, as last amended by PL 1971, c. 618, § 12, is repealed.

Sec. 14. 38 MRSA § 599, sub-§ 5, as amended by PL 1977, c. 300, § 49, is repealed.

Sec. 15. 38 MRSA §§ 1301 to 1306 and § 1308, as amended, are repealed.

Sec. 16. 38 MRSA §§ 1320 to 1322, as enacted by PL 1977, c. 353, § 3, are repealed.

STATEMENT OF FACT

This bill transfers environmental licensing, permits, variances and approvals to the county commissioners in each county.