

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1602, L.D. 2214, Bill, "An Act to Clarify the Role of the Board of Environmental Protection"

Amend the bill after the enacting clause by inserting the following: 'PART A'

Further amend the bill in section 13 in that part designated "~~§341-A.~~" by striking out all of subsection 1 and inserting in its place the following:

'1. Purpose. The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.'

Further amend the bill in section 13 in that part designated "~~§341-A.~~" in subsection 3 in paragraph C in the 2nd line (page 8, line 5 in L.D.) by striking out the following: "department staff" and inserting in its place the following: 'staff of the department'

Further amend the bill in section 13 in that part designated "~~§341-D.~~" in subsection 1 by striking out all of paragraph A (page 9, lines 39 to 47 in L.D.)

Further amend the bill in section 13 in that part designated "~~§341-D.~~" in subsection 2 in paragraph C in the first line (page 10, line 7 in L.D.) by inserting after the following: "questions" the following: 'or interpretations of a rule or law'

Further amend the bill in section 13 in that part designated "~~§341-D.~~" in subsection 2 by striking out all of the last 2 blocked paragraphs (page 10, lines 16 to 23 in L.D.) and inserting in their place the following:

'The board may vote to assume jurisdiction of an application if

2 it finds that one or more of the criteria in this subsection have
3 been met.

4 Any interested party may request the board to assume jurisdiction
5 of an application.'

6 Further amend the bill in section 13 in that part designated
7 "§341-D." by striking out all of subsections 4 and 5 and
8 inserting in their place the following:

10 '4. Appeal or review. The board shall review, may hold a
11 hearing at its discretion on and may affirm, amend or reverse any
12 of the following:

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

24 (1) An interested party seeking to supplement the
25 record has shown due diligence in bringing the evidence
26 to the licensing process at the earliest possible time;
27 or

28 (2) The evidence is newly discovered and could not, by
29 the exercise of diligence, have been discovered in time
30 to be presented earlier in the licensing process.

32 The board is not bound by the commissioner's findings of
33 fact or conclusions of law but may adopt, modify or reverse
34 findings of fact or conclusions of law established by the
35 commissioner. Any changes made by the board under this
36 paragraph must be based upon the board's review of the
37 record, any supplemental evidence admitted by the board and
38 any hearing held by the board;

40 B. License or permit decisions made by the commissioner
41 that the board votes to review within 30 days of the next
42 regularly scheduled board meeting following written
43 notification to the board of the commissioner's decision.
44 The procedures for review are the same as provided under
45 paragraph A; and

48 C. License or permit decisions appealed to the board under
49 another law. Unless the law provides otherwise, the
50 standard of review is the same as provided under paragraph A.

2 5. Requests for reconsideration. Within 30 days of a
3 decision by the board, any person aggrieved by the decision may
4 petition the board in writing for:

6 A. Correction of any part of the decision that the
7 petitioner believes to be in error and not intended by the
8 board;

10 B. An opportunity to present new or additional evidence to
11 secure reconsideration of any part of the decision; or

12 C. A challenge to any fact of which official notice was
13 taken.

14 The petition must set forth in detail the findings, conclusions
15 or conditions to which the petitioner objects, the basis of the
16 objections, the nature of any new or additional evidence to be
17 offered and the nature of the relief requested. Within 30 days
18 of receiving a complete reconsideration petition, the board shall
19 decide whether to reconsider its decision. The board may hold a
20 hearing within 30 days of its decision to reconsider the decision.

22 In considering the petition, the board may grant the petition in
23 full or in part, or dismiss the petition. The board shall
24 provide reasonable notice to interested persons.

26 The board may allow the record to be supplemented when it finds
27 that the evidence offered is relevant and material and that an
28 interested party seeking to supplement the record has shown due
29 diligence in bringing the evidence to the licensing process at
30 the earliest possible time or the evidence is newly discovered
31 and could not, by the exercise of diligence, have been discovered
32 in time to be presented earlier in the licensing process.

34 The running of the time for appeal under section 346, subsection
35 1, is terminated by a timely petition for reconsideration filed
36 under this subsection. The full time for appeal commences and is
37 computed from the date of the final board action dismissing the
38 petition or another final board action as a result of the
39 petition.

42 The filing of a petition for reconsideration is not an
43 administrative or judicial prerequisite for the filing of an
44 appeal under section 346, subsection 1.'

46 Further amend the bill in section 13 in that part designated
47 "§341-D." in subsection 6 in paragraph C in the first line (page
48 12, line 39 in L.D.) by inserting after the following:
49 "administrative" the following: 'consent'

52 Further amend the bill in section 14 in subsection 1-A in
the next to the last line (page 14, line 13 in L.D.) by inserting

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2 after the following: "subsection" the following: 'and section
341-A, subsection 3, paragraph C'

4 Further amend the bill in section 15 in subsection 2 in the
6th line (page 14, line 24 in L.D.) by striking out the
6 following: "and of the" and inserting in its place the following:
'~~and-of-the~~' and in the 7th line (page 14, line 25 in L.D.) by
8 striking out the following: "board"

10 Further amend the bill in section 18 in subsection 8 in the
first line (page 14, line 40 in L.D.) by inserting after the
12 following: "develop" the following: 'by January 1, 1991.'

14 Further amend the bill in section 18 in subsection 8 by
striking out all of paragraph E (page 15, line 3 in L.D.)

16 Further amend the bill in section 18 in subsection 8 by
18 relettering the paragraphs to read consecutively.

20 Further amend the bill in section 18 by striking out all of
subsection 9 and inserting in its place the following:

22 '9. Rules. The commissioner may submit to the board new or
24 amended rules for its adoption.'

26 Further amend the bill in section 18 by striking out all of
subsection 12 and inserting in its place the following:

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

38 A. Availability to the public of necessary information
40 concerning these environmental permits;

42 B. Assistance to applicants in obtaining environmental
44 permits from the department; and

46 C. That the public understands the permitting process and
48 all the procedures of the department including those of the
50 board. Any written material must be in clear, concise
52 language.'

Further amend the bill in section 20 in subsection 1 in the
2nd paragraph (page 16, line 23 in L.D.) by inserting after the
following: "shall" the following: 'require the applicant to'

Further amend the bill in section 20 in subsection 1 in the
last paragraph in the first and 2nd lines (page 17, lines 9 and
10 in L.D.) by striking out the following: "the applicant of

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2 board or commissioner decisions" and inserting in its place the
3 following: 'the an applicant of denial of an application by the
4 board or commissioner decisions'

6 Further amend the bill in section 22 in subsection 2-A in
7 paragraph B in the 2nd line (page 17, line 33 in L.D.) by
8 striking out the following: "provisions of" and inserting in its
9 place the following: 'provisions under'

10 Further amend the bill in section 22 in subsection 2-A in
11 paragraph C in the 3rd line (page 17, line 39 in L.D.) by
12 striking out the following: "within 80 days" and inserting in its
13 place the following: 'as expeditiously as possible'

14 Further amend the bill in section 22 in subsection 2-A by
15 striking out all of the next to the last paragraph (page 17,
16 lines 42 and 43 in L.D.)

18 Further amend the bill in section 22 in subsection 2-B in
19 the 2nd line (page 17, line 51 in L.D.) by striking out the
20 following: "provisions" and inserting in its place the following:
21 'time requirements'

22 Further amend the bill in section 25 in subsection 4-A in
23 paragraph A in the 2nd line (page 18, line 17 in L.D.) by
24 striking out the following: "which" and inserting in its place
25 the following: 'that' and in the 3rd line from the end (page 18,
26 line 25 in L.D.) by striking out the following: "office" and
27 inserting in its place the following: 'and appropriate regional
28 offices'

29 Further amend the bill in section 25 in subsection 4-A in
30 paragraph B in the next to the last line (page 18, line 43 in
31 L.D.) by striking out the following: "office" and inserting in
32 its place the following: 'and appropriate regional offices'

33 Further amend the bill in section 25 in subsection 4-A by
34 inserting at the end the following:

35 'The commissioner may incorporate comments on draft permits at
36 the discretion of the commissioner. The commissioner may make
37 any revised draft available for public comment. If the
38 commissioner decides the draft is substantially revised, the
39 commissioner shall make it available for public comment.'

40 Further amend the bill in section 27 in subsection 8 in the
41 next to the last line (page 19, line 5 in L.D.) by inserting
42 after the following: "of the board" the following: 'or the
43 chair's designee'

44 Further amend the bill in section 31 in subsection 1 in
45 paragraph A in the first line (page 19, line 42 in L.D.) by

inserting after the following: "administrative" the following:
2 'consent'

4 Further amend the bill in section 32 by striking out all of
subsection 4 and inserting in its place the following:

6
8 '4. Administrative agreements. The public may make written
comment to the board at the board's discretion on any
administrative consent agreements entered into by the
10 commissioner and approved by the board.'

12 Further amend the bill in section 38 in the first line (page
21, line 36 in L.D.) by striking out the following: "By January
14 15, 1991, the" and inserting in its place the following: 'The'

16 Further amend the bill in section 38 in subsection 1 in the
3rd line (page 21, line 43 in L.D.) by inserting after the
18 following: "agenda" the following: ', by January 1, 1992'

20 Further amend the bill in section 38 in subsection 2 in the
last line (page 21, line 51 in L.D.) by inserting after the
22 following: "rights" the following: ', by January 1, 1992'

24 Further amend the bill in section 38 in subsection 3 in the
2nd line (page 22, line 2 in L.D.) by inserting after the
26 following: "hearings" the following: ', by June 30, 1991'

28 Further amend the bill by renumbering the sections to read
§§A-1 to A-38.

30
32 Further amend the bill by inserting at the end before the
statement of fact the following:

34
36 **PART B**

38 **Sec. B-1. 38 MRSA §342, sub-§4, as amended by PL 1987, c. 816,**
Pt. 2, §4, is further amended to read:

40
42 **4. Organization of department.** The commissioner, after
consultation with the Board of Environmental Protection, shall
organize the department into the bureaus, divisions, regional
44 offices and other administrative units ~~that he deems~~ necessary to
fulfill the duties of the department ~~and support the duties of~~
46 ~~the Board of Environmental Protection.~~ After consultation with
the ~~Board of Environmental Protection~~ board, he the commissioner
48 shall prescribe the functions of the bureaus and other
administrative units to insure that the powers and duties of the
50 ~~board~~ department are administered efficiently so that all license
applications and other business of the department may be
52 expeditiously completed in the public interest.

2 A. The Office of Quality Assurance is established within
3 the department and ~~shall be~~ to be managed by a quality
4 assurance officer. It ~~shall be~~ is the responsibility of
5 this office to certify that sampling, data handling and
6 analytical procedures used by the department's ~~lab~~
laboratory and other laboratories are in accordance with the
7 highest professional standards to assure that data generated
8 on behalf of departmental programs are of known and
9 predictable precision and accuracy.

12 **Sec. B-2. 38 MRSA §342, sub-§6**, as amended by PL 1983, c. 536,
13 is further amended to read:

14 6. **Technical services.** The commissioner may provide
15 technical assistance, advice and consultation at the request of
16 any municipality or quasi-municipal entity on matters relating to
17 solid waste management. Technical services may include, but are
18 not be limited to, technical advice regarding the operation of
19 waste management facilities or services and employment of
20 consultants to assist in the location or design of any type of
21 solid waste facility. The assignment of consultants shall must be
22 based upon demonstrated need, including, but not limited to,
23 placement on the open-dump inventory list, noncompliance with
24 orders of the commissioner or board or noncompliance with state
25 or federal rules.

28 **Sec. B-3. 38 MRSA §344, sub-§6**, as enacted by PL 1977, c. 300,
29 §9, is amended to read:

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

38 **Sec. B-4. 38 MRSA §346, sub-§1**, as repealed and replaced by PL
39 1977, c. 694, §758, is amended to read:

42 1. **Appeal to Superior Court.** Except as provided in section
43 347 ~~347-A~~, subsection 2 3, any person aggrieved by any order or
44 decision of the board or commissioner may appeal ~~there-from~~ to
45 the Superior Court. These appeals to the Superior Court shall be
46 taken in accordance with Title 5, chapter 375, subchapter VII.

48 **Sec. B-5. 38 MRSA §347-C**, as enacted by PL 1989, c. 311, §4,
49 is amended to read:

50 **347-C. Right of inspection and entry**

52

2 Employees and agents of the Department of Environmental
3 Protection may enter any property at reasonable hours and enter
4 any building with the consent of the property owner, occupant or
5 agent, or pursuant to an administrative search warrant, in order
6 to inspect the property or structure, take samples and conduct
7 tests as appropriate to determine compliance with any laws
8 administered by the department or the terms and conditions of any
9 order, regulation, license, permit, approval or decision of the
10 ~~Board-of-Environmental-Protection~~ commissioner or of the board.

11 Sec. B-6. 38 MRSA §348, as amended by PL 1983, c. 796, §17,
12 is further amended to read:

13 **§348. Judicial enforcement**

14
15 1. **General.** In the event of a violation of any provision of
16 the laws administered by the ~~Department--of--Environmental~~
17 ~~Protection~~ department or of any order, regulation, license,
18 permit, approval or decision of the ~~Board--of--Environmental~~
19 ~~Protection~~ board or commissioner or decree of the court, as the
20 case may be, the Attorney General may institute injunction
21 proceedings to enjoin any further violation thereof, a civil or
22 criminal action or any appropriate combination thereof without
23 recourse to any other provision of law administered by the
24 ~~Department-of-Environmental-Protection~~ department.

25
26 2. **Restoration.** The court may order restoration of any area
27 affected by any action or inaction found to be in violation of
28 any provision of law administered by the ~~Department--of--~~
29 ~~Environmental--Protection~~ department or of any order, rule,
30 regulation, license, permit, approval or decision of the ~~Board-of~~
31 ~~Environmental-Protection~~ board or commissioner or decree of the
32 court, as the case may be, to its condition prior to the
33 violation or as near thereto as may be possible. Where the court
34 finds that the violation was wilful, the court shall order
35 restoration under this subsection unless the restoration will:

36
37 A. Result in a threat or hazard to public health or safety;

38 B. Result in substantial environmental damage; or

39 C. Result in a substantial injustice.

40
41 3. **Injunction proceedings.** If the ~~board~~ department finds
42 that the discharge, emission or deposit of any materials into any
43 waters, air or land of this State constitutes a substantial and
44 immediate danger to the health, safety or general welfare of any
45 person, persons or property ~~they~~ the department shall forthwith
46 request the Attorney General to initiate immediate injunction
47 proceedings to prevent such discharge. The injunction proceedings
48 may be instituted without recourse to the issuance of an order,
49 as provided for in section 347 347-B.

2 **Sec. B-7. 38 MRSA §349, sub-§3**, as amended by PL 1989, c. 282,
3 §4, is further amended to read:

4 **3. Falsification and tampering.** Notwithstanding Title
5 17-A, section 4-A, any person who knowingly makes any false
6 statement, representation or certification in any application,
7 record, report, plan or other document filed or required to be
8 maintained by any provision of law administered by the
9 department, or by any order, rule, license, permit, approval or
10 decision of the board or commissioner, or who tampers with or
11 renders inaccurate any monitoring devices or method required by
12 any provision of law, or any order, rule, license, permit,
13 approval or decision of the board or commissioner or who fails to
14 comply with any information submittal required by the
15 commissioner pursuant to section 568, subsection 3, or section
16 1364, subsection 3, shall is, upon conviction, be subject to a
17 fine of not more than \$10,000, or by imprisonment for not more
18 than 6 months, or both.

19 **Sec. B-8. 38 MRSA §349, sub-§5, ¶C**, as enacted by PL 1983, c.
20 796, §19, is amended to read:

21 C. The extent to which the violation continued following an
22 order of the ~~department~~ commissioner or board to correct it;
23 and

24 **Sec. B-9. 38 MRSA §349, sub-§7**, as enacted by PL 1989, c. 110,
25 is amended to read:

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

31 **Sec. B-10. 38 MRSA §352, sub-§1**, as amended by PL 1987, c.
32 787, §6, is further amended to read:

33 **1. Fees established.** The department commissioner shall
34 establish procedures to charge applicants for costs incurred in
35 reviewing license and permit applications. For the purposes of
36 this subchapter, costs may include, but are not be limited to,
37 personnel costs, travel, supplies, legal and computer services.

38 **Sec. B-11. 38 MRSA §352, sub-§3**, as amended by PL 1987, c.
39 787, §8, is further amended to read:

40 **3. Maximum fee.** Except as provided in this subsection, no
41 fee may exceed the maximum established in Table 1 I. The
42 commissioner shall set the actual fees. If the commissioner
43 determines that a particular application, by virtue of its size,
44

2 uniqueness, complexity or other relevant factors, is likely to
3 require significantly more costs than those listed on Table I,
4 ~~he the commissioner~~ may designate that application as subject to
5 special fees. A special fee shall ~~may~~ not exceed \$40,000. Such
6 a designation must be made at, or prior to, the time the
7 application is accepted as complete and may not be based solely
8 on the likelihood of extensive public controversy. All
9 department staff who have worked on the review of the application
10 will ~~will~~ must submit quarterly reports to the commissioner detailing
11 the time spent on the application and all expenses attributable
12 to the application. The processing fee for that application
13 shall ~~shall~~ must be the actual cost to the department. The applicant
14 shall be billed quarterly and all fees ~~must-be~~ paid prior to
15 receipt of the permit.

16 **Sec. B-12. 38 MRSA §352, sub-§6**, as enacted by PL 1987, c.
17 787, §10, is amended to read:

18 **6. Reporting requirements.** The department commissioner
19 shall report, before February 1st of each year, to the joint
20 standing committee of the Legislature having jurisdiction over
21 natural resources on the effects of the license fee increases on
22 department efficiency and license and permit processing time.

23 **Sec. B-13. 38 MRSA §353**, as amended by PL 1987, c. 787, §11,
24 is further amended to read:

25 **§353. Payment of fees**

26 **2. Processing fee.** A processing fee shall ~~shall~~ must be paid at
27 the time of filing the application. Failure to pay the
28 processing fee at the time of filing the application ~~will-result~~
29 results in the application being returned to the applicant. The
30 ~~department-shall~~ commissioner may not refund the processing fee
31 if the application is denied by the board or the commissioner. If
32 the application is withdrawn by the applicant within 30 days of
33 the start of processing, the processing fee shall ~~shall~~ must be
34 refunded.

35 **3. License fee.** A license fee shall ~~shall~~ must be paid at the
36 time of filing the application. Failure to pay the license fee
37 at the time of filing ~~will-result~~ results in the application
38 being returned to the applicant. The ~~department~~ commissioner
39 shall refund the license fee if the board or commissioner denies
40 the application or if the application is withdrawn by the
41 applicant. Notwithstanding the provisions of this subsection,
42 the license fee for a subdivision shall ~~shall~~ must be paid prior to the
43 issuance of the license.

44 **3-A. Certification fee.** A certification fee shall ~~shall~~ must be
45 paid prior to the issuance of any certification. If the

certification is ~~not-issued~~ withdrawn or denied, the department commissioner shall refund the certification fee.

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

10 **5. Renewals or amendments.** The processing fee for renewals or amendments ~~shall-be~~ is equal to direct costs up to 1/2 the processing fee for initial applications. The license fee for renewals ~~shall-be~~ is identical to the initial license fee. The license fee for amendments ~~shall~~ may not exceed the initial license fee.

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

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

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

42 **Sec. B-14. 38 MRSA §354**, as enacted by PL 1983, c. 574, §1, is amended to read:

46 **§354. Federal programs**

48 ~~If~~ Notwithstanding section 352, if the ~~board~~ department is required by federal law to issue any certificate, permit or license, ~~it~~ the commissioner shall establish a fee schedule identical to ~~that-which-exists-for~~ the federal program that is most like the state program which-is-most-like-the-federal

2 program. If there are no similar state programs, the board
3 commissioner shall adopt the appropriate fee schedule based upon
4 identified costs including ~~liasea~~ liaison costs.

6 **Sec. B-15. 38 MRSA §355**, as enacted by PL 1987, c. 349, Pt.
H, §28, is amended to read:

8 **§355. Lake Environmental Protection Fund**

10 The Lake Environmental Protection Fund, referred to in this
11 subchapter as the "fund," is established as a nonlapsing fund ~~for~~
12 ~~the purpose of assisting to assist~~ the municipalities of the
13 State in defraying legal expenses which may be incurred as a
14 result of the regulation of land use activities and the
15 enforcement of land use laws and ordinances ~~adjacent to lakes in~~
16 ~~lake watersheds~~. ~~The funds shall consist~~ fund consists of such
17 money as shall ~~be~~ is appropriated to it from time to time by the
18 Legislature. It shall ~~be~~ is administered by the ~~Department of~~
19 ~~Environmental Protection~~ department and the money in it shall ~~be~~
20 deposited with the Treasurer of State to the credit of the fund
21 and may be invested as provided by law. Interest on these
22 investments shall must be credited to the fund.

24 **Sec. B-16. 38 MRSA §356**, as amended by PL 1987, c. 769, Pt.
A, §171, is further amended to read:

26 **§356. Disbursements**

28 The fund ~~shall--be~~ is available to compensate the
29 municipalities of the State for legal expenses, including court
30 costs, attorneys' fees and expert and other witness fees,
31 incurred in the enforcement of local land use laws and ordinances
32 affecting great ponds and the defense of regulatory actions taken
33 pursuant to such land use laws and ordinances. The State shall
34 provide 75% of a municipality's legal expenses which shall must
35 be matched with a 25% local share, except that no single
36 municipality may receive more than \$25,000 from the fund in any
37 fiscal year. For purposes of this subchapter, "land use laws and
38 ordinances" means those laws and ordinances enumerated in Title
39 30 30-A, section 4966 4452, subsection 5.

42 **Sec. B-17. 38 MRSA §357**, as amended by PL 1987, c. 884, Pt.
C, §4, is further amended to read:

44 **§357. Procedure**

46 Within 90 days of the completion of litigation or settlement
47 for which compensation for legal expenses is available under
48 section 356, a municipality may apply to the ~~Board of~~
49 ~~Environmental Protection~~ commissioner for reimbursement ~~of such~~
50 of those expenses as that have not been awarded to it by the
51 court and paid pursuant to Title 30 30-A, section 4966 4452,

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2 subsection 3, paragraph D. The board commissioner shall make an
award of compensation that ~~it~~ the commissioner determines to be
4 just under the circumstances. In order to be awarded
compensation, it ~~shall~~ is not be necessary that the municipality
6 ~~shall-have-prevailed~~ prevail in the litigation or the settlement,
but only that its position be determined by the board
commissioner to have been reasonable. Awards ~~shall-be~~ are made
8 on a first-come first-served basis.

10 **Sec. B-18. 38 MRSA §361-A, sub-§§1-G and 1-H** are enacted to
read:

12 1-G. Board. "Board" means the Board of Environmental
14 Protection.

16 1-H. Department. "Department" means the Department of
Environmental Protection composed of the board and the
18 commissioner.

20 **Sec. B-19. 38 MRSA §362-A, first ¶,** as enacted by PL 1973, c.
22 423, §3, is amended to read:

24 Notwithstanding any other law administered or enforced by
the department, the department board is authorized to permit
26 persons to discharge, emit or place any substances on the land or
in the air or waters of the State, in limited quantities and
under the strict control and supervision of the department
28 commissioner or ~~its~~ the commissioner's designees, exclusively for
the purpose of scientific research and experimentation in the
30 field of pollution and pollution control. The research and
experimentation conducted under this section ~~shall-be~~ is subject
32 to such terms and conditions as the ~~department--deems~~ board
determines necessary in order to protect the public's health,
34 safety and general welfare, and may be terminated by the
department board or commissioner at any time upon 24 hours'
36 written notice.

38 **Sec. B-20. 38 MRSA §391-A,** as enacted by PL 1987, c. 771, §4,
40 is repealed.

42 **Sec. B-21. 38 MRSA §401, last ¶,** as enacted by PL 1987, c. 583,
§60, is amended to read:

44 This article is not intended to limit a municipality's power
to enact ordinances under Title 30 30-A, section 2151-A 3001, to
46 protect and conserve the quality and quantity of ground water.

48 **Sec. B-22. 38 MRSA §403, sub-§2,** as enacted by PL 1983, c.
50 521, is amended to read:

2 2. **Determination of ground water quality.** The Department
3 ~~of--Environmental--Protection~~ commissioner and the Department of
4 Conservation shall delineate the primary recharge areas for all
5 sand and gravel aquifers capable of yielding more than 10
6 gallons per minute. Utilizing existing water supply information
7 and well drilling logs, the ~~Department--of--Environmental~~
8 ~~Protection~~ commissioner and the Department of Conservation shall
9 determine depth to bedrock, depth to water table, surficial
10 material stratigraphy and generalized ground water flow
11 directions of the aquifers. The ~~Department--of--Environmental~~
12 ~~Protection~~ commissioner and the Department of Conservation shall
13 also determine the extent and direction of contamination plumes
14 originating from distinct sources within each area studied. The
15 primary recharge areas, flow directions and contamination plumes
16 are to be shown on maps of a scale of 1:50,000.

17 **Sec. B-23. 38 MRSA §410-G**, as enacted by PL 1987, c. 843,
18 §1, is amended to read:

19 **§410-G. Report required**

20 The ~~Department--of--Environmental--Protection~~ commissioner in
21 cooperation with the Department of Marine Resources shall report
22 to the joint standing committee of the Legislature having
23 jurisdiction over energy and natural resources and the joint
24 standing committee of the Legislature having jurisdiction over
25 marine resources during the first regular session of each
26 Legislature. The initial report shall must include
27 recommendations regarding the design of the monitoring program
28 and on the level of funding necessary to fully implement the
29 program. The report shall ~~be~~ is due on or before March 15th.
30 The report shall must address the problems or potential problems
31 of marine and estuarine resources caused by industrial
32 contaminants. The ~~department~~ commissioner also shall prescribe
33 remedial steps to address problems identified in the report.
34

35 **Sec. B-24. 38 MRSA §411**, as amended by PL 1989, c. 104, Pt.
36 B, §13 and Pt. C, §10, is further amended to read:

37 **§411. State contribution to pollution abatement**

38 The ~~department~~ commissioner may pay an amount not to exceed
39 80% of the expense of a municipal or quasi-municipal pollution
40 abatement construction program or a pollution abatement
41 construction program in an unorganized township or plantation
42 authorized by the county commissioners. The ~~department~~
43 commissioner may make payments to the Maine Municipal Bond Bank
44 to supply the State's share of the revolving loan fund
45 established by Title 30-A, section 6006-A. The ~~department~~
46 commissioner may pay up to 90% of the expense of a municipal or
47 quasi-municipal pollution abatement construction program or a
48 pollution abatement construction program in an unorganized
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2 township or plantation authorized by the county commissioners in
3 which the construction cost of the project does not exceed
4 \$100,000 as long as total expenditures for the small projects do
5 not exceed \$1,000,000 in any fiscal year and not more than one
6 grant is made to any applicant each year, except that the
7 department commissioner may pay up to 50% of the expense of
8 individual projects serving seasonal dwellings or commercial
9 establishments. The application for a grant under this paragraph
10 for a project serving a single-family dwelling, including
11 outbuildings, or a single commercial establishment, shall must
12 include a signed statement of the financial condition of the
13 owner of the single-family dwelling or commercial establishment
14 describing the need for the grant. That statement ~~will-become~~
15 becomes part of the application record and no further evidence of
16 need ~~will-be~~ is required.

17 State grant-in-aid participation under this section shall-be
18 is limited to grants for waste treatment facilities, interceptor
19 systems and outfalls. The word "expense" shall does not include
20 costs relating to land acquisition or debt service, unless
21 allowed under federal statutes and regulations.

22 The department commissioner shall develop a project priority
23 list, for approval and adoption by the board, for pollution
24 abatement construction and salt or sand-salt storage building
25 projects. The factors ~~to-be~~ considered in developing the priority
26 lists shall include, but are not be limited to, protection of
27 ground and surface water supplies, shellfish, general public
28 health hazards and water contact activities.

29 All proceeds of the sale of bonds for the construction and
30 equipment of pollution abatement facilities ~~to-be~~ expended under
31 the direction and supervision of the ~~Department of Environmental~~
32 ~~Protection~~ shall commissioner must be segregated, apportioned and
33 expended as provided by the Legislature.

34 **Sec. B-25. 38 MRSA §411-A**, as enacted by PL 1989, c. 442, §1,
35 is amended to read:

36 **§411-A. State contribution to residential overboard discharge**
37 **replacement projects**

38 **1. General authority.** Subject to the availability of funds
39 under section 411, the department commissioner shall pay a
40 portion of the expense of a pollution abatement construction
41 project ~~which~~ that results in the elimination of an overboard
42 discharge to the waters of the State where that elimination is
43 required under section 414-A, subsection 1-B. The costs eligible
44 for payment under this program include the costs that the
45 department requires for abandonment of the overboard discharge
46 and the design, engineering and construction costs of the
47 replacement system. Grants made under this section may be made
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2 directly to the owners of the overboard discharge and may also be
made to sanitary and sewer districts which that have agreed to
4 establish operation and maintenance programs for holding tanks
within their boundaries.

6 2. **Cost-share.** The department commissioner shall determine
the portion of project expenses which--are eligible for grants
8 under this section as follows.

10 A. The department commissioner shall pay 90% of the costs
of a project which that results in the removal of a
12 year-round residential overboard discharge.

14 B. The department commissioner shall pay 50% of the costs
of a project which that results in the removal of a
16 commercial overboard discharge.

18 C. The department commissioner shall pay 25% of the costs
of a project which that results in the removal of a seasonal
20 residential overboard discharge.

22 For the purposes of this section and section 414-A, seasonal
residential overboard discharge means an overboard discharge from
24 a human habitation which-is occupied for less than 6 months in
any calendar year.

26 3. **Priority.** The department commissioner shall utilize
28 grants made under this section to eliminate sources of
contamination to shellfish harvesting areas and to eliminate
30 public nuisance conditions.

32 4. **Reimbursement.** The department commissioner shall
utilize grants under this section to reimburse individuals for
34 the costs of removing any overboard discharge, subject to the
provisions of subsection 2, when:

36 A. The removal occurred after June 1, 1987, and prior to the
38 effective date of this section;

40 B. The removal resulted in the elimination of sources of
contamination to shellfish areas or public nuisance
42 conditions; and

44 C. The removal was the direct result of an unsuccessful
licensing application under former section 464, subsection
46 4, paragraph G.

48 **Sec. B-26. 38 MRSA §412**, as repealed and replaced by PL 1977,
c. 81, is amended to read:

50 **§412. Grants by State for planning**

52

1. Grants by State for planning. The Department--of
2 Environmental--Protection commissioner is authorized to pay an
4 amount at least 15%, but not to exceed 25%, of the expense
6 incurred by a municipality or quasi-municipal corporation in
8 preliminary or final planning of a pollution abatement program in
the form of a grant. ~~Such~~ The amount may not be paid until the
governing body of the municipality or the quasi-municipal
corporation duly votes to proceed with preliminary or final
planning of a pollution abatement program, as appropriate.

10
12 A. For the purposes of this section, "preliminary planning"
means engineering studies ~~which~~ that include analysis of
14 existing pollution problems; estimates of the cost of
alternative methods of waste treatment, studies of areas to
16 be served by the proposed facilities and estimates of the
cost of serving such areas; preliminary sketches of existing
and proposed sewer and treatment plant layouts; and
18 estimates of alternative methods of financing, including
user charges, and other studies and estimates designed to
20 aid the municipality or quasi-municipal corporation in
deciding whether and how best to proceed with a pollution
22 abatement program.

24 B. For the purposes of this section, "final planning" means
the preparation of engineering drawings and specifications
26 for the construction of waste treatment facilities,
interceptor systems and outfalls or other facilities
28 specifically designated in departmental ~~regulations~~ rules.
All proceeds from the sale of bonds for the planning of
30 pollution abatement facilities ~~to--be~~ expended under the
direction and supervision of the ~~Department-of-Environmental~~
32 ~~Protection---shall~~ commissioner must be segregated,
apportioned and expended as provided by the Legislature.

34
36 **Sec. B-27. 38 MRSA §412-A**, as enacted by PL 1979, c. 243, is
amended to read:

38 **§412-A. Technical and legal assistance**

40 At the request of any recipient of state funds under section
411 or 412, the ~~department~~ commissioner is authorized to provide
42 technical assistance and, through the Attorney General, legal
assistance in the administration or enforcement of any contract
44 entered into, by or for the benefit of the recipient in
connection with wastewater treatment works or other facilities
46 assisted by these funds.

48 Whenever any state funds have been disbursed pursuant to
section 411 or 412, the State, acting through the Attorney
50 General, shall have a direct right of action against the
recipient thereof, or any contractor, subcontractor, architect,
52 engineer or manufacturer of any equipment purchased with these

2 funds, to recover the funds, as well as any federal funds
3 administered by the department commissioner for the same
4 purposes, which may be properly awarded as actual damages in an
5 action alleging negligence or breach of contract.

6 **Sec. B-28. 38 MRSa §413**, as amended by PL 1989, c. 656, §1,
7 is further amended to read:

8 **§413. Waste discharge licenses**

10 **1. License required.** No person shall may directly or
11 indirectly discharge or cause to be discharged any pollutant
12 without first obtaining a license therefor from the beard
13 department.

16 **1-A. License required for surface wastewater disposal**
17 **systems.** No person shall may install, operate or maintain a
18 surface waste--water wastewater disposal system without first
19 obtaining a license therefor from the beard department.

20 **1-B. License required for subsurface wastewater disposal**
21 **systems.** No person shall may install, operate or maintain a
22 subsurface waste--water wastewater disposal system without first
23 obtaining a license therefor from the beard department, except
24 that a license shall is not be required for systems designed and
25 installed in conformance with the State-of-Maine-Plumbing-Code
26 plumbing code, as promulgated by the Department of Human Services
27 under Title 22, section 42.

30 **2. Exemptions.** No person may be deemed in violation of
31 this section for the discharge of rock, sand, dirt or other
32 pollutants resulting from erosion related to agricultural
33 activities, subject to the following conditions.

34 **A.** The appropriate soil and water conservation district has
35 recommended an erosion and sedimentation control plan or
36 conservation plan for the land where this erosion originates.

37 **B.** The beard commissioner has certified that the plan meets
38 the objectives of this chapter.

39 **C.** The department commissioner determines that the
40 agricultural activities are in compliance with the
41 applicable portion of the plan, or the soil and water
42 district has certified that funds from existing federal and
43 state programs are not available to implement the applicable
44 portion of the plan.

45 **2-B. Exemptions; snow dumps.** The Beard-of-Environmental
46 Protection board may by rule exempt categories of snow dumps from
47 the need to obtain a license under this section when it finds
48 that the exempted activity would not have a significant adverse
49 effect.

effect on the quality or classifications of the waters of the State.

2-C. **Dredge spoils.** Holders of a permit obtained pursuant to the United States Clean Water Act, Public Law 92-500, Section 404, are exempt from the need to obtain a waste discharge license for disposal of dredged material into waters of the State when the dredged material is disposed of in an approved United States Army Corps of Engineers disposal site. Disposal of all dredged materials is governed by the natural resource protection laws, sections 480-A to 480-S.

2-D. **Exemptions; road salt or sand-salt storage piles.** The ~~Board of Environmental Protection~~ commissioner may exempt any road salt or sand-salt storage area from the need to obtain a license under this section when ~~it~~ the commissioner finds that the exempt activity will not have a significant adverse effect on the quality or classifications of the waters of the State. In making ~~its~~ this finding, the ~~board's~~ commissioner's review shall must include, but is not be limited to, the location, structure and operation of the storage area.

Owners of salt storage areas shall register the location of storage areas with the department on or before January 1, 1986. As required by section 411, the department shall prioritize municipal or quasi-municipal sand-salt storage areas prior to November 1, 1986.

2-E. **Exemptions; pesticide permits.** The following activities have been determined to have no significant adverse effect on the quality of the waters of the State and do not need ~~to obtain~~ require an aquatic pesticide permit from the Department of Environmental Protection:

A. The application of aquatic pesticides by the Department of Inland Fisheries and Wildlife to waters of the State for the purpose of restocking, including the elimination of undesirable species; or

B. The treatment of public water supplies by the application of copper sulfate or copper sulfate compounds where those water supplies are closed to swimming and fishing.

2-F. **Exemption; aquaculture.** No person may be considered in violation of this section if:

A. The discharge activity is associated with off-shore marine aquaculture operations in the estuarine and marine waters; and

2 B. As a condition of obtaining a leasehold from the
3 Department of Marine Resources, the Department of
4 Environmental Protection certifies that the aquaculture
5 activities mentioned in this subsection will not have a
6 significant adverse effect on water quality or violate the
standards ascribed to the receiving waters' classifications.

8 3. **Transfer of ownership.** In the event that any person
9 possessing a license issued by the ~~board~~
10 department transfers the ownership of the property, facility or
11 structure which ~~that~~ is the source of a licensed discharge,
12 without transfer of the license being approved by the ~~board~~
13 department, the license granted by the ~~board~~
14 department continues to authorize a discharge within the limits
15 and subject to the terms and conditions stated in the license,
16 provided that the parties to the transfer ~~shall be~~ are jointly
17 and severally liable for any violation thereof until such time as
18 the ~~board~~ department approves transfer or issuance of a waste
19 discharge license to the new owner. The ~~board~~ department may in
20 its discretion require the new owner to apply for a new license,
21 or may approve transfer of the existing license upon a
22 satisfactory showing that the new owner can abide by its terms
and conditions.

24 6. **Unlicensed discharge.** If after investigation the ~~board~~
25 commissioner finds any unlicensed discharge, ~~it~~ the commissioner
26 may notify the Attorney General of the violation without recourse
27 to the hearing procedures of section 347 347-A. The Attorney
28 General shall proceed immediately under section 348.

30 7. **Tidal waters and subtidal lands.** In connection with a
31 license under sections 414 and 414-A, whenever issued, the ~~board~~
32 department may grant to a licensee a permit to construct,
33 maintain and operate any facilities necessary to comply with the
34 terms of ~~such~~ that license in, on, above or under tidal waters or
35 subtidal lands of the State. ~~Such~~ This permit may be issued upon
36 such terms and conditions as the ~~board~~
37 department ~~determines~~ necessary to insure that ~~such~~ the facilities create
38 minimal interference with existing uses, including a requirement
39 that the licensee provide satisfactory evidence of financial
40 capacity, or in lieu thereof, a bond in such form and amount as
41 the ~~board~~ department may find necessary, to insure removal of
42 such facilities. In the event that ~~such~~ the facilities are no
43 longer necessary in order for ~~such~~ the licensee or successor
44 thereof to comply with the terms of its license, the ~~board~~
45 department may, after opportunity for notice and hearing, require
46 the licensee or successor to remove all or any portion of ~~such~~
47 the facilities from the tidal waters or subtidal lands. ~~Such~~ This
48 removal may be ordered if the ~~board~~ department determines that
49 maintenance of ~~such~~ the facilities will unreasonably interfere
50 with navigation, the development or conservation of marine
51 resources, the scenic character of any coastal area, other

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2 appropriate existing public uses of such area or public health
and safety, and that cost of such ~~this~~ removal will not create an
undue economic burden on such ~~the~~ licensee or successor.

4
6 8. Treated wastewater. Municipalities may apply to the
board for authority to issue licenses for the discharge of not
more than 2,500 gallons a day of treated domestic waste-~~water-~~
8 ~~wastewater~~ to surface waters within their jurisdiction and for
the inspection and enforcement of the licenses, in conformance
10 with this chapter and applicable ~~regulation~~ rule of the board.

12 Authority ~~shall-only~~ may be given to a municipality only after a
finding by the board that the municipality has the capability and
14 will fully execute all responsibilities under applicable state
law, will routinely inspect and monitor licensed discharges
16 within its jurisdiction and will take enforcement action against
those persons who violate discharge permit requirements.

18
20 Upon issuance of a license, a municipality shall forward a copy
of that license to the ~~department~~ commissioner within 5 working
days. The commissioner shall review the application and, within
22 30 days of receipt, approve the license as issued, disapprove or
modify the license. If the commissioner fails to take action
24 within 30 days of receipt, that inaction constitutes a decision
to approve the license as written. Within 30 days of the-~~receipt~~
26 ~~of-the~~ a license decision by the ~~department~~ commissioner, any
person aggrieved by the decision of the municipality, or the
28 ~~department~~ commissioner, may appeal to the board to reverse the
decision of the municipality or the commissioner.

30
32 Municipalities delegated authority pursuant to this subsection
may prescribe, by ordinance, standards for the issuance of waste
34 discharge licenses and for minimum performance and maintenance of
treatment systems ~~as-may-be~~ necessary to carry out the intent of
this subsection. No ordinance or other municipal law may
36 establish standards and procedures that are less stringent than
those required under relevant state and federal law and
38 departmental rule.

40 ~~The Board-of-Environmental-Protection board~~ may promulgate rules
governing the minimum requirements that shall control the
42 licensing and enforcement of discharges by the municipalities.
~~Included-in-these-rules-shall-be~~ These rules must include a model
44 ordinance ~~which that~~, if adopted by municipalities, will satisfy
the requirements of the rules.

46
48 Notwithstanding section 352, municipalities may establish
reasonable fees, not to exceed \$200 per year, to defray the costs
of discharge license issuance, inspection and testing. The
50 department shall may not collect fees associated with those
licenses delegated under this subsection.

52

2 The department commissioner may provide municipalities with
technical assistance in their licensing, inspections and
enforcement programs.

4
6 If at any time the board determines that a municipality may be
failing to exercise its license-granting authority in accordance
with its approval procedures or the purposes of this chapter and
8 rules promulgated by the board, ~~it~~ the board shall notify the
municipality of the specific alleged deficiencies and shall order
10 a public hearing, of which adequate public notice shall must be
given, to be held in the municipality to solicit public or
12 official comment on those alleged deficiencies. Following the
hearing, if ~~it~~ the board finds such deficiencies, ~~it~~ the board
14 may revoke the municipality's license-granting authority. The
municipality may reapply for authority at any time. Nothing in
16 this subsection limits the ~~board's-or-department's~~ commissioner's
authority to inspect or initiate enforcement action against any
18 discharge within a municipality.

20 **9. Emergency public water utility license.** An emergency
license may be issued pursuant to section 414-A to a certified
22 public water supply operator for the purpose of discharging or
causing to be discharged copper sulfate or related compounds into
24 a public water supply.

26 **Sec. B-29. 38 MRSA §414**, as amended by PL 1989, c. 442, §2,
is further amended to read:

28 **§414. Applications for licenses**

30
32 **2. Terms of licenses.** Licenses shall ~~be~~ are issued by the
~~board~~ department for a term of not more than 5 years, except that
34 licenses for residential discharges may be issued for a term of
not more than 10 years.

36 **2-A. Relicensing.** The relicensing of an existing licensed
waste discharge prior to or after the expiration of the term of
38 the existing license is subject to all of the requirements of
this chapter. For the purposes of this chapter, the term
40 "relicense" includes, without limitation, the terms, "renewal,"
"renew," "reissue" and "extend."

42
44 **3. Inspection and records.** Authorized representatives of
the commissioner and the Attorney General shall have access at
any reasonable time, to and through any premises where a
46 discharge originates or is located, for the purposes of
inspection, testing and sampling. The ~~board~~ department may order
48 a discharger to produce and shall have the right to copy any
records relating to the handling, treatment or discharge of
50 pollutants and may require any licensee to keep such records
relating thereto as ~~it-deems~~ the department determines necessary.

52

2 3-A. **Inspection of overboard discharges.** The department
3 commissioner shall inspect all licensed overboard discharges a
4 minimum of twice each calendar year. The department commissioner
5 shall assess all costs of inspection, including personnel costs
6 and necessary laboratory analyses, to the license holder. No
7 assessment under this section may exceed \$100 annually. All
8 revenues received under this subsection shall ~~be~~ are credited to
9 the Maine Environmental Protection Fund. The department
10 commissioner may retain private contractors to undertake the
11 inspections required under this subsection.

12 5. **Unlawful to violate license.** After the issuance of a
13 license by the board department, it shall ~~be~~ is unlawful to
14 violate the terms or conditions of the license, whether or not
15 such violation actually lowers the quality of the receiving
16 waters below the minimum requirements of their classification.

17 6. **Confidentiality of records.** ~~The board may establish~~
18 ~~reasonable fees for the reproduction of materials in its custody~~
19 ~~including parts of an application submitted to the board and~~
20 ~~parts of the records of a hearing held by the board under this~~
21 ~~section. All such fees collected by the board may be retained by~~
22 ~~it to reimburse expenses incurred in reproducing such materials.~~
23 Any records, reports or information obtained under this
24 subchapter shall ~~be~~ is available to the public, except that upon
25 a showing satisfactory to the board department by any person that
26 such any records, reports or information, or particular part
27 thereof, other than effluent data, to which the board department
28 has access under this subchapter would, if made public, divulge
29 methods or processes of ~~such person~~ which are entitled to
30 protection as trade secrets, such these records, reports or
31 information shall must be confidential and not available for
32 public inspection or examination. Such Any records, reports or
33 information may be disclosed to employees or authorized
34 representatives of the State or the United States concerned with
35 carrying out this subchapter or any applicable federal law, and
36 to any party to a hearing held under this section on such terms
37 as the board commissioner may prescribe in order to protect such
38 these confidential records, reports and information, provided
39 that such this disclosure is material and relevant to any issue
40 under consideration by the board department.

41
42 **Sec. B-30. 38 MRS §414-A**, as amended by PL 1989, c. 442, §3,
43 is further amended to read:

44
45 **§414-A. Conditions of licenses**

46
47 1. **Generally.** The board department shall issue a license
48 for the discharge of any pollutants only if it finds that:
49
50

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2 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;

4

6 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
8 the board expects to adopt in accordance with this
subchapter;

10

12 C. The discharge either by itself or in combination with
other discharges will not lower the existing quality of any
body of water, unless, following opportunity for public
14 participation, the board department finds that the discharge
is necessary to achieve important economic or social
16 benefits to the State and when the discharge is in
conformance with section 464, subsection 4, paragraph F.
18 The finding must be made following procedures established by
rule of the board pursuant to section 464, subsection 4,
20 paragraph F;

22

24 D. The discharge will be subject to effluent limitations
which that require application of the best practicable
treatment. "Effluent limitations" means any restriction or
prohibition including, but not limited to, effluent
26 limitations, standards of performance for new sources, toxic
effluent standards and other discharge criteria regulating
28 rates, quantities and concentrations of physical, chemical,
biological and other ~~constituents~~ constituents that
30 are discharged directly or indirectly into waters of the
State. "Best practicable treatment" means the methods of
32 reduction, treatment, control and handling of pollutants,
including process methods, and the application of best
34 conventional pollutant control technology or best available
technology economically achievable, for a category or class
36 of discharge sources which that the board department
determines are best calculated to protect and improve the
38 quality of the receiving water and which that are consistent
with the requirements of the Federal Water Pollution Control
40 Act, as amended. In determining best practicable treatment
for each such category or class, the board department shall
42 consider the ~~then~~ existing state of technology, the
effectiveness of the available alternatives for control of
44 the type of discharge and the economic feasibility of such
alternatives; and

46

48 E. A pesticide discharge is unlikely to exert a significant
adverse impact on nontarget species. This standard shall is
only be applicable to applications to discharge pesticides.

50

52 1-A. Emergency license for copper sulfate applications in
public water supplies. The commissioner shall issue upon

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2 application, an emergency license within 48 hours of application
3 to treat public water supplies with copper sulfate or related
4 compounds. The board commissioner may not issue more than 2
5 consecutive emergency licenses for the same body of water.

6 A. An emergency license may only be issued if the
7 Department of Human Services, Division of Health Engineering
8 has determined that:

10 (1) An abundant growth of algae producing taste or
11 odor ~~producing~~-algae exists to such a degree that the
12 water supply is in danger of becoming unhealthful or
13 unpalatable;

14 (2) The abundance of algae is a sporadic event. For
15 purposes of this section, "sporadic" means occurring
16 not more than 2 years in a row; and

18 (3) The algae cannot effectively be controlled by
19 other methods.

22 B. Any emergency license issued under this ~~section~~
23 subsection is for one application or series of applications
24 not to exceed 6 months, as provided in the terms of the
25 license.

26 C. The board commissioner shall impose all conditions
27 necessary to meet the requirements of this section and all
28 other relevant provisions of law.

29 D. ~~The Department of Environmental Protection board~~ and the
30 Department of Human Services shall jointly adopt rules to
31 carry out the purposes of this section.

32 1-B. **Relicensing of overboard discharges.** The following
33 provisions shall govern the relicensing of overboard discharges.

34 A. The board department shall find that the discharge meets
35 the requirements of best practicable treatment under this
36 section for purposes of relicensing, when it finds that
37 there are no technologically proven alternative methods of
38 ~~waste-water~~ wastewater disposal consistent with the Maine
39 ~~State-Plumbing-Code-which~~ plumbing code adopted by the
40 Department of Human Services pursuant to Title 22, section
41 42, that will not result in an overboard discharge.

42 B. For the purposes of this subsection, the department
43 shall may not require the installation or use of ~~waste-water~~
44 wastewater holding tanks as a "technologically proven
45 alternative method of ~~waste--water~~ wastewater disposal"
46 except in the following cases:
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2 (1) Seasonal residential overboard discharges which
3 that are located on the mainland or on any island
4 connected to the mainland by vehicle bridge or by
5 scheduled car ferry service; and

6 (2) All overboard discharges located within the
7 boundaries of a sanitary or sewer district when the
8 district has agreed to service and maintain the holding
9 tank at an annual fee that does not exceed those fees
10 charged to other similar users of the district's
11 services who are physically connected to the sewers of
12 the district.

13 C. The board department shall issue a conditional permit to
14 any applicant denied a license for an overboard discharge
15 under this subsection. The term of the permit ~~shall extend~~
16 extends until 6 months after the department commissioner
17 offers a grant to the applicant for the costs of replacing
18 the overboard discharge under the provisions of section
19 411-A.

20 D. The board department shall limit to a maximum of 5 years
21 the term of any overboard discharge license, including
22 relicensings, issued after June 1, 1987. All licenses in
23 existence on June 1, 1987, with expiration dates occurring
24 in 1989 or 1990, shall expire on the date stated in the
25 license. All other licenses in existence on June 1 1987,
26 shall expire on the same day and month stated the
27 existing license but in a new year, determined the
28 following schedule:
29

30	31	32	33
	Current Expiration Date		New Date
34	1991, 1992		1990
35	1993, 1994		1991
36	1995, 1996		1992
37	1997, 1998		1993

38 E. At the time of each relicensing of an overboard
39 discharge, the board department shall impose all conditions
40 necessary to meet the requirements of this section and all
41 other relevant laws.

42 2. Schedules of compliance. The board department may
43 establish schedules, within the terms and conditions of licenses,
44 for compliance with best practicable treatment, as defined in
45 subsection 1, paragraph D, which includes the application of best
46 conventional pollutant control technology or best available
47 technology economically achievable. Schedules shall must be
48 consistent with the times permitted for compliance with the
49 United States Water Pollution Control Act, as amended, and may
50 include such interim and final dates for attainment of specific
51

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standards as are necessary to carry out the purposes of this subchapter. The schedules shall must be as short as possible and shall--be based upon a consideration of the technological and economic impact of the steps necessary to attain these standards.

3. ~~At such time as~~ When the Administrator of the United States Environmental Protection Agency ~~determines to~~ ceases issuing permits for discharges of pollutants to waters of this State pursuant to ~~his~~ the administrator's authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended, the ~~board~~ department 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~~ this determination shall must contain ~~such--provision~~ provisions, including effluent limitations, ~~which~~ that the ~~board~~ deems department determines necessary to carry out the purposes of this subchapter and any ~~such~~ federal laws or regulations.

Notwithstanding the foregoing, the ~~board~~ department is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances shall may be granted only in accordance with the Federal Water Pollution Control Act, ~~sections~~ Sections 316 and 301(k), as amended, and applicable regulations.

Sec. B-31. 38 MRSA §414-B, sub-§2, as repealed and replaced by PL 1979, c. 444, §8, is amended to read:

2. **Pretreatment standards.** The ~~board~~ department may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants which interfere with, pass through or otherwise are incompatible with those treatment works. In addition, the ~~board~~ department may establish pretreatment standards for designated toxic pollutants which may be introduced into a publicly owned treatment works.

The ~~board~~ department may require that any license for a discharge from a publicly owned treatment works include conditions to require the identification of pollutants, in terms of character and volume, from any significant source introducing pollutants subject to pretreatment standards, and to assure compliance with these pretreatment ~~sandards~~ standards by each of these sources.

Sec. B-32. 38 MRSA §414-B, sub-§3, as enacted by PL 1973, c. 450, §15, is amended to read:

3. **User charges.** The ~~board~~ department 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.

Sec. B-33. 38 MRSA §414-B, sub-§4, as enacted by PL 1989, c. 433, §1, is amended to read:

4. **Acceptance of wastewater.** Municipal and quasi-municipal ~~waste-water~~ wastewater treatment facilities constructed wholly or in part with funding allocated pursuant to section 411 shall accept for treatment holding tank ~~waste-water~~ wastewater from any watercraft sewage pump-out facilities required pursuant to section 423-B. Municipal and quasi-municipal ~~waste--water~~ wastewater treatment facilities may charge an annual or per visit fee for this service to be approved by the ~~board~~ commissioner.

Sec. B-34. 38 MRSA §417, as amended by PL 1977, c. 373, §33, is repealed and the following enacted in its place:

§417. Certain deposits and discharges prohibited

No person, firm, corporation or other legal entity may place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that it may fall or be washed into these waters, or in such a manner that the drainage from any of the following may flow or leach into these waters, except as otherwise provided by law:

1. Forest products refuse. Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;

2. Potatoes. Any potatoes or any part or parts of potatoes; or

3. Refuse. Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse.

This section does not apply to solid waste disposal facilities in operation on July 1, 1977, owned by a municipality or quasi-municipal authority if the operation and maintenance of the facility has been or is approved by the department pursuant to the requirements of chapter 13 and the rules adopted thereunder.

Sec. B-35. 38 MRSA §418, as amended by PL 1985, c. 506, Pt. A, §79, is further amended to read:

§418. Log driving and storage

1. **Prohibitions.** No person, firm, corporation or other legal entity may place logs or pulpwood into the inland waters of

2 this State for the purpose of driving the logs or pulpwood to
pulp mills, lumber mills or any other destination, except to
transport logs or pulpwood from islands to the mainland.

4
6 No person, firm, corporation or other legal entity may place logs
or pulpwood on the ice of any inland waters of this State, except
to transport logs or pulpwood from islands to the mainland.

8
10 No person, firm, corporation or other legal entity may place logs
or pulpwood into the inland waters of this State for the purpose
of storage or curing the logs or pulpwood, or for other purposes
12 incidental to the processing of forest products, or to transport
logs or pulpwood from islands to the mainland, without a permit
14 from the board department as described in subsection 2.

16 2. Storage; permit. Whoever proposes to use the inland
waters of this State for the storage or curing of logs, or
18 pulpwood, or for other purposes incidental to the processing of
forest products, or to transport logs or pulpwood from islands to
20 the mainland, shall apply to the board department for a permit
for that use. Applications for these permits shall must be in
22 such a form and ~~require such information as the board may~~
determine prescribed by the commissioner.

24
26 ~~Within 45 days of receipt of an application, the board shall~~
~~either grant the application or hold a public hearing thereon as~~
~~provided.~~

28
30 If the ~~board is able to find~~ department finds, on the basis of
the application, that the proposed use will not lower the
32 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 that use will
34 impose undue economic hardship on the applicant, it shall grant
the permit for a period not to exceed 10 years, with such terms
36 and conditions as, in its judgment, may be necessary to protect
the quality, standards and rights.

38
40 In the event the ~~board deems~~ department determines it necessary
to solicit further evidence regarding the proposed use, it shall
schedule a public hearing on the application.

42
44 At that hearing the board department shall solicit and receive
testimony concerning the nature and extent of the proposed use
and its impact on existing water quality, water classification
46 standards and the public rights of fishing and navigation and the
economic implications upon the applicant of the use. If, after
48 hearing, the board department determines that the proposed use
will not lower the existing quality or the classification
50 standards, whichever is higher, of any waters, nor adversely
affect the public rights of fishing and navigation therein and
52 that inability to conduct the use will impose undue economic

2 hardship on the applicant, it shall grant the permit for a period
not to exceed 10 years, with such terms and conditions, as in its
4 judgment, may be necessary to protect the quality, standards and
rights.

6 Sec. B-36. 38 MRSA §419-A, sub-§2, ¶C, as enacted by PL 1987,
c. 474, is amended to read:

8
10 C. The Board of Pesticides Control ~~shall--be~~ is the
enforcement agency for this section. The ~~beard~~ Board of
12 Pesticides Control shall make available a list of paints
with acceptable tributyltin release rates by January 1, 1988.

14 Sec. B-37. 38 MRSA §420, first ¶, as amended by PL 1979, c.
16 472, §14, is further amended to read:

18 No person, firm, corporation or other legal entity shall
place, deposit, discharge or spill, directly or indirectly, into
20 the ~~inland-ground-or~~ ground water, inland surface waters or tidal
waters of this State, or on the ice thereof, or on the banks
22 thereof so that the same may flow or be washed into such waters,
or in such manner that the drainage therefrom may flow into such
waters, any of the following substances:

24 Sec. B-38. 38 MRSA §420, sub-§1, ¶B, as amended by PL 1979, c.
26 127, §210, is further amended to read:

28 B. Notwithstanding paragraph A, whenever the ~~beard--shall~~
~~find~~ commissioner finds that a concentration of 10 parts per
30 billion of mercury or greater is present in any waters of
this State, or that danger to public health exists due to
32 mercury concentrations of less than 10 parts per billion in
any waters of this State, ~~it~~ the commissioner may issue an
34 emergency order to all persons discharging to such waters
prohibiting or curtailing the further discharge of mercury,
36 and compounds containing mercury, thereto. ~~Sueh~~ These
findings and ~~the~~ order shall must be served in a manner
38 similar to that described in section ~~347~~ 347-A, subsection 2
3, and the parties affected by ~~sueh~~ that order shall have
40 the same rights and duties ~~with--respect--thereto~~ as is
described in section ~~347~~ 347-A, subsection 2 3.

42 Sec. B-39. 38 MRSA §420-A, first ¶, as enacted by PL 1987, c.
44 762, §1, is amended to read:

46 In order to determine the nature of dioxin contamination in
the waters and fisheries of the State, the ~~department~~
48 commissioner shall conduct a one-year monitoring program as
described in this section.

50 Sec. B-40. 38 MRSA §420-A, sub-§§2 and 4, as enacted by PL
52 1987, c. 762, §1, are amended to read:

2 **2. Monitoring locations and subjects.** The department
3 commissioner shall:

4
5 A. Select a representative sample of wastewater treatment
6 plant sludges from municipal wastewater treatment plants and
7 bleached pulp mills. These facilities shall must be
8 selected on the basis of known or likely dioxin
9 contamination of their discharged effluent. The total
10 number of facilities shall may not exceed 12;

11
12 B. Sample and test the sludge of these facilities for
13 dioxin contamination at least once during each season of the
14 year. The department commissioner shall specify which
15 cogeners of dioxin will be analyzed; and

16
17 C. Sample and test for dioxin contamination a selection of
18 fish representative of those species present in the
19 receiving waters. Sufficient numbers of fish will must be
20 analyzed to provide a reasonable estimate of the level of
21 contamination in the population of each water body affected.

22
23 **4. Report.** The department commissioner shall report by
24 December 1, 1990 on the results of the monitoring program to the
25 joint standing committee of the Legislature having jurisdiction
26 over natural resources. The final report shall must contain the
27 department's commissioner's conclusions as to the levels of
28 dioxin contamination in the sample subjects and the likely scope
29 of dioxin contamination in the State's waters.

30
31 **Sec. B-41. 38 MRSA §421, 2nd ¶,** as amended by PL 1981, c. 545,
32 §1, is further amended to read:

33 ~~If the board shall determine~~ department determines that soil
34 conditions, ~~groundwater~~ ground water conditions, topography or
35 other conditions indicate that any boundary of any such area
36 should be further than 300 feet from any classified body of
37 surface water, it may, after notice to the affected party, order
38 the relocation of such boundaries and the removal of any solid
39 waste, previously deposited within the original boundaries, to
40 the confines of the new boundaries.

41
42 **Sec. B-42. 38 MRSA §421, 3rd ¶,** as amended by PL 1979, c. 472,
43 §15, is further amended to read:

44
45 Any person, corporation, municipality or state agency
46 establishing a solid waste disposal area after September 23, 1971
47 may apply to the board department for a determination that the
48 boundaries of the proposed area are suitably removed from any
49 classified body of surface water.

2 **Sec. B-43. 38 MRSA §421, last ¶**, as amended by PL 1981, c. 545,
§2, is further amended to read:

4 Notwithstanding this section, if the ~~Board of Environmental~~
5 ~~Protection~~ ~~shall determine~~ department determines from an
6 examination of soil conditions, ~~groundwater~~ ground water
7 characteristics, climatic conditions, topography, the nature and
8 amount of the solid waste and other appropriate factors, that the
9 deposit of solid waste within an area less than 300 feet from any
10 classified body of surface water, will not result in an
11 unlicensed direct or indirect discharge of pollutants to such
12 that body of surface water, it may, after notice, permit the
13 deposit of solid waste within such that area, upon such terms and
14 conditions as it ~~deems~~ determines necessary. Permits issued
15 pursuant to this section shall ~~be~~ are for a term of not more than
16 2 years but may be renewed for successive 2-year terms after
17 reexamination pursuant to this chapter.

18
19 **Sec. B-44. 38 MRSA §438-A, sub-§§2 and 3**, as amended by PL
20 1989, c. 403, §7, are further amended to read:

21 **2. Municipal ordinances.** In accordance with a schedule
22 adopted by the board and acting in accordance with a local
23 comprehensive plan, municipalities shall prepare and submit to
24 the ~~board~~ commissioner zoning and land use ordinances ~~which~~ that
25 are consistent with, or are no less stringent than, the minimum
26 guidelines adopted by the board and, for coastal communities,
27 which address the coastal management policies cited in section
28 1801. When a municipality determines that special local
29 conditions within portions of the shoreland zone require a
30 different set of standards from those in the minimum guidelines,
31 the municipality shall document the special conditions and submit
32 them, together with its proposed ordinance provisions, to the
33 ~~board~~ commissioner for review and approval.

34 **3. Commissioner approval.** Municipal ordinances, amendments
35 and any repeals of ordinances shall ~~are~~ are not be effective unless
36 approved by the ~~board~~ commissioner. In determining whether to
37 approve municipal ordinances or amendments, the ~~board~~
38 commissioner shall consider the legislative purposes described in
39 section 435, the minimum guidelines and any special local
40 conditions which, in the judgment of the ~~board~~ commissioner,
41 justify a departure from the requirements of the minimum
42 guidelines in a manner ~~which~~ is not inconsistent with the
43 legislative purposes described in section 435. Recognizing that
44 the guidelines are intended as minimum standards, the ~~board~~
45 commissioner shall approve a municipal ordinance ~~which~~ that
46 imposes more restrictive standards than those in the guidelines.
47 If an ordinance or an amendment adopted by a municipality
48 contains standards ~~which~~ are inconsistent with or less stringent
49 than the minimum guidelines, the ~~board~~ commissioner may approve
50 the proposed ordinances or amendment with conditions imposing the
51 proposed ordinances or amendment with conditions imposing the

2 minimum guidelines in place of the inconsistent or less stringent
3 standard or standards. Those conditions ~~shall be~~ are effective
4 and binding within the municipality and ~~shall~~ must be
5 administered and enforced by the municipality. If the ~~board~~
6 commissioner fails to act on any proposed municipal ordinance or
7 amendment within 45 days of the ~~board's~~ commissioner's receipt of
8 the proposed ordinance or amendment, the ordinance or amendment
9 is automatically approved. Any application for a shoreland
10 zoning permit submitted to a municipality within the 45-day
11 period ~~shall be~~ is governed by the terms of the proposed
12 ordinance or amendment if the ordinance or amendment is approved
13 under this subsection. A municipality may appeal to the board a
14 decision of the commissioner under this subsection.

15 **Sec. B-45. 38 MRSA §438-A, sub-§4**, as amended by PL 1989, c.
16 143, and c. 403, §7, is repealed and the following enacted in its
17 place:

18 **4. Failure to adopt ordinances.** If a municipality fails to
19 adopt ordinances as required under this article or if the
20 commissioner determines that an ordinance which a municipality
21 has adopted does not satisfy the requirements and purposes under
22 this article, and that the commissioner is unable to make the
23 ordinance consistent with the minimum guidelines by the
24 imposition of conditions, as set forth in subsection 3, the
25 commissioner shall request and the board may adopt, acting in
26 accordance with Title 5, chapter 375, subchapter II, suitable
27 ordinances, or suitable provisions of ordinances, on behalf of
28 the municipality. Notwithstanding subsections 2 and 3, if the
29 board determines that special water quality considerations on a
30 great pond warrant more restrictive standards than those
31 contained in the minimum guidelines, the board may adopt the
32 additional standards for all municipalities outside the
33 jurisdiction of the Maine Land Use Regulation Commission which
34 abut those waters. Following adoption by the board, these
35 ordinances or provisions are effective and binding within the
36 municipality and must be administered and enforced by that
37 municipality.

38 **Sec. B-46. 38 MRSA §438-A, sub-§§5 and 6**, as enacted by PL
39 1987, c. 815, §§5 and 11, are amended to read:

40 **5. Exemptions.** Any areas within a municipality ~~which that~~
41 are subject to nonmunicipal zoning and land use controls may be
42 exempted from the operation of this section upon a finding by the
43 ~~board~~ commissioner that the purposes of this chapter have been
44 accomplished by nonmunicipal measures.

45 **6. Variances.** A copy of each request for a variance under
46 an ordinance approved ~~or imposed~~ by the ~~Board-of-Environmental~~
47 ~~Protection~~ commissioner or board under this article ~~shall~~ must be
48 forwarded by the municipality to the commissioner at least 20
49 days before the date of the hearing.

2 days prior to action by the municipality. The material submitted
3 shall must include the application plus all supporting
4 information provided by the applicant. The commissioner may
5 comment when the commissioner determines that the municipal
6 issuance of the variance would be in noncompliance with the
7 requirements of state law for a zoning variance or the variance
8 would undermine the legislative purposes declared in section
9 435. Such ~~These~~ comments, if submitted by the commissioner prior
10 to the action by the municipality, shall must be made part of the
11 record, and shall must be considered by the municipality prior to
12 taking action on the variance request.

13
14 **Sec. B-47. 38 MRSA §439-A, sub-§3**, as enacted by PL 1987, c.
15 815, §§7 and 11, is amended to read:

16 **3. Soil evaluation reports.** Any other law notwithstanding,
17 when a zoning ordinance adopted in conformity with this article
18 requires a written report of soil suitability for subsurface
19 waste disposal or commercial or industrial development, that
20 report shall must be prepared and signed by a duly qualified
21 person who has made an on-the-ground evaluation of the soil
22 properties involved. Persons qualified to prepare these reports
23 shall must be certified by the Department of Human Services and
24 shall include Maine State Certified Soil Scientists, Maine
25 Registered Professional Engineers, Maine State Certified
26 Geologists and other persons who have training and experience in
27 the recognition and evaluation of soil properties and can provide
28 proof of this training and experience in a manner specified by
29 the Department of Human Services. ~~That-department~~ The Department
30 of Human Services may promulgate rules for the purpose of
31 establishing training and experience standards required by this
32 subsection.

33
34 **Sec. B-48. 38 MRSA §443-A, sub-§1**, as enacted by PL 1987, c.
35 815, §§10 and 11, is amended to read:

36
37 **1. Consultation with state agencies.** All agencies of State
38 Government shall cooperate to accomplish the objectives of this
39 article. To that end, the ~~department~~ commissioner shall consult
40 with the governing bodies of municipalities and with other state
41 agencies to achieve the purposes of this article, and shall
42 extend to municipalities all possible technical and other
43 assistance for that purpose.

44
45 **Sec. B-49. 38 MRSA §449, sub-§1**, as reallocated by PL 1989, c.
46 403, §1, is amended to read:

47
48 **1. Commissioner assistance.** A description of the
49 assistance and supervision that the ~~Department-of-Environmental~~
50 ~~Protection~~ commissioner has provided to the municipalities in
51 carrying out their shoreland zoning responsibilities;
52

2 Sec. B-50. 38 MRSA §451, as amended by PL 1983, c. 566, §§24
and 25, is further amended to read:

4 **§451. Enforcement generally**

6 After adoption of any classification by the Legislature for
8 surface waters or tidal flats or sections thereof, it shall-be is
unlawful for any person, firm, corporation, municipality,
10 association, partnership, quasi-municipal body, state agency or
other legal entity to dispose of any pollutants, either alone or
12 in conjunction with another or others, in such manner as will,
after reasonable opportunity for dilution, diffusion or mixture
14 with the receiving waters or heat transfer to the atmosphere,
lower the quality of those waters below the minimum requirements
of such classifications, or where mixing zones have been
16 established by the board department, so lower the quality of
those waters outside such zones, notwithstanding any exemptions
18 or licenses which may have been granted or issued under sections
413 to 414-B.

20 The board department may establish a mixing zone with
22 respect to any discharge at the time application for license for
the discharge is made, and when so established shall must be a
24 condition of and form a part of the license issued. The board
department may, after opportunity for a hearing in accordance
26 with section ~~345~~ 345-A, establish by order a mixing zone with
respect to any discharge for which a license has been issued
28 pursuant to section 414, or for which an exemption has been
granted by virtue of section 413, subsection 2. Prior to the
30 commencement of any enforcement action to abate a classification
violation, the board department shall establish, in the manner
32 provided in this paragraph, a mixing zone with respect to the
discharge sought to be thereby affected.

34 The purpose of a mixing zone is to allow a reasonable
36 opportunity for dilution, diffusion or mixture of pollutants with
the receiving waters before the receiving waters below or
38 surrounding a discharge will be tested for classification
violations. In determining the extent of any mixing zone to be by
40 it established under this section, the board department may
require from the applicant testimony concerning the nature and
42 rate of the discharge; the nature and rate of existing discharges
to the waterway; the size of the waterway and the rate of flow
44 therein; any relevant seasonal, climatic, tidal and natural
variations in such size, flow, nature and rate; the uses of the
46 waterways in the vicinity of the discharge, and such other and
further evidence as in the board's department's judgment will
48 enable it to establish a reasonable mixing zone for such
discharge. An order establishing a mixing zone may provide that
50 the extent thereof shall vary in order to take into account
seasonal, climatic, tidal and natural variations in the size and
52 flow of, and the nature and rate of, discharges to the waterway.

2 Where no mixing zones have been established by the ~~board~~
3 department, it shall-be is unlawful for any person, corporation,
4 municipality or other legal entity to dispose of any pollutants,
5 either alone or in conjunction with another or others, into any
6 classified surface waters, tidal flats or sections thereof, in
7 such manner as will, after reasonable opportunity for dilution,
8 diffusion, mixture or heat transfer to the atmosphere, lower the
9 quality of any significant segment of those waters, tidal flats
10 or sections thereof, affected by such discharge, below the
11 minimum requirements of such classification, and notwithstanding
12 any licenses which may have been granted or issued under sections
13 413 to 414-B.

14

15 **Sec. B-51. 38 MRSA §451-A, sub-§1**, as amended by PL 1987, c.
16 769, Pt. A, §176, is further amended to read:

17 **1. Power to grant variances.** The ~~Board-of-Environmental~~
18 Protection department may grant a variance from any statutory
19 water pollution abatement requirement, pursuant to section 414-A,
20 subsection 1, paragraph D, to any municipality or quasi-municipal
21 entity, hereinafter called the "municipality," upon application
22 by it. The ~~board~~ department may grant a variance only upon a
23 finding that:

24
25 A. Federal funds for the construction of municipal waste
26 water treatment facilities are not available for the project;

27

28 B. The municipality has demonstrated that it has completed
29 preliminary plans acceptable to the ~~Department--of~~
30 Environmental--Protection department for the treatment of
31 municipal wastes and for construction of that portion of the
32 municipal sewage system intended to be served by the planned
33 municipal treatment plant when that plant first begins
34 operations; and

35

36 C. Beginning on October 1, 1976, the municipality shall
37 collect, from each discharger into its sewage system and
38 each discharger not connected to the sewage system which
39 that has signed an approved agreement with the municipality
40 pursuant to subsection 2, a fee sufficient to equal their
41 proportionate share of the actual current cost of operating
42 the sewage system for which preliminary plans have been
43 completed and approved pursuant to paragraph B. Actual
44 current costs shall include but are not be limited to
45 preliminary plans, final design plans, site acquisition,
46 legal fees, interest fees, sewer system maintenance and
47 rehabilitation and other administrative costs. A
48 municipality may provide, when permitted under the federal
49 construction grant program, that in lieu of such annual fees
50 paid by dischargers, the municipality may apportion an

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2 appropriate amount from general revenues to cover that share
of fees to be paid by dischargers.

4 The funds collected or apportioned pursuant to this
6 paragraph and interest collected thereon shall must be
invested and expended pursuant to Title 30-A, subpart 9.

8 Any funds paid by a discharger or discharger not connected
10 to the sewage system pursuant to this paragraph may be
12 credited to the account of the discharger if the
14 municipality is subsequently reimbursed by the federal
construction grant program. The credit arrangement shall
must be determined by agreement between the municipality and
the discharger.

16 Variances shall ~~be~~ are issued for a term certain not to exceed 3
18 years, and may be renewed, except that no variance may run longer
20 than the time specified for completion of the municipal waste
22 treatment facility. Notwithstanding the provisions of this
subsection, no variance issued under this section may extend
24 beyond July 1, 1988. Upon notice of the availability of federal
26 funds, the municipality shall present to the ~~Department--of
Environmental----Protection~~ department for approval an
implementation schedule for designing, constructing and placing
the waste collection and treatment facilities in operation.

28 Variances may be conditioned upon reasonable and necessary terms
relating to appropriate interim measures to be taken by the
municipality to maintain or improve water quality.

30 **Sec. B-52. 38 MRSA §451-A, sub-§1-A, as enacted by PL 1987, c.**
32 **492, is amended to read:**

34 **1-A. Time schedule for salt and sand-salt storage program.**
An owner or operator of a salt or sand-salt storage area is not
36 in violation of any ground water classification or
reclassification adopted on or after January 1, 1980, at any time
38 prior to October 1, 1996, with respect to discharges to the
ground water from those facilities, if by that time the owner or
40 operator has completed all steps then required to be completed by
the schedules set forth in this subchapter. The ~~department~~
42 commissioner shall administer this schedule according to the
project priority list adopted by the board pursuant to section
44 411 and the provisions of this subsection.

46 A. Preliminary plans and engineers' estimates shall must be
48 completed and submitted to the Department of Transportation
by the following dates:

50 (1) For Priority 1 and 2 projects - January 1989;

52 (2) For Priority 3 project - January 1990;

2 (3) For Priority 4 project - January 1991; and

4 (4) For Priority 5 project - January 1992.

6 B. Arrangements for administration and financing shall must
8 be completed within 12 months of the dates established in
paragraph A for each priority category.

10 C. Detailed engineering and final plan formulation shall
12 must be completed within 24 months of the dates established
in paragraph A for each priority category.

14 D. Review of final plans with the Department of
16 Transportation shall must be completed and construction
commenced within 36 months of the dates established in
18 paragraph A for each priority category. The Department of
Transportation shall consult with the department
commissioner in reviewing final plans.

20 E. Construction shall must be completed and in operation on
22 or before January 1, 1996.

24 In no case shall may violations of the lowest ground water
26 classification be allowed. In addition, no violations of any
ground water classifications adopted after January 1, 1980, may
28 be allowed for more than 3 years from the date of an offer of a
state grant for the construction of those facilities or after
January 1, 1996, whichever is earlier.

30 The ~~beard-shall~~ department may not issue time schedule variances
32 under subsection 1 to owners or operators of salt or sand-salt
storage areas.

34 An owner or operator of a salt or sand-salt storage area who is
36 in compliance with this section is exempt from the requirements
of licensing under section 413, subsection 2-D.

38 An owner or operator is not in violation of a schedule
40 established pursuant to this subsection if the owner or operator
is eligible for a state grant to implement the schedule and the
42 state grant is not available.

44 **Sec. B-53. 38 MRSA §452**, as amended by PL 1971, c. 618, §12,
is further amended to read:

46 **§452. Forms filed; right of entry; furnishing information**

48 Persons, firms, corporations, quasi-municipal corporations,
50 municipalities, state agencies and other legal entities shall
file with the ~~beard-such~~ commissioner information relative to
52 their present method of collection, disposal, composition and

2 volume of all wastes discharged by them into any waters of the
3 State, in such a manner and on such forms as ~~the board may by~~
4 ~~regulation prescribe~~ prescribed by the commissioner, within 30
5 days of receipt of such those forms.

6 **Sec. B-54. 38 MRSA §464, sub-§2, ¶¶A and B**, as enacted by PL
7 1985, c. 698, §15, are amended to read:

8
9 A. Upon petition by any person or on its own motion, the
10 board may initiate, following public notice, may and the
11 commissioner shall conduct classification studies and
12 investigations. Information collected during these studies
13 and investigations shall must be made available to the
14 public in an expeditious manner. After consultation with
15 other state agencies and, where appropriate, individuals,
16 citizen groups, industries, municipalities and federal and
17 interstate water pollution control agencies, the board may
18 propose changes in water ~~reclassification~~ classification.

19 B. The board shall ~~call~~ hold public hearings in the
20 affected area, or reasonably adjacent to the affected area,
21 for the purposes of presenting to all interested persons the
22 proposed classification for each particular water body and
23 obtaining public input.

24
25 **Sec. B-55. 38 MRSA §464, sub-§3**, as amended by PL 1987, c.
26 567, is further amended to read:

27
28 **3. Reports to the Legislature.** The ~~board--and--the~~
29 department shall periodically report to the Legislature as
30 governed by the following provisions.

31
32 A. The ~~board~~ commissioner shall submit to the first regular
33 session of each Legislature a report on the quality of the
34 State's waters which describes existing water quality,
35 identifies waters which that are not attaining their
36 classification and states what measures are necessary for
37 the attainment of the standards of their classification.

38
39 B. The board shall, from time to time, but at least once
40 every 3 years, hold public hearings for the purpose of
41 reviewing the water quality classification system and
42 related standards and, as appropriate, recommending changes
43 in the standards to the Legislature.

44
45 C. The ~~department~~ commissioner shall report annually to
46 each regular session of the Legislature on the status of
47 licensed discharges.

48
49 ~~D.--The--department,--in--cooperation--with--the--Land--Use~~
50 ~~Regulation--Commission,--shall--conduct--a--study--of--indirect~~
51 ~~discharges--and--the--problems--posed--by--those--discharges--to--the~~

2 ~~waters of the State. The study shall incorporate the~~
3 ~~results of previous investigations conducted pursuant to the~~
4 ~~United States Water Pollution Control Act, Section 208. The~~
5 ~~study shall include recommendations for land use management~~
6 ~~and other related techniques designed to mitigate the~~
7 ~~effects of indirect discharges. The study shall commence on~~
8 ~~July 1, 1987. The study shall be submitted to the joint~~
9 ~~standing committee of the Legislature having jurisdiction~~
10 ~~over natural resources by February 29, 1988.~~

11 **Sec. B-56. 38 MRSA §464, sub-§4, ¶A, as amended by PL 1989, c.**
12 **442, §4, is further amended to read:**

13 **A. Notwithstanding section 414-A, the board department**
14 **shall may not issue a water discharge license for any of the**
15 **following discharges:**

16 (1) Direct discharge of pollutants to waters having a
17 drainage area of less than 10 square miles, except that
18 discharges into these waters which that were licensed
19 prior to January 1, 1986, ~~shall be~~ are allowed to
20 continue only until practical alternatives exist;

21 (2) New direct discharge of domestic pollutants to
22 tributaries of Class-GPA waters;

23 (3) Any discharge into a tributary of GPA waters
24 which, by itself or in combination with other
25 activities, causes water quality degradation which
26 would impair the characteristics and designated uses of
27 downstream GPA waters or causes an increase in the
28 trophic state of those GPA waters;

29 (4) Discharge of pollutants to waters of the State
30 which that imparts color, taste, turbidity, toxicity,
31 radioactivity or other properties which that cause
32 those waters to be unsuitable for the designated uses
33 and characteristics ascribed to their class;

34 (5) Discharge of pollutants to any water of the State
35 which that violates sections 465, 465-A and 465-B,
36 except as provided in section 451; causes the "pH" of
37 fresh waters to fall outside of the 6.0 to 8.5 range;
38 causes the "pH" of estuarine and marine waters to fall
39 outside of the 7.0 to 8.5 range; or causes fish for
40 human consumption to be injurious to human health as
41 determined by the United States Food and Drug
42 Administration under the procedures established by
43 United States Code, Title 21, section 342 or as
44 determined by the Department of Human Services. The
45 Department of Human Services shall establish a protocol
46 for determining risk in these situations. The protocol

2 shall ~~must~~ be promulgated as a rule in accordance with
the Maine Administrative Procedure Act, Title 5,
4 chapter 375; and

6 (6) New discharges of domestic pollutants to the
surface waters of the State which ~~that~~ are not conveyed
and treated in municipal or quasi-municipal sewage
8 facilities. For the purposes of this subparagraph,
"new discharge" means any overboard discharge which-was
10 not licensed as of June 1, 1987, except those
discharges which ~~that~~ were in continuous existence for
12 the 12 months preceding June 1, 1987, as demonstrated
by the applicant to the ~~board~~ department with clear and
14 convincing evidence. For purposes of licensing, the
~~board~~ department shall treat an increase in the
16 licensed volume or quantity of an existing discharge or
an expansion in the months during which the discharge
18 will take place as a new discharge of domestic
pollutants.

20 **Sec. B-57. 38 MRSA §464, sub-§4, ¶E**, as enacted by PL 1985, c.
22 698, §15, is amended to read:

24 E. The waters contained in excavations approved by the
~~board~~ department for waste--~~water~~ wastewater treatment
26 purposes shall-be are unclassified waters.

28 **Sec. B-58. 38 MRSA §464, sub-§4, ¶F**, as amended by PL 1989, c.
30 309, §2, is further amended to read:

32 F. The antidegradation policy of the State shall-be is
governed by the following provisions.

34 (1) Existing in-stream water uses and the level of
water quality necessary to protect those existing uses
36 shall ~~must~~ be maintained and protected. Existing
in-stream water uses are those uses which have actually
38 occurred on or after November 28, 1975, in or on a
water body whether or not the uses are included in the
40 standard for classification of the particular water
body.

42 Determinations of what constitutes an existing
44 in-stream water use on a particular water body shall
~~must~~ be made on a case-by-case basis by the ~~Board~~
46 department. In making its determination of uses to be
protected and maintained, the ~~Board~~ department shall
48 consider designated uses for that water body and:

50 (a) Aquatic, estuarine and marine life present in
the water body;

52

2 (b) Wildlife that utilize the water body;

4 (c) Habitat, including significant wetlands,
6 within a water body supporting existing
8 populations of wildlife or aquatic, estuarine or
10 marine life, or plant life that is maintained by
12 the water body;

14 (d) The use of the water body for recreation in
16 or on the water, fishing, water supply, or
18 commercial activity that depends directly on the
20 preservation of an existing level of water
22 quality. Use of the water body to receive or
24 transport waste water discharges is not considered
an existing use for purposes of this
antidegradation policy; and

(e) Any other evidence which that, for divisions
(a), (b) and (c), demonstrates their ecological
significance because of their role or importance
in the functioning of the ecosystem or their
rarity and, for division (d), demonstrates its
historical or social significance.

(1-A) The board department may only issue a waste
discharge license pursuant to section 414-A, or approve
a water quality certification pursuant to the United
States Clean Water Act, Section 401, Public Law 92-500,
as amended, when the board department finds that:

(a) The existing in-stream use involves use of
the water body by a population of plant life,
wildlife, or aquatic, estuarine or marine life, or
as aquatic, estuarine, marine, wildlife, or plant
habitat, and the applicant has demonstrated that
the proposed activity would not have a significant
impact on the existing use. For purpose of this
division, significant impact means:

(i) Impairing the viability of the existing
population, including significant impairment
to growth and reproduction or an alteration
of the habitat which impairs viability of the
existing population; or

(b) The existing in-stream use involves use of
the water body for recreation in or on the water,
fishing, water supply or commercial enterprises
that depend directly on the preservation of an
existing level of water quality and the applicant
has demonstrated that the proposed activity would

2 not result in significant degradation of the
existing use.

4 The board department shall determine what constitutes a
6 population of a particular species based upon the
degree of geographic and reproductive isolation from
8 other individuals of the same species.

10 If the board department fails to find that the
12 conditions of this subparagraph are met, water quality
certification, pursuant to the United States Clean
14 Water Act, Section 401, Public Law 92-500, as amended,
is denied.

16 (2) Where high quality waters of the State constitute
an outstanding national resource, that water quality
18 shall must be maintained and protected. For purposes
of this paragraph, the following waters ~~shall be~~ are
20 considered outstanding national resources: those water
bodies in national and state parks and wildlife
22 refuges; public reserved lands; and those water bodies
classified as Class AA and SA waters pursuant to
24 section 465, subsection 1; section 465-B, subsection 1;
and listed under sections 467, 468 and 469.

26 (3) The board department may only issue a discharge
license pursuant to section 414-A or approve water
28 quality certification pursuant to the United States
Clean Water Act, Section 401, Public Law 92-500, as
30 amended, if the standards of classification of the
water body and the requirements of this paragraph will
32 be met.

34 (4) ~~Where~~ When the actual quality of any classified
water exceeds the minimum standards of the next highest
36 classification, that higher water quality shall must be
maintained and protected. The board shall recommend to
38 the Legislature that that water be reclassified in the
next higher classification.

40 (5) The board department may only issue a discharge
42 license pursuant to section 414-A or approve water
quality certification pursuant to the United States
44 Clean Water Act, Section 401, Public Law 92-500, as
amended, which would result in lowering the existing
46 quality of any water body after making a finding,
following opportunity for public participation, that
48 the action is necessary to achieve important economic
or social benefits to the State and when the action is
50 in conformance with subparagraph (3). That finding
must be made following procedures established by rule
52 of the board.

2 **Sec. B-59. 38 MRSA §464, sub-§6, ¶¶A and B**, as enacted by PL
3 1985, c.698, §15, are amended to read:

4
5 A. At any time during the term of a valid ~~waste-water~~
6 wastewater discharge license ~~which that~~ was issued prior to
7 the effective date of this article, the board may modify
8 that license in accordance with section 347 ~~341-D~~,
9 subsection 3 if the discharger is not in compliance with the
10 water quality criteria pertaining to the protection of the
11 resident biological community. When a discharge license is
12 modified under this subsection, the board shall establish a
13 reasonable schedule to bring the discharge into compliance
14 with the water quality criteria pertaining to the protection
15 of the resident biological community.

16
17 B. When a discharge license is issued after the effective
18 date of this article and before the effective date of the
19 rules adopted pursuant to subsection 5, the ~~board~~ department
20 shall establish a reasonable schedule to bring the discharge
21 into compliance with the water quality criteria pertaining
22 to the protection of the resident biological community.

23 **Sec. B-60. 38 MRSA §464, sub-§§7 and 8**, as enacted by PL 1989,
24 c. 442, §6, are amended to read:

25 7. **Interdepartmental coordination.** The ~~board~~ commissioner,
26 the Commissioner of Marine Resources and the Commissioner of
27 Human Services shall jointly:

28 A. Make available accurate and consistent information on the
29 requirements of this section, section 411-A and section
30 414-A, subsection 1-B; and

31 B. Certify ~~waste-water~~ wastewater treatment and disposal
32 technologies which can be used to replace overboard
33 discharges.

34 8. **Development of group systems.** Subject to the provisions
35 of section 414-A, subsection 1-B, the ~~board~~ commissioner shall
36 coordinate the development and implementation of ~~waste-water~~
37 wastewater treatment and disposal systems serving more than one
38 residence or commercial establishment where ~~where~~ when individual
39 replacement systems are not feasible.

40 **Sec. B-61. 38 MRSA §465, first ¶**, as enacted by PL 1985, c.
41 698, §15, is amended to read:

42 The ~~board~~ department shall have 4 standards for the
43 classification of fresh surface waters which are not classified
44 as great ponds.

2 **Sec. B-62. 38 MRSA §465, sub-§2, ¶C**, as enacted by PL 1985, c.
698, §15, is amended to read:

4 C. Direct discharges to these waters licensed after January
6 1, 1986, ~~shall--be~~ are permitted only if, in addition to
8 satisfying all the requirements of this article, the
10 discharged effluent will be equal to or better than the
12 existing water quality of the receiving waters. Prior to
14 issuing a discharge license, the ~~board~~ department shall
16 require the applicant to objectively demonstrate to the
18 ~~board's~~ department's satisfaction that the discharge is
 necessary and that there are no other reasonable
 alternatives available. Discharges into waters of this
 classification ~~which--were~~ licensed prior to January 1, 1986,
 ~~shall--be~~ are allowed to continue only until practical
 alternatives exist. There ~~shall~~ may be no deposits of any
 material on the banks of these waters in any manner so that
 transfer of pollutants into the waters is likely.

20 **Sec. B-63. 38 MRSA §465, sub-§4, ¶B**, as enacted by PL 1985, c.
22 698, §15, is amended to read:

24 B. The dissolved oxygen content of Class C water ~~shall~~ may
26 be not less than 5 parts per million or 60% of saturation,
28 whichever is higher, except that in identified salmonid
30 spawning areas where water quality is sufficient to ensure
32 spawning, egg incubation and survival of early life stages,
34 that water quality sufficient for these purposes ~~shall~~ must
36 be maintained. Between May 15th and September 30th, the
38 number of Escherichia coli bacteria of human origin in these
 waters may not exceed a geometric mean of 142 per 100
 milliliters or an instantaneous level of 949 per 100
 milliliters. The ~~department~~ board shall promulgate rules
 governing the procedure for designation of spawning areas.
 Those rules ~~shall~~ must include provision for periodic review
 of designated spawning areas and consultation with affected
 persons prior to designation of a stretch of water as a
 spawning area.

40 **Sec. B-64. 38 MRSA §465-A, first ¶**, as enacted by PL 1985, c.
42 698, §15, is amended to read:

44 The ~~board~~ department shall have one standard for the
46 classification of great ponds and natural lakes and ponds less
48 than 10 acres in size. Impoundments of rivers that are defined
 as great ponds pursuant to section 392--~~shall--be~~ 480-B are
 classified as GPA or as specifically provided in sections 467 and
 468.

50 **Sec. B-65. 38 MRSA §465-A, sub-§1, ¶C**, as enacted by PL 1985,
52 c. 698, §15, is amended to read:

2 C. There shall ~~may~~ be no new direct discharge of pollutants
3 into Class GPA waters. Aquatic pesticide treatments or
4 chemical treatments for the purpose of restoring water
5 quality approved by the ~~board-shall-be~~ department are exempt
6 from the ~~no-discharge~~ no discharge provision. Discharges
7 into these waters which ~~were~~ licensed prior to January 1,
8 1986, shall ~~be~~ are allowed to continue only until practical
9 alternatives exist. No materials may be placed on or
10 removed from the shores or banks of a Class GPA water body
11 in such a manner that materials may fall or be washed into
12 the water or that contaminated drainage therefrom may flow
13 or leach into those waters, except as permitted pursuant to
14 section ~~391~~ 480-C. No change of land use in the watershed
15 of a Class GPA water body may, by itself or in combination
16 with other activities, cause water quality degradation which
17 that would impair the characteristics and designated uses of
18 downstream GPA waters or cause an increase in the trophic
19 state of those GPA waters.

20 **Sec. B-66. 38 MRSA §465-B, first ¶,** as enacted by PL 1985, c.
21 698, §15, is amended to read:

22 The ~~board~~ department shall have 3 standards for the
23 classification of estuarine and marine waters.

24 **Sec. B-67. 38 MRSA §465-C, first ¶,** as enacted by PL 1985, c.
25 698, §15, is amended to read:

26 The ~~board~~ department shall have 2 standards for the
27 classification of ground water.

28 **Sec. B-68. 38 MRSA §467, sub-§1, ¶A,** as repealed and replaced
29 by PL 1989, c. 228, §1, is amended by amending subparagraph (3)
30 to read:

31 (3) The Legislature recognizes, however, that at
32 certain times portions of the waters in the
33 impoundments created by Gulf Island, Deer Rips and
34 Lewiston Falls dams have not and may not continue to
35 meet the Class C requirements for aquatic life and
36 dissolved oxygen due to hydrologic conditions related
37 to the creation of the impoundments, including, but not
38 limited to, impaired mixing of water columns,
39 historical accumulation of sediment and elevated water
40 temperature. The Legislature further recognizes that,
41 for the purposes of this subparagraph, these
42 impoundments constitute a valuable, indigenous and
43 renewable energy resource for hydroelectric energy
44 which provides a significant contribution to the
45 economic development and general welfare of the
46 citizens of the State. This subparagraph is repealed
47 on January 1, 1992.

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2 Accordingly, the value and importance to the people of
4 the State of hydroelectric energy and the unavoidable
6 consequences to water quality resulting from the
8 existence of these impoundments shall must be
10 considered when the board department determines the
12 impact of a discharge on the designated uses of the
14 impoundments identified in this subparagraph. These
16 impoundments shall--be are considered to meet their
18 classification if the department finds that conditions
in those impoundments are not preventing their
designated uses from being reasonably attained.
Nothing in this subparagraph may be construed to limit
the board's department's authority to consider the
requirements of section 414-A, subsection 1, paragraphs
A to E. This subparagraph is repealed on January 1,
1992.

18
20 **Sec. B-69. 38 MRSA §467, sub-§7, ¶A**, as enacted by PL 1985, c.
698, §15, is amended by amending subparagraph (3) to read:

22 (3) The Legislature recognizes, however, that at
24 certain times portions of the waters in the
26 impoundments created by Mattaceunk Dam, also known as
28 Weldon Dam, and Dolby Dam have not and may continue to
30 not meet the Class C requirements for aquatic life and
32 dissolved oxygen due to hydrologic conditions related
34 to the creation of the impoundments, including, but not
36 limited to, impaired mixing of water columns,
38 historical accumulation of sediment and elevated water
40 temperature. The Legislature further recognizes that,
42 for the purposes of this subparagraph, these
44 impoundments constitute a valuable indigenous and
46 renewable energy resource for hydroelectric energy
48 which provide a significant contribution to the
50 economic development and general welfare of the
52 citizens of the State. Accordingly, the value and
importance to the people of the State of hydroelectric
energy and the unavoidable consequences to water
quality resulting from the existence of these
impoundments shall must be considered when the board
department determines the impact of a discharge on the
designated uses of the impoundments identified in this
subparagraph. These impoundments shall---be are
considered to meet their classification if the
department finds that conditions in those impoundments
are not preventing their designated uses from being
reasonably attained. Nothing in the subparagraph may be
construed to limit the board's department's authority
to consider the requirements of section 414-A,
subsection 1, paragraphs A to E.

2 **Sec. B-70. 38 MRSA §480-C, sub-§1**, as enacted by PL 1987, c.
809, §2, is amended to read:

4 **1. Prohibition.** No person may perform or cause to be
6 performed any activity listed in subsection 2 without first
obtaining a permit from the ~~Beard-of-Environmental-Protection~~
department or in violation of the conditions of a permit, if
8 these activities:

10 A. Are in, on or over any protected natural resource; or

12 B. Are on land adjacent to any freshwater or coastal
14 wetland, great pond, river, stream or brook and operate in
such a manner that material or soil may be washed into them.

16 **Sec. B-71. 38 MRSA §480-D, first ¶**, as enacted by PL 1987, c.
809, §2, is amended to read:

18 The ~~Beard-of-Environmental-Protection~~ department shall grant
20 a permit upon proper application and upon such terms as it deems
considers necessary to fulfill the purposes of this article. The
22 ~~beard~~ department shall grant a permit when it finds that the
applicant has demonstrated that the proposed activity meets the
24 following standards.

26 **Sec. B-72. 38 MRSA §480-D, sub-§3**, as enacted by PL 1987, c.
809, §2, is amended by amending the 2nd paragraph to read:

28 In determining whether there is unreasonable harm to significant
30 wildlife habitat, the ~~beard~~ department may consider proposed
mitigation if that mitigation does not diminish in the vicinity
32 of the proposed activity the overall value of significant
wildlife habitat and species utilization of the habitat and if
34 there is no specific biological or physical feature unique to the
habitat that would be adversely affected by the proposed
36 activity. For purposes of this subsection, "mitigation" means
any action taken or not taken to avoid, minimize, rectify,
38 reduce, eliminate or compensate for any actual or potential
adverse impact on the significant wildlife habitat, including the
40 following:

42 **Sec. B-73. 38 MRSA §480-E**, as repealed and replaced by PL
1989, c. 656, §4, is amended to read:

44 **§480-E. Permit processing requirements**

46 The department shall process all permits under this article
48 in accordance with chapter 2, subchapter I, and the following
requirements.

50 **1. Municipal notification.** The ~~beard~~ department may not
52 issue review a permit without notifying the municipality in which

2 the proposed activity is to occur and considering any comments
filed by the municipality within a reasonable period as
4 established by the board commissioner.

6 2. **Water supply notification.** If the resource subject to
alteration or the underlying ground water is utilized by a water
company, municipality or water district as a source of supply,
8 the applicant for the permit shall, at the time of filing an
application, forward a copy of the application to the water
10 company, municipality or water district by certified mail and the
board department shall consider any comments concerning the
12 application filed with the department commissioner within a
reasonable period, as established by the board commissioner.

14 3. **Dredge spoils disposal.** The commissioner may not accept
16 an application for dredge spoils disposal in a coastal wetland
unless the following requirements are met.

18 A. The applicant has collected and tested the dredge spoils
20 in accordance with a protocol approved by the commissioner.
The collection, testing and forwarding of the results of the
22 tests to the commissioner must occur within one year before
the submission of a completed application.

24 B. The applicant has published notice of the proposed route
26 by which the dredged materials are to be transported to the
disposal site in a newspaper of general circulation in the
28 area adjacent to the proposed route.

30 C. The application has been submitted to each municipality
adjacent to any proposed marine and estuarine disposal site
32 and route.

34 Any public hearing held pursuant to this application must be held
in the municipality nearest to the proposed disposal site.

36 4. **Deferrals.** When winter conditions prevent the board
38 department or municipality from evaluating a permit application,
the board department or municipality, upon notifying the
40 applicant of that fact, may defer action on the application for a
reasonable period. The applicant may not alter the resource area
42 in question during the period of deferral.

44 5. Permission of record owner. The written permission of
46 the record owner or owners of flowed land is considered
sufficient right, title or interest to confer standing for
48 submission of a permit application, provided that the letter of
permission specifically identifies the activities being performed
50 and the area that may be used for that purpose. The commissioner
may not refuse to accept a permit application for any prohibited
52 activity due to the lack of evidence of sufficient right, title
or interest if the owner or lessee of land adjoining a great pond

2 has made a diligent effort to locate the record owner or owners
3 of flowed land and has been unable to do so.

4 Sec. B-74. 38 MRSA §480-F, as enacted by PL 1987, c. 809, §2,
5 is amended to read:

6 **§480-F. Delegation of permit-granting authority to municipality;**
7 **home rule**

10 1. ~~Delegation. All permits shall be issued by the Board of~~
11 ~~Environmental Protection, subject to delegation to the~~
12 ~~commissioner as provided by law, except that a~~ A municipality may
13 apply to the board for authority to issue such permits under this
14 article. The board shall grant such authority if it finds that
15 the municipality has:

16 A. Established a planning board;

18 B. Adopted a comprehensive plan and related land use
19 ordinances consistent with the criteria set forth in Title
20 30 30-A, chapter 187, subchapter VI II;

22 C. The financial, technical and legal resources to
23 adequately review and analyze permit applications and
24 oversee and enforce permit requirements;

26 D. Made provision by ordinance or rule for prompt notice to
27 the board commissioner and the public upon receipt of
28 application and written notification to the applicant and
29 the board commissioner of the issuance or denial of a permit
30 stating the reasons for issuance or denial; and

32 E. ~~Provided that the an~~ application form ~~that~~ is the same
33 as that provided by the ~~Board of Environmental Protection~~
34 commissioner.

36 2. Procedure. No permit issued by a municipality may
37 become effective until 30 days subsequent to its receipt by the
38 board commissioner, but, if approved by the board department in
39 less than 30 days, the effective date shall ~~be~~ is the date of
40 approval. A copy of the application for the permit and the
41 permit issued by the municipality shall ~~must~~ be sent to the board
42 commissioner immediately upon its issuance by registered mail.
43 The board department shall review that permit and either approve,
44 deny or modify it as ~~the board deems~~ necessary. If the board
45 department does not act within 30 days of its receipt of the
46 permit by the municipality, this shall ~~constitute~~ constitutes its
47 approval and the permit shall ~~be~~ is effective as issued, except
48 that within this 30-day period the board department may extend
50 the time for its review an additional 30 days.

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2 3. Home rule. Nothing in this article may be understood or
3 interpreted to limit the home rule authority of a municipality to
4 protect the natural resources of the municipality through
5 enactment of standards that are more stringent than those found
6 in this article.

7 4. Joint enforcement. Any person who violates any permit
8 issued under this section is subject to the provisions of section
9 349 in addition to any penalties which the municipality may
10 impose. The provisions of this section may be enforced by the
11 department commissioner and the municipality which that issued
12 the permit.

13 Sec. B-75. 38 MRSA §480-H, as enacted by PL 1987, c. 809,
14 §2, is amended to read:

15 **§480-H. Rules; performance and use standards**

16
17 In fulfilling its responsibilities to adopt rules pursuant
18 to section 343-A 341-D, subsection 1, the board shall, to the
19 extent practicable, adopt performance and use standards for
20 activities regulated by this article.
21

22
23 Sec. B-76. 38 MRSA §480-I, sub-§1, as enacted by PL 1987, c.
24 809, §2, is amended to read:

25
26 1. Identification by maps. The department commissioner
27 shall map areas meeting the definition of freshwater wetlands and
28 fragile mountain areas set forth in this article and shall
29 periodically review and revise the maps identifying these areas.
30 Maps of significant wildlife habitats shall must be adopted by
31 rule pursuant to the Maine Administrative Procedure Act, Title 5,
32 chapter 375, to the extent that those habitats are identified by
33 the Department of Inland Fisheries and Wildlife.
34

35 Sec. B-77. 38 MRSA §480-I, sub-§2, ¶B, as enacted by PL 1987,
36 c. 809, §2, is amended to read:

37
38 B. Upon receipt of the proposed maps, the municipal
39 officers of each municipality shall take any action they
40 deem determine appropriate to increase public participation
41 in this identification and delineation, but shall return
42 their comments to the department commissioner within a
43 90-day period.
44

45 Sec. B-78. 38 MRSA §§480-K to 480-M, as enacted by PL 1987,
46 c. 809, §2, are amended to read:

47 **§480-K. Data bank**

48
49 The ~~Department of Environmental Protection~~ commissioner
50 shall maintain, in cooperation with other state agencies, a data
51

2 bank containing all the known information pertaining to all
resources of state significance, as enumerated in this article,
4 within the State. All governmental agencies, state or federal,
shall make available to the ~~department--such~~ commissioner
information in their possession relating to these resources.

6
8 **§480-L. Research**

10 The ~~Department-of-Environmental-Protection~~ commissioner, in
cooperation with other state agencies, is authorized to conduct
12 research and studies to determine how the resource values of
resources of state significance can be restored and enhanced.

14 **§480-M. Funds**

16 The ~~Department-of-Environmental-Protection~~ department is the
public agency of the State authorized to accept funds, public and
18 private, for the purposes of this article.

20 **Sec. B-79. 38 MRSA §480-N, sub-§1**, as amended by PL 1989, c.
502, Pt. A, §145, is further amended to read:

22
24 1. **Fund purposes and administration.** There is established
a nonlapsing Lake Restoration and Protection Fund, from which the
26 ~~department~~ commissioner may pay up to 50% of the eligible costs
incurred in a lake restoration or protection project, except that
28 projects addressing technical assistance, public education or
research issues may be paid up to 100%. Eligible costs include
30 all costs except those related to land acquisition, legal fees
and debt service. All money credited to that fund shall must be
32 used by the ~~department~~ commissioner for projects to improve or
maintain the quality of lake waters in the State and for no other
34 purpose. The ~~Commissioner---of---Environmental---Protection~~
commissioner may authorize the State Controller to draw a warrant
36 for such funds as may be necessary to pay the lawful expenses of
the lake restoration or protection project, up to the limits of
38 the money duly authorized. Any balance remaining in the fund
shall must continue without lapse from year to year and remain
available for the purpose for which the fund is established and
40 for no other purpose.

42 **Sec. B-80. 38 MRSA §480-N, sub-§§3, 4 and 5**, as enacted by PL
1989, c. 502, Pt. A, §146, are amended to read:

44
46 3. **Intensive staffing program.** The ~~department~~ commissioner
shall establish an intensive staffing program ~~which--shall to~~
provide adequate staffing at both the state and regional levels.
48 The ~~department~~ commissioner shall provide technical information
and guidance and the regional agencies shall assist with the
50 adoption of revised comprehensive plans, standards and local
ordinances by local governments.

52

2 4. **Public education program.** The department commissioner
shall develop a coordinated public education program ~~which shall~~
4 ~~target for school children and involve~~ involving extensive use of
the media.

6 5. **Research.** The department commissioner shall encourage
internal research focused on the following statewide topics:

8 A. Lake vulnerability, particularly as it relates to
10 noncultural features of the watershed;

12 B. The effectiveness and design of the best management
practices to control phosphorous pollution; and

14 C. New lake and watershed diagnostic tools.

16 **Sec. B-81. 38 MRSA §480-O, first ¶,** as enacted by PL 1987, c.
18 809, §2, is amended to read:

20 Nothing in this article prohibits the rebuilding,
22 replacement or new construction of a bulkhead, retaining wall or
similar structure, provided that the applicant for a permit
24 demonstrates to the ~~board~~ department or municipality, as
appropriate, that the following conditions are met.

26 **Sec. B-82. 38 MRSA §480-R, sub-§2,** as amended by PL 1989, c.
28 546, §7, is further amended to read:

30 2. **Enforcement.** In addition to the ~~Department of~~
~~Environmental Protection~~ department staff, inland fisheries and
32 wildlife game wardens, Department of Marine Resources marine
patrol officers and all other law enforcement officers enumerated
34 in Title 12, section 7055, shall enforce the terms of this
article.

36 **Sec. B-83. 38 MRSA §480-S,** as enacted by PL 1987, c. 809, §2,
is amended to read:

38 **§480-S. Fee for significant wildlife habitat review**

40 The department commissioner shall establish procedures to
42 charge applicants for costs incurred in reviewing license and
permit applications regarding significant wildlife habitats in
44 the same manner as provided for other fees in section 352. The
maximum fees are \$150 for processing and \$50 for a license. All
46 fees shall must be credited to the Maine Environmental Protection
Fund established in section 351.

48 **Sec. B-84. 38 MRSA §481, 3rd ¶,** as amended by PL 1983, c.
50 513, §1, is further amended to read:

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2 The purpose of this subchapter is to provide a flexible and
practical means by which the State, acting through the ~~Board of~~
3 ~~Environmental Protection~~ department, in consultation with
appropriate state agencies, may exercise the police power of the
4 State to control the location of those developments substantially
5 affecting local environment in order to insure that such
developments will be located in a manner which will have a
6 minimal adverse impact on the natural environment within the
7 development sites and of their surroundings and protect the
8 health, safety and general welfare of the people.

12 Sec. B-85. 38 MRSA §482, sub-§1, as amended by PL 1971, c.
618, §12, is repealed.

14 Sec. B-86. 38 MRSA §482, sub-§4-B, as enacted by PL 1979, c.
16 466, §13, is amended to read:

18 4-B. Reclamation. "Reclamation" means the rehabilitation of
the area of land affected by mining under a plan approved by the
19 ~~board~~ department, including, but not limited to, the creation of
20 lakes or ponds, where practicable, the planting of forests, the
21 seeding of grasses and legumes for grazing purposes, the planting
of crops for harvest and the enhancement of wildlife and aquatic
22 resources, but not including the filling in of pits, shafts and
23 underground workings with solid materials.

26 Sec. B-87. 38 MRSA §482-A, sub-§§2 and 3, as enacted by PL
28 1987, c. 346, §2, are amended to read:

30 2. Consideration of local ordinance. In determining whether
a developer has made adequate provision for the control of noise
31 generated by a development, the ~~board~~ department shall consider
32 ~~its own regulations~~ departmental rules and the quantifiable noise
standards of the municipality in which the development is located
33 and of any municipality which ~~that~~ may be affected by the noise.

36 3. Prohibition. Nothing in this section may be construed to
37 prohibit any municipality from adopting noise regulations
38 stricter than those adopted by the ~~Department of Environmental~~
39 ~~Protection~~ board.

42 Sec. B-88. 38 MRSA §483-A, as enacted by PL 1987, c. 812, §§9
and 18, is amended to read:

44 §483-A. Prohibition

46 No person may construct or cause to be constructed or
47 operate or cause to be operated or, in the case of a subdivision,
sell or lease, offer for sale or lease or cause to be sold or
48 leased, any development requiring approval under this article
without first having obtained approval for such this

2 construction, operation, lease or sale from the ~~Board--of~~
3 ~~Environmental-Protection~~ department.

4 **Sec. B-89. 38 MRSA §484, first ¶**, as repealed and replaced by
5 PL 1987, c. 812, §§10 and 18, is amended to read:

6 The ~~board~~ department shall approve a development proposal
7 whenever it finds that:

8 **Sec. B-90. 38 MRSA §484, sub-§2**, as repealed and replaced by
9 PL 1989, c. 502, Pt. B, §50, and as amended by PL 1989, c. 610,
10 is further amended to read:

11 **2. Traffic movement.** The developer has made adequate
12 provision for traffic movement of all types into, out of or
13 within the development area. The ~~board~~ department shall consider
14 traffic movement both on-site and off-site. Before issuing a
15 permit, the ~~board~~ department shall determine that any traffic
16 increase attributable to the proposed development will not result
17 in unreasonable congestion or unsafe conditions on a road in the
18 vicinity of the proposed development. The Department of
19 Transportation shall provide the ~~board~~ department with an
20 analysis of traffic movement of all types into, out of or within
21 the development area. In making its determination under this
22 subsection, the ~~board~~ department shall consider the analysis
23 provided by the Department of Transportation;

24 **Sec. B-91. 38 MRSA §484, sub-§6**, as enacted by PL 1987, c.
25 812, §§10 and 18, is amended to read:

26 **6. Infrastructure.** The developer has made adequate
27 provision of utilities, including water supplies, sewerage
28 facilities and solid waste disposal, roadways and open space
29 required for the development and the development will not have an
30 unreasonable adverse effect on the existing or proposed
31 utilities, roadways and open space in the municipality or area
32 served by those services or open space. In assessing the impact
33 on open space, the ~~board~~ department shall use as a standard that
34 which is set forth in the municipality's comprehensive land use
35 plan, when such a plan exists.

36 **Sec. B-92. 38 MRSA §485-A**, as enacted by PL 1987, c. 812,
37 §§11 and 18, is amended to read:

38 **§485-A. Notification required; department action; administrative**
39 **appeals**

40 **1. Application.** Any person intending to construct or
41 operate a development shall, before commencing construction or
42 operation, notify the ~~department~~ commissioner in writing of the
43 intent, nature and location of the development, together with
44 such other information as the board may by rule require. The
45

2 ~~board-or-the-commissioner~~ department shall either approve the
4 proposed development, setting forth such terms and conditions as
6 are appropriate and reasonable, or disapprove the proposed
development, setting forth the reasons for the disapproval, or
scheduling schedule a hearing in the manner described in
subsection-2 section 486-A.

8 2. **Hearing request.** If the board department has issued an
10 order without a hearing regarding any person's development, that
12 person may request, in writing, a hearing before the board within
14 30 days after notice of the board's department's decision. This
16 request shall must set forth, in detail, the findings and
18 conclusions of the board department to which that person objects,
the basis of the objections and the nature of the relief
requested. Upon receipt of the request, the board shall schedule
and hold a hearing limited to the matters set forth in the
request. Hearings shall must be scheduled in accordance with
section 486-A.

20 3. **Failure to notify commissioner.** The board commissioner
22 may, at any time with respect to any person who has commenced
24 construction or operation of any development without having first
26 notified the board commissioner pursuant to this section,
schedule and conduct a public hearing with respect to that
development.

28 **Sec. B-93. 38 MRSA §486-A, sub-§1,** as enacted by PL 1987, c.
812, §§12 and 18, is repealed and the following enacted in its
place:

30 1. Hearings. If the department determines to hold a
32 hearing on a notification submitted pursuant to section 485-A,
34 the department shall solicit and receive testimony to determine
36 whether that development will in fact substantially affect the
38 environment or pose a threat to the public's health, safety or
general welfare. The department shall permit the applicant to
provide evidence on the economic benefits of the proposal as well
as the impact of the proposal on energy resources.

40 **Sec. B-94. 38 MRSA §486-A, sub-§§2 to 5,** as enacted by PL 1987,
42 c. 812, §§12 and 18, are amended to read:

44 2. **Developer; burden of proof.** At the hearings held under
46 this section, the burden is upon the person proposing the
48 development to demonstrate affirmatively to the board department
that each of the criteria for approval listed in this article has
been met, and that the public's health, safety and general
welfare will be adequately protected.

50 3. **Findings of fact; order.** ~~Within-30-days-after~~ After the
52 board department adjourns any hearing held under this section, it
the department shall make findings of fact and issue an order

2 granting or denying permission to the person proposing the
development to construct or operate the development, as proposed,
4 or granting that permission upon such terms and conditions as the
~~board--deems~~ department considers advisable to protect and
6 preserve the environment and the public's health, safety and
general welfare, except in the case of any low-level radioactive
8 waste storage or disposal facility, in which case the board shall
act in accordance with section 1478.

10 **4. No construction pending order.** Any person who has
notified the ~~board~~ commissioner, pursuant to section 485-A, of
12 intent to construct or operate a development shall immediately
defer or suspend construction or operation of that development
14 until the ~~board~~ department has issued its an order.

16 **5. Continuing compliance; air and water pollution.** Any
person securing approval of the ~~board~~ department, pursuant to
18 this article, shall maintain the financial capacity and technical
ability to meet the state air and water pollution control
20 standards until that person has complied with those standards.

22 **Sec. B-95. 38 MRSA §487-A, sub-§1, ¶¶A and B,** as enacted by PL
1987, c. 812, §§13 and 18, are amended to read:

24
26 A. Any person intending to construct or operate a
development which that is a hazardous activity shall file a
preliminary notice of intent with the ~~department~~
28 commissioner and the municipal officers of any municipality
affected. The preliminary notice shall must contain a brief
30 description of:

32 (1) The nature of the proposed development; and

34 (2) The location of the proposed development.

36 Any person intending to construct or operate any other
development may file this preliminary notice.

38
40 B. The ~~department~~ commissioner shall determine whether the
proposed development is likely to discharge pollutants to a
42 significant ground water aquifer and whether the proposed
location of the development is on a primary sand and gravel
44 recharge area. The ~~department~~ commissioner shall make this
determination and notify the applicant within 15 days of the
46 receipt of the preliminary notification. If both of these
determinations are affirmative, or if requested by the
48 municipal officers of any affected municipality, the
applicant must then provide, as part of the notice under
section 485-A, detailed information on:

50
52 (1) The nature and extent of the significant ground
water aquifer, including recharge areas and flow paths;

- 2 (2) The quality and quantity of the significant ground
water aquifer;
- 4 (3) Existing and potential uses of the aquifer;
- 6 (4) The nature and quantity of potentially hazardous
8 materials to be handled; and
- 10 (5) The nature and quantity of pollutants to be
discharged.

12 **Sec. B-96. 38 MRSA §487-A, sub-§§2 and 4, as enacted by PL**
14 **1987, c. 812, §§13 and 18, are amended to read:**

16 **2. Power generating facilities.** In case of a permanently
18 installed power generating facility of more than 1,000 kilowatts
or a transmission line carrying 100 kilovolts, or more, proposed
20 to be erected within this State by an electric utility or
utilities, the proposed development, in addition to meeting the
22 requirements of section 484, ~~subsections 1 to 9,~~ shall must also
have been approved by the Public Utilities Commission under Title
35-A, section 3132.

24 In the event that an electric utility or utilities file a
26 notification pursuant to section 485-A before they are issued a
certificate of public convenience and necessity by the Public
28 Utilities Commission, they shall file a bond or, in lieu of that
bond, satisfactory evidence of financial capacity to make that
30 reimbursement with the department, payable to the department, in
a sum satisfactory to the ~~Commissioner of Environmental~~
32 Protection commissioner and in an amount not to exceed \$50,000.
This bond or evidence of financial capacity shall must be
34 conditioned to require the applicant to reimburse the department
for its cost incurred in processing any application in the event
36 that the applicant does not receive a certificate of public
convenience and necessity.

38 **4. Notice to landowners; transmission line or gas**
40 **pipeline.** Any person making application ~~for site location of~~
~~development approval pursuant to sections 481 to 483~~ under this
42 article, for approval for a transmission line or gas pipeline
shall, prior to filing a notification pursuant to this article,
44 provide notice to each owner of real property upon whose land the
applicant proposes to locate a gas pipeline or transmission line.
46 Notice shall must be sent by registered certified mail, postage
prepaid, to the landowner's last known address contained in the
48 applicable tax assessor's records. The applicant shall file a
map with the town clerk of each municipality through which the
50 pipeline or transmission line is proposed to be located,
indicating the intended approximate location of the pipeline or
52 transmission line within the municipality. The applicant is not

2 required to provide notice of intent to construct a gas pipeline
3 or transmission line other than as set forth in this subsection.
4 The ~~board~~ department shall receive evidence regarding the
5 location, character and impact on the environment of the proposed
6 transmission line or pipeline. In addition to finding that the
7 requirements of section 484, ~~subsections 1 to 9~~ have been met,
8 the ~~board~~ department, in the case of the transmission line or
9 pipeline, shall consider whether any proposed alternatives to the
10 proposed location and character of the transmission line or
11 pipeline may lessen its impact on the environment or the risks it
12 would engender to the public health or safety, without
13 unreasonably increasing its cost. The ~~board~~ department may
14 approve or disapprove all or portions of the proposed
15 transmission line or pipeline and shall make such orders
16 regarding its location, character, width and appearance as will
17 lessen its impact on the environment, having regard for any
18 increased costs to the applicant.

19
20 **Sec. B-97. 38 MRSA §489-A, first ¶**, as amended by PL 1989, c.
21 497, §§13 and 15, is further amended to read:

22 The ~~Department of Environmental Protection board~~ board may
23 register municipalities for authority to substitute permits
24 issued pursuant to Title 30-A, chapter 187, subchapter IV, for
25 permits required by section 483 485-A under the following
26 conditions.

27
28 **Sec. B-98. 38 MRSA §489-A, sub-§§2, 3, 6 and 7**, as enacted by PL
29 1989, c. 207, §2, are amended to read:

30
31 **2. Registration.** The department board shall register
32 municipalities to grant permits for projects under subsection 1
33 if the board finds that the municipality meets all of the
34 following criteria:

35
36 A. A municipal planning board or reviewing authority is
37 established;

38
39 B. A comprehensive plan consistent with Title 30-A, chapter
40 187 has been adopted with standards and objectives
41 determined by the department to be at least as stringent as
42 this article;

43
44 C. Subdivision regulations have been adopted that are
45 consistent with Title 30-A, chapter 187, and determined by
46 the department board to be at least as stringent as criteria
47 set forth in section 484;

48
49 D. Site plan review regulations have been adopted with
50 criteria which are determined by the department board to be
51 at least as stringent as section 484;

52

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2 E. A professional planning staff to provide professional
planning assistance and advice to the municipal reviewing
4 authority has been retained or the municipality has
otherwise arranged to provide professional planning
6 assistance to advise the municipal reviewing authority on
project review;

8 F. Procedures for public hearing and notification have been
established including:

10 (1) Notice to the department commissioner upon receipt
12 of an application, including a description of the
project;

14 (2) Notice of issuance and denial to the applicant and
16 department commissioner, including the reason for
denial;

18 (3) Public notification of the application and any
20 hearings; and

22 (4) Satisfactory hearing procedures;

24 G. Procedures for appeal by aggrieved parties of local
26 decisions are defined; and

28 H. A registration form, provided by the department
commissioner, has been completed and submitted by the
municipality, demonstrating compliance with the criteria
30 under this subsection.

32 3. **Certification.** A municipality certified by the
Department of Economic and Community Development under Title 30-A
34 chapter 191, may be registered if the department board finds the
municipality has fulfilled the requirements of subsection 2 and
36 applies to be registered.

38 6. **Central list of pending projects.** The department
commissioner shall maintain and make available a list of projects
40 pending municipal review under this section.

42 7. **Technical assistance.** The department commissioner and
other state review agencies shall provide technical assistance to
44 municipalities upon request for projects reviewed under this
section.

46 **Sec. B-99. 38 MRSA §489-A, sub-§8,** as amended by PL 1989, c.
48 497, §14, is further amended to read:

50 8. **Review process.** Upon final action by the municipal
reviewing authority of an application under this section:
52

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2 A. The municipality shall submit to the department
3 commissioner within 14 days of final action by the municipal
4 reviewing authority, one copy of the project application,
5 one copy of the record of review and action and one copy of
6 the notification form provided by the department
commissioner;

8 B. The department commissioner shall review the application
9 and, within 45 days of final action by the municipal
10 reviewing authority, notify the municipality if the
11 department intends to exercise jurisdiction; and

12 C. If the department does not act within the 45-day period,
13 this inaction constitutes approval by the department and the
14 municipal permits shall be effective as issued as the
15 municipal permit and ~~board~~ department permit.

18 **Sec. B-100. 38 MRSA §489-A, sub-§9, ¶A**, as enacted by PL 1989,
19 c. 207, §2, is repealed and the following enacted in its place:

20 A. The commissioner finds that the project:

21 (1) Meets one or more of the criteria set forth in
22 section 341-D, subsection 2;

23 (2) Will have a potentially significant environmental
24 effect; or

25 (3) Could affect more than one municipality.

26 In making these findings, the commissioner shall consider
27 all public comments submitted to the department;

28 **Sec. B-101. 38 MRSA §489-A, sub-§9, ¶¶B and C**, as enacted by PL
29 1989, c. 207, §2, are amended to read:

30 B. The local reviewing authority in which the project is
31 located petitions the ~~board~~ commissioner in writing;

32 C. The local reviewing authority, in a municipality
33 adjoining the municipality in which a project is located,
34 petitions the ~~board~~ commissioner in writing; or

35 **Sec. B-102. 38 MRSA §489-A, sub-§§10 and 11**, as enacted by PL
36 1989, c. 207, §2, are amended to read:

37 10. **Appeal of decision by commissioner to review.** An
38 aggrieved party may appeal the decision by the commissioner to
39 exert or not exert state jurisdiction over the proposed project
40 to the board. Review and actions taken by the department ~~or the~~

2 heard are subject to appeal procedures governing the department
and heard under section 341-D, subsections 4 and 5.

4 11. **Joint enforcement.** Any person who violates any permit
6 issued under this section is subject to the provisions of section
349, in addition to any penalties which the municipality may
8 impose. Any permits issued or conditions imposed by a local
authority shall must be enforced by the department commissioner
and the municipality that issued the permit.

10 Sec. B-103. 38 MRSA §490, as amended by PL 1983, c. 574, §3,
12 is further amended to read:

14 **§490. Reclamation**

16 1. **Requirement.** All mining activities shall must include
18 provisions for safety and reclamation of the land area affected
or otherwise comply with an approval issued pursuant to this
20 chapter. For a metallic ore mine, these provisions shall must
include a plan for the maintenance of the mine site during mining
22 and for a period after termination of mining, including the
methods and annual estimated costs for gas monitoring; leachate
24 pumping, transportation, monitoring and treatment; ~~groundwater~~
ground water monitoring, collection and analysis; such
26 revegetation as the ~~board deems~~ department determines necessary;
and activities necessary for prevention of soil erosion and for
28 protection of ground and surface waters.

30 2. **Bonds.** The ~~board~~ department may require a bond payable
to the State with sureties satisfactory to the ~~board~~ department
32 or such other security as the ~~board~~ department may determine will
adequately secure compliance with this chapter, conditioned upon
34 the faithful performance of the requirements set forth in this
chapter and of the rules ~~and regulations~~ of the board. Other
36 security may include a security deposit with the State, an escrow
account and agreement, insurance or an irrevocable trust. In
38 determining the amount of the bond or the security, the ~~board~~
department shall take into consideration the character and nature
of the overburden, the future suitable use of the land involved
40 and the cost of grading and reclamation to be required. All
proceeds of forfeited bonds or other security shall must be
42 expended by the ~~board~~ department for the reclamation of the area
for which the bond was posted, and any remainder shall ~~be~~
44 returned to the operator.

46 2-A. **Metallic ore mines.** Security shall ~~be~~ is required of
a person engaged in the mining of metallic ores. However, if the
48 ~~board~~ department finds that the person's ~~net worth~~ net worth or
that of any affiliated person who guarantees performance, as
50 shown on audited financial statements, exceeds 5 times the
estimated costs of reclamation, it may waive this requirement.
52 If security is not required, that person or the affiliated person

2 guaranteeing performance shall submit to the board commissioner
3 annually, copies of his that person's audited financial
4 statements. The board commissioner shall review these statements
5 annually and, if ~~it~~ the commissioner finds at any time that that
6 person's or affiliated person's financial capacity is
7 insufficient to secure adequately compliance with this chapter,
8 ~~it~~ the commissioner shall require a bond or other security.

9
10 3. Time schedules. It shall ~~be~~ is the duty of a person
11 engaged in a mining activity to commence the reclamation of the
12 area of land affected by the mining activity as soon as possible
13 after the beginning of the mining activity of that area in
14 accordance with plans previously approved by the board
15 department. If it appears that planting to provide vegetative
16 cover of an affected area may not be successful, the board
17 department may authorize the deferring of the planting until the
18 soil has become suitable for those purposes and a yearly report
19 shall must be filed with the board commissioner indicating the
20 soil conditions until a successful planting or seeding has been
21 completed.

22 ~~4. -- Gifts and funds for reclamation. -- The board may acquire,~~
23 ~~in the name of the State, land by gift or purchase which has been~~
24 ~~affected by a mining activity for the purpose of carrying out~~
25 ~~reclamation work. Upon completion of reclamation, the land may be~~
26 ~~sold at public auction, conveyed to the municipality or remain~~
27 ~~property of the State. The board may accept funds from private or~~
28 ~~other sources, which shall be used for reclamation purposes,~~
29 ~~whether in conjunction with appropriated funds of the State or~~
30 ~~otherwise.~~

31 4-A. Acquisition of property. The department may acquire,
32 by purchase, lease, condemnation, donation or otherwise any real
33 property or any interest in real property that the board
34 determines, by 2/3 majority vote, is necessary to conduct
35 remedial action under this section. There may be no cause of
36 action to compel the department to acquire any interest in real
37 property under this section. Upon completion of reclamation
38 work, the land may be sold or conveyed or remain property of the
39 State. The department may accept funds from private or other
40 sources, which shall be used for reclamation purposes, whether in
41 conjunction with appropriated funds of the State or otherwise.

42
43 5. Cooperation with others. The board department shall
44 cooperate with the federal, state and local governments, with
45 natural resource and conservation organizations, and with any
46 public or private entities having interests in any subject within
47 the purview of this chapter.

48
49 The board department is designated the public agency of the State
50 for the purpose of cooperating with appropriate departments and
51 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 department 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-deems~~ department determines advisable and proper for purposes of this chapter.

The board department is further designated the public agency of the State for the purposes of meeting requirements of the Federal Government with respect to the administration of these federal funds, not inconsistent with this chapter.

6. **Fees.** All fees collected by and other funds received by the board department pursuant to this section shall must be placed in a reclamation fund to carry out the purposes of this chapter. This fund shall does not lapse.

7. **Definition.** For the purpose of this section, "reclamation" when applied to a metallic ore mine, shall ~~include~~ includes continued maintenance of land affected by mining for a period after termination of mining activity.

8. **Rules.** The board may adopt or amend rules to carry out this section, including rules relating to operational or maintenance plans; standards for determining the reclamation period; annual revisions of those plans; limits, terms and conditions on bonds or other security; proof of financial responsibility of a person engaged in mining activity or the affiliated person who guarantees performance; estimation of reclamation costs; reports on reclamation activities; or the manner of determining when the bond or other security may be discharged.

9. **Enforcement.** If, after an opportunity for a hearing, the board commissioner determines that the owner of a mine site or the person who was engaged in mining at the mine site has violated this section, the board commissioner shall direct the department staff or contractors under the supervision of the commissioner to enter on the property and carry out the necessary reclamation. The person engaged in mining or any affiliated person who guarantees performance at the mine site shall ~~be~~ is liable for the reasonable expenses of this necessary reclamation. The department commissioner may use the bond or other security to meet the reasonable expenses of reclamation.

Sec. B-104. 38 MRSa §496-A, 2nd and 4th ¶¶, as amended by PL 1971, c. 618, §12, are further amended to read:

The commission may administer programs of training and certification for such personnel, and may make classifications

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2 thereof. Any certificate issued by the commission shall be
3 accepted by this State and all agencies and subdivisions thereof
4 as conclusive evidence that the holder has the training,
5 education and experience necessary for certification for the
6 class of position or responsibility described therein. The Board
7 of Environmental Protection may impose and the Commissioner of
8 Environmental Protection may administer any other requirements
9 for certification within any applicable provisions of law, but ~~it~~
10 the commissioner shall not reexamine or reinvestigate the
11 applicant for a certificate with respect to ~~his~~ the applicant's
12 training, education or experience qualifications.

13
14 Nothing contained in this section shall limit or abridge the
15 authority of the commission to revise its standards and to issue
16 new or additional certificates. In any such case, the Board
17 Commissioner of Environmental Protection may require an applicant
18 for a certificate to present a certificate or certificates which
19 evidence training, education and experience meeting the current
20 standards of the commission.

21 **Sec. B-105. 38 MRSA §496-B, 2nd ¶**, as amended by PL 1971, c.
22 618, §12, is further amended to read:

23 Sampling pursuant to this section shall be at points at or
24 near the places where waters cross a boundary of this State, and
25 the samples shall be tested in order to determine their quality.
26 The sampling and testing provided for herein shall be scheduled
27 by the commission or in accordance with its requests, and shall
28 include such factors or elements as the commission shall request.
29 Any sampling and testing done by the Board Commissioner of
30 Environmental Protection of this State as part of the activities
31 of the commission's network shall be reported fully and promptly
32 by such agency to the commission, together with the results
33 thereof.
34

35 **Sec. B-106. 38 MRSA §541, 4th ¶**, as amended by PL 1985, c.
36 496, Pt. A, §5, is further amended to read:

37
38 The Legislature intends by the enactment of this legislation
39 to exercise the police power of the State through the Board-of
40 Environmental--Protection--and--the Department of Environmental
41 Protection by conferring upon the board department the power to
42 deal with the hazards and threats of danger and damage posed by
43 such transfers and related activities; to require the prompt
44 containment and removal of pollution occasioned thereby; to
45 provide procedures whereby persons suffering damage from those
46 occurrences may be promptly made whole; and to establish a fund
47 to provide for the inspection and supervision of those activities
48 and guarantee the prompt payment of reasonable damage claims
49 resulting therefrom.
50

2 **Sec. B-107. 38 MRSA §542, sub-§3**, as amended by PL 1971, c.
618, §12, is repealed.

4 **Sec. B-108. 38 MRSA §543, 2nd and 3rd ¶¶**, as enacted by PL
1973, c. 423, §11, are amended to read:

6
8 Notwithstanding the prohibition of this section, the ~~Beard~~
~~of-Environmental-Protection~~ department may license the discharge
10 of waste, refuse or effluent, including natural drainage
contaminated by oil, ~~petroleum-products-or-their-by-products,~~
12 into or upon any coastal waters if, and only if, it finds that
such discharge will be receiving the best available treatment and
14 that such discharge will not degrade existing water quality nor
perceptibly violate the classification of the receiving waters,
16 nor create any visible sheen upon the receiving waters.

18 In acting upon an application for any such license, the
~~beard~~ department shall follow the provisions of subchapter I
insofar as they are applicable.

20 **Sec. B-109. 38 MRSA §544**, as amended by PL 1971, c. 618, §12,
22 is further amended to read:

24 **§544. Powers and duties of the department**

26 The powers and duties conferred by this subchapter shall be
exercised by the ~~Beard-of-Environmental-Protection~~ department and
28 shall be deemed to be an essential governmental function in the
exercise of the police power of the State.

30 1. **Jurisdiction.** The powers and duties of the ~~beard~~
32 department under this subchapter shall extend to the areas
described in section 543 and to a distance of 12 miles from the
34 coastline of the State.

36 2. **Licenses.** Licenses required under this subchapter shall
be secured from the ~~beard~~ department subject to such terms and
38 conditions as are set forth in this subchapter.

40 **Sec. B-110. 38 MRSA §545, sub-§1**, as repealed and replaced by
PL 1977, c. 375, §6, is amended to read:

42 1. **Expiration of license.** Licenses shall be issued upon
44 application and shall be for a period of not less than 12 months
to expire no later than 24 months after the date of issuance. The
46 ~~beard~~ department may issue a temporary license for a shorter
period of time if it finds that the applicant has substantially
48 complied but has failed to comply with one or more provisions of
existing ~~regulations~~ rules. Licenses shall be issued subject to
50 such terms and conditions as ~~the board may determine~~ determined
by the department as necessary to carry out the purposes of this
52 subchapter.

2 **Sec. B-111. 38 MRSA §545, sub-§2**, as amended by PL 1971, c.
618, §12, is further amended to read:

4
6 **2. Renewal of licenses.** As a condition precedent to the
issuance or renewal of a license the ~~board~~ department shall
8 require satisfactory evidence that the applicant has or is in the
process of implementing state and federal plans and rules and
10 ~~regulations~~ for control of pollution related to oil, ~~petroleum~~
~~products and their by-products~~ and the abatement thereof when a
discharge occurs.

12 **Sec. B-112. 38 MRSA §545-B**, as enacted by PL 1987, c. 750,
14 §2, is amended to read:

16 **§545-B. Registration of transportation of oil in inland areas**

18 Effective October 1, 1988, any person who transports by rail
or highway more than 25 barrels of oil into Maine at any one time
20 shall must register annually with the department commissioner.

22 **Sec. B-113. 38 MRSA §547, first ¶**, as amended by PL 1971, c.
618, §12, is further amended to read:

24
26 Whenever any disaster or catastrophe exists or appears
imminent arising from the discharge of oil, ~~petroleum products or~~
28 ~~their by-products~~, the Governor shall by proclamation declare the
fact and that an emergency exists in any or all sections of the
State. If the Governor is temporarily absent from the State or is
30 otherwise unavailable, the next person in the State who would act
as Governor if the office of Governor were vacant shall, by
32 proclamation, declare the fact and that an emergency exists in
any or all sections of the State. A copy of ~~such~~ the proclamation
34 shall must be filed with the Secretary of State. The Governor
shall have general direction and control of the ~~Board of~~
36 ~~Environmental Protection~~ department and shall be responsible for
carrying out the purposes of this subchapter.

38 **Sec. B-114. 38 MRSA §548**, as amended by PL 1985, c. 496, Pt.
40 A, §11, is further amended to read:

42 **§548. Removal of prohibited discharges**

44 Any person discharging or suffering the discharge of oil,
46 ~~petroleum products or their by-products~~ in the manner prohibited
by section 543 shall immediately undertake to remove that
discharge to the ~~department's~~ commissioner's satisfaction.
48 Notwithstanding the above requirement, the ~~department~~
commissioner may undertake the removal or cleanup of that
50 discharge and may retain agents and ~~contracts~~ contractors for
those purposes who shall operate under the direction of the
52 ~~department~~ commissioner. The ~~department~~ commissioner may

2 implement remedies to restore or replace water supplies
contaminated by a discharge of oil, ~~petroleum products or their~~
4 ~~by-products~~ prohibited by section 543, including all discharges
from interstate pipelines, using the most cost-effective
6 alternative that is technologically feasible and reliable and
which effectively mitigates or minimizes damages to, and provides
adequate protection of, the public health, welfare and the
8 environment.

10 Any unexplained discharge of oil, ~~petroleum products or~~
~~their by-products~~ within state jurisdiction or discharge of oil,
12 ~~petroleum products or their by-products~~ occurring in waters
beyond state jurisdiction that for any reason penetrates within
14 state jurisdiction shall must be removed by or under the
direction of the department commissioner. Any expenses involved
16 in the removal or cleanup of discharges, including the
restoration of water supplies contaminated by discharges from
18 interstate pipelines and other discharges prohibited by section
543, whether by the person causing the same discharge, the person
20 reporting the same or discharge, the board-by-itself commissioner
or through-its the commissioner's agents or contractors, shall
22 must be paid in the first instance from the Maine Coastal and
Inland Surface Oil Clean-up Fund and any reimbursements due that
24 fund shall must be collected in accordance with section 551.

26 **Sec. B-115. 38 MRSA §549**, as amended by PL 1985, c. 785, Pt.
B, §178, is further amended to read:

28 **§549. Personnel and equipment**

30 The department commissioner shall establish and maintain at
32 such ports within the State, and other places as ~~it shall~~
~~determine,--such the commissioner determines,~~ employees and
34 equipment as ~~in its judgment may be~~ necessary to carry out this
subchapter. The commissioner, subject to the Civil Service Law,
36 may employ such personnel as ~~may be~~ necessary to carry out the
purposes of this subchapter, and shall prescribe the duties of
38 those employees. The salaries of those employees and the cost of
that equipment shall must be paid from the Maine Coastal and
40 Inland Surface Oil Clean-up Fund established by this subchapter.
The department commissioner and the Maine-Mining-Bureau Director
42 of the Maine Geological Survey shall periodically consult with
each other relative to procedures for the prevention of oil
44 discharges into the coastal waters of the State from offshore
drilling production facilities. Inspection and enforcement
46 employees of the department in their line of duty under this
subchapter shall have the powers of a constable.

48 **Sec. B-116. 38 MRSA §550**, as repealed and replaced by PL
50 1977, c. 375, §9, is amended to read:

52 **§550. Enforcement; penalties**

2 Any person who causes or is responsible for a discharge in
violation of section 543 shall ~~is~~ not be subject to any fines or
4 civil penalties if such ~~that~~ person promptly reports and removes
such ~~the~~ discharge in accordance with the rules, ~~regulations~~ and
6 orders of the ~~board~~ department.

8 Sec. B-117. 38 MRSA §551, sub-§2, as amended by PL 1985, c.
496, Pt. A, §13, is further amended to read:

10 2. **Third party damages.** Any person, claiming to have
12 suffered damages to real estate or personal property or loss of
income directly or indirectly as a result of a discharge of oil,
14 prohibited by section 543, including all discharges of oil from
interstate pipelines, hereinafter called the claimant, may apply
16 within 6 months after the occurrence of such discharge to the
board commissioner stating the amount of damage alleged to be
18 suffered as a result of such discharge. The board commissioner
shall prescribe appropriate forms and details for the
20 applications. The board may, upon petition and for good cause
shown, waive the 6 months' limitation for filing damage claims.

22 A. If the claimant, the board commissioner and the person
24 causing the discharge can agree to the damage claim, or in
the case where the person causing the discharge is not known
26 after the ~~board--shall--have~~ commissioner has exercised
reasonable efforts to ascertain the discharger, if the
28 claimant and the board commissioner can agree to the damage
claim, the board commissioner shall certify the amount of
30 the claim and the name of the claimant to the Treasurer of
State and the Treasurer of State shall pay the same from the
32 Maine Coastal and Inland Surface Oil Clean-up Fund.

34 B. If the claimant, the board commissioner and the person
causing the discharge ~~cannot~~ can not agree as to the amount
36 of the damage claim, or in the case where the person causing
the discharge is not known after the ~~board--shall--have~~
38 commissioner has exercised reasonable efforts to ascertain
the discharger, if the claimant and the board commissioner
40 ~~cannot~~ can not agree as to the amount of the damage claim,
the claim shall forthwith be transmitted for action to the
42 Board of Arbitration as provided in this subchapter.

44 C. Third party damage claims shall be stated in their
entirety in one application. Damages omitted from any claim
46 at the time the award is made shall be deemed waived.

48 D. Damage claims arising under this subchapter shall be
recoverable only in the manner provided under this
50 subchapter, it being the intent of the Legislature that the
remedies provided in this subchapter are exclusive.

52

2 E. Awards from the fund on damage claims shall not include
any amount which the claimant has recovered, on account of
4 the same damage, by way of settlement with or judgment of
the federal courts against the person causing or otherwise
6 responsible for the discharge.

8 **Sec. B-118. 38 MRSA §551, sub-§2-A**, as amended by PL 1989, c.
502, Pt. A, §147, is repealed.

10 **Sec. B-119. 38 MRSA §551, sub-§4, ¶A**, as amended by PL 1989,
c. 500, §2, is further amended to read:

12 A. License fees shall ~~be~~ are determined on the basis
14 of 3¢ per barrel of unrefined crude oil and all other
refined oil, ~~petroleum products and their by-products,~~
16 including #6 fuel oil, #2 fuel oil, kerosene, gasoline,
jet fuel and diesel fuel, transferred by the licensee
18 during the licensing period and shall must be paid
monthly by the licensee on the basis of records
20 certified to the department commissioner. License fees
shall must be paid to the department and upon receipt
22 by it credited to the Maine Coastal and Inland Surface
Oil Clean-up Fund.

24 **Sec. B-120. 38 MRSA §551, sub-§4, ¶D**, as amended by PL 1989,
c. 500, §3, is further amended to read:

28 D. Any person who is required to register with the
department commissioner pursuant to section 545-B and
30 who first transports oil in Maine shall pay fees, which
shall ~~be~~ are determined on the basis of 3¢ per barrel
32 for all refined oil, including #6 fuel oil, #2 fuel
oil, kerosene, gasoline, jet fuel, diesel fuel and
34 liquid asphalt transported by the registrant during the
period of registration. Fees shall must be paid
36 monthly by the registrant on the basis of records
certified to the department commissioner. Fees shall
38 must be paid to the department and upon receipt by it
credited to the Maine Coastal and Inland Surface Oil
40 Clean-up Fund. The registrant shall make available to
the department commissioner and its the commissioner's
42 authorized representatives all documents relating to
the oil transported by the registrant during the period
44 of registration. This paragraph shall does not apply
to waste oil which that is transported into Maine in
46 any motor vehicle which that has a valid license issued
by the department for the transportation of waste oil
48 pursuant to section 1319-O and which that is subject to
fees established under section 1319-I.

50 **Sec. B-121. 38 MRSA §551, sub-§5, ¶A**, as amended by PL 1985,
52 c. 496, Pt. A, §13, is further amended to read:

2 A. Administrative expenses, personnel expenses and
3 equipment costs of the ~~board~~ commissioner related to the
4 enforcement of this subchapter and any loans to the Ground
5 Water Oil Clean-up Fund made pursuant to section 569;

6
7 **Sec. B-122. 38 MRSA §551, sub-§6**, as amended by PL 1985, c.
8 746, §22, is further amended to read:

9
10 **6. Reimbursements to Maine Coastal and Inland Surface Oil**
11 **Clean-up Fund.** The department commissioner shall seek recovery to
12 the use of the fund all sums expended therefrom, including
13 overdrafts, for the following purposes, including interest
14 computed at 15% a year from the date of expenditure, unless the
15 department commissioner finds the amount involved too small or
16 the likelihood of success too uncertain; provided that recoveries
17 resulting from damage due to an oil pollution disaster declared
18 by the Governor pursuant to section 547 ~~shall-be~~ are apportioned
19 between the Maine Coastal and Inland Surface Oil Clean-up Fund
20 and the General Fund so as to repay the full costs to the General
21 Fund of any bonds issued as a result of the disaster:

22
23 A. All disbursements made by the fund pursuant to
24 subsection 5, paragraphs B, D, E and H in connection with a
25 prohibited discharge;

26
27 B. In the case of a licensee promptly reporting a discharge
28 as required by this subchapter, disbursement made by the
29 fund pursuant to subsection 5, paragraphs B, D and E in
30 connection with any single prohibited discharge including
31 ~~3rd-party~~ 3rd-party claims in excess of \$15,000, except to
32 the extent that the costs are covered by payments received
33 under any federal program;

34
35 C. Requests for reimbursement to the fund if not paid
36 within 30 days of demand shall must be turned over to the
37 Attorney General for collection; and

38
39 D. The department commissioner may file claims with
40 appropriate federal agencies to recover for the use of the
41 fund all disbursement from the fund in connection with a
42 prohibited discharge.

43
44 **Sec. B-123. 38 MRSA §551, sub-§7**, as amended by PL 1985, c.
45 496, Pt. A, §13, is further amended to read:

46
47 **7. Waiver of reimbursement.** Upon petition of any licensee
48 the board may, after hearing, waive the right to reimbursement to
49 the fund if it finds that the occurrence was the result of any of
50 the following:

51 A. An act of war;

2 B. An act of government, either State, Federal or
4 municipal, except insofar as the act was pursuant to section
548; or

6 C. An act of God, which shall ~~mean~~ means an unforeseeable
8 act exclusively occasioned by the violence of nature without
the interference of any human agency.

10 Upon such finding by the board immediate credit therefor shall
12 must be entered for the party involved. The findings of the board
shall ~~be~~ are conclusive as it is the legislative intent that
14 waiver provided in this subsection is a privilege conferred not a
right granted.

16 Sec. B-124. 38 MRSA §552-A, as enacted by PL 1977, c. 375,
18 §18, is amended to read:

20 **§552-A. Detention of vessels**

22 Whenever there is probable cause to believe that a vessel
has violated or been the means of a violation of this subchapter
24 or any other law which the Department of Environmental Protection
is responsible for administering or any rule, ~~regulation~~ or order
of the board, commissioner or any official of the department made
26 thereunder, the vessel shall must be detained in any port of the
State until payment of any fine or penalty assessable under the
28 law has been paid or secured to the satisfaction of the Attorney
General. Any justice or judge of the Superior Court or the
30 District Court may issue such orders as are necessary to carry
out the purposes of this section.

32 Sec. B-125. 38 MRSA §555, as amended by PL 1983, c. 483, §16,
34 is further amended to read:

36 **§555. Budget approval**

38 The department commissioner shall submit its budget
recommendations for disbursements from the fund in accordance
40 with section 551, subsection 5, paragraphs A, C, F and H for each
biennium. The budget shall must be submitted in accordance with
42 Title 5, sections 1663 to 1666. The State Controller shall
authorize expenditures therefrom as approved by the commissioner.
44 Expenditures pursuant to section 551, subsection 5, paragraphs B,
D, E and G may be made as authorized by the State Controller
46 following approval by the commissioner.

48 Sec. B-126. 38 MRSA §556, as amended by PL 1979, c. 541, Pt.
50 A, §270, is further amended to read:

52 **§556. Municipal ordinances; powers limited**

2 Nothing in this subchapter shall ~~may~~ be construed to deny
any municipality, by ordinance or by law, from exercising police
4 powers under any general or special Act; provided that ordinances
and bylaws in furtherance of the intent of this subchapter and
6 promoting the general welfare, public health and public safety
shall ~~be~~ are valid unless in direct conflict with this subchapter
or any rule, ~~regulation~~ or order of the board or commissioner
8 adopted under authority of this subchapter.

10 **Sec. B-127. 38 MRSA §557**, as amended by PL 1971, c. 618, §12,
is further amended to read:

12 **§557. Construction**

14 This subchapter, being necessary for the general welfare,
16 the public health and the public safety of the State and its
inhabitants, shall be liberally construed to effect the purposes
18 set forth under this subchapter. No rule, ~~regulation~~ or order of
the board shall or commissioner may be stayed pending appeal
20 under the provisions of this subchapter.

22 **Sec. B-128. 38 MRSA §560**, as amended by PL 1987, c. 419, §12,
is further amended to read:

24 **§560. Vessels at anchorage**

26 1. **Purpose.** The Legislature intends by the enactment of
28 this section to exercise the police power of the State through
the ~~Board of Environmental Protection~~ department by conferring
30 upon ~~said board~~ the department the exclusive power to deal with
the hazards and threats of danger and damage posed by the
32 anchorage of ~~oil-carrying~~ oil-carrying vessels in the waters of
the State. The purpose of ~~regulations~~ rules adopted by the board
34 shall ~~be~~ is to protect the coastal waters, tidal flats, beaches
and lands adjoining the waters of the State from damage by the
36 intentional or accidental discharge of oil, other pollutants as
defined in section 361-A or air contaminants as defined in
38 section 582 or explosion from the accumulation of gases aboard
such vessels and to prohibit interference with the harvesting of
40 marine resources, and aesthetic and recreational uses of such
coastal waters.

42 **2. Definitions.**

44 A. **Anchorage.** As used in this section, the word
46 "anchorage" means the mooring for a period of definite or
indefinite duration of a vessel designed or used to carry
48 oil, which is not waiting for a scheduled loading or
unloading of cargo in Maine waters, but shall does not
50 include the mooring of a vessel for bunkering, maintenance,
repair or overhaul, or in connection with or as a part of
52 sea trials.

2 3. ~~Board to adopt rules.~~ The ~~Board--of--Environmental~~
3 ~~Protection board~~ shall adopt rules limiting or, to the extent the
4 board determines necessary, prohibiting the anchorage in Maine
5 coastal waters, estuaries or rivers under the jurisdiction of the
6 State of vessels designed or used to carry oil as cargo. All
7 rules adopted by the ~~Board--of--Environmental--Protection board~~
8 under this section shall do not apply to vessels at anchorage
9 prior to July 1, 1975.

10 4. Scope of rules. In adopting these regulations rules, in
11 addition to other provisions of this subchapter, the board's
12 consideration shall must include, but is not be limited to:

13 A. The location, duration and type of anchorage;

14 B. The type and capacity of vessels permitted anchorage;

15 C. The systems and precautions necessary for safety on each
16 vessel;

17 D. The training, number and availability of crew members
18 aboard each vessel;

19 E. A requirement for contingency plans in the event of
20 accident, fire, storm or other unforeseen acts;

21 F. The protection of the natural environment, aesthetic and
22 recreational uses of State waters; and

23 G. The protection of the fisheries or fishing industry of
24 the State.

25 5. Exemption. The board may by regulation rule exempt
26 certain activities not inconsistent with the purposes of this
27 section. An unpowered vessel of less than 500 barrels total oil
28 storage capacity is exempt from the provisions of this section,
29 provided that the vessel is subject to any applicable rules
30 administered by the United States Coast Guard and the owner
31 notifies the department commissioner of the location and contents
32 of the vessel within 7 days of establishing the anchorage.

33 6. Prohibition. No person shall may have a vessel at
34 anchorage in Maine waters for more than 7 days without a current
35 license from the board department.

36 7. Licenses and fees. ~~The board shall require a license~~ A
37 license is required for anchorage of a vessel in Maine waters and
38 charge a fee of 1/2¢ per deadweight ton is due for each 30 days
39 of anchorage or part thereof. The board department may license
40 properly treated effluents and emissions regulated by this
41

2 section consistent with the other environmental laws of the State
of-Maine.

4 **8. Application for a license.** Any person desiring to have a
vessel at anchorage in Maine waters shall apply in writing to the
6 beard commissioner and, shall cause publish public notice of the
application and a brief summary ~~to be published~~ in a paper of
8 general circulation in the vicinity of the proposed activity and
provide such information as ~~the board may require by regulation~~
10 required by rule of the board. ~~The board~~ After receipt of the
application, the department shall, ~~within 30 days of receipt of~~
12 such application, issue a license or deny a license giving the
reasons therefor or order a hearing thereon. Any person denied a
14 license without a hearing may request, in writing, within 30 days
after notice of denial, a hearing before the beard department.
16 Such The request shall must set forth in detail the findings to
which he that person objects, the basis of such objection and the
18 nature of the relief requested.

20 **10. Board to solicit advice.** The Board of Environmental
Protection shall solicit the advice of the Commissioner of Marine
22 Resources and the Commander of the United States Coast Guard
prior to adopting any ~~regulations~~ rules under this section.

24 **Sec. B-129. 38 MRSA §561, 2nd ¶,** as enacted by PL 1985, c.
26 496, Pt. A, §14, is amended to read:

28 The Legislature intends by the enactment of this subchapter
to exercise the police power of the State through the ~~Beard of~~
30 ~~Environmental--Protection--and--the--Department--of--Environmental~~
~~Protection~~ department by conferring upon the beard ~~and the~~
32 department the power to deal with the hazards and threats of
danger and damage posed by the storage and handling of oil in
34 underground facilities and related activities; to require the
prompt containment and removal of pollution occasioned thereby;
36 to provide procedures whereby persons suffering damage from these
occurrences may be promptly made whole; to establish a fund to
38 provide for the investigation, mitigation and removal of
discharges or threats of discharge of oil from underground
40 storage facilities, including the restoration of contaminated
water supplies; and to guarantee the prompt payment of reasonable
42 damage claims resulting therefrom.

44 **Sec. B-130. 38 MRSA §562, sub-§§2 and 3,** as enacted by PL 1985,
c. 496, Pt. A, §14, are repealed.

46 **Sec. B-131. 38 MRSA §563, sub-§1, ¶A,** as amended by PL 1987,
48 c. 491, §6, is further amended to read:

50 A. No person may install, or cause to be installed, a new
or replacement underground oil storage facility without
52 first having registered the facility with the department

2 commissioner in accordance with the requirements of
4 subsection 2, and having paid the registration fee in
6 accordance with the requirements of subsection 4, at least 5
8 business days prior to installation. If compliance with this
10 time requirement is impossible due to an emergency
12 situation, the owner or operator of the facility at which
14 the new or replacement facility is to be installed shall
16 inform the department commissioner as soon as the emergency
18 becomes known.

20 The owner or operator of the facility shall also promptly
22 submit upon completion a copy of the registration form to
24 the fire department in whose jurisdiction the underground
26 tank will be located.

28 The owner or operator shall make available a copy of the
30 facility's registration at that facility for inspection by
32 the department commissioner and authorized municipal
34 officials.

36 **Sec. B-132. 38 MRSA §563, sub-§1, ¶B,** as enacted by PL 1985,
38 c. 496, Pt. A, §14, is amended to read:

40 B. No person may operate, maintain or store oil in an
42 underground oil storage facility after May 1, 1986, unless
44 each underground oil storage tank at that facility is
46 registered with the department commissioner.

48 **Sec. B-133. 38 MRSA §563, sub-§2,** as amended by PL 1987, c.
50 491, §7, is further amended to read:

2. **Information required for registration.** The owner or
operator of an underground oil storage facility shall provide the
department commissioner with the following information on a form
in triplicate to be developed and provided by the department
commissioner; one copy to be submitted to the department
commissioner, one copy to be promptly submitted upon completion
to the fire department in whose jurisdiction the underground tank
is located and one copy to be retained by the owner or operator:

A. The name, address and telephone number of the owner of
the underground oil storage tank to be registered;

B. The name, address and telephone number of the person
having responsibility for the operation of the tank to be
registered;

C. A description of the location of the facility and the
location of the tank or tanks at that facility;

- 2 D. Whether the location of any tank at the facility is
within 1,000 feet of a public drinking water supply or
within 300 feet of a private drinking water supply;
- 4
- 6 E. The size of the tank to be registered;
- 8 F. The type of tank or tanks and piping at the facility and
the type of product stored or contained in the tank or tanks
and piping;
- 10
- 12 G. For new, replacement or retrofitted tanks, the name of
the installer, the expected date of installation or
retrofit, the nature of any emergency pursuant to subsection
14 1, paragraph A, if applicable, and a description or plan
showing the layout of the facility or tank, including, for
16 tanks in sensitive geologic areas, the form of secondary
containment, monitoring wells or equipment to be installed
18 pursuant to section 564, subsection 1, paragraph C and,
where applicable, the method of retrofitting; and
- 20
- 22 H. For existing facilities and tanks, the best estimate of
the age and type of tank or tanks at the facility.

24 For existing tanks, the information required for registration
shall must be submitted to the department commissioner in
26 accordance with this subsection on or before February 1, 1986.

28 **Sec. B-134. 38 MRSA §563, sub-§3**, as amended by PL 1987, c.
402, Pt. A, §199, is further amended to read:

30

32 **3. Amended registration required.** The owner or operator of
an underground oil storage facility shall file an amended
34 registration form with the department commissioner immediately
upon any change in the information required pursuant to
36 subsection 2. No A fee may not be charged for filing an amended
registration.

38 **Sec. B-135. 38 MRSA §563, sub-§5**, as repealed and replaced by
PL 1987, c. 491, §8, is amended to read:

40

42 **5. Payment for failure to register or to pay annual
registration fee.** Any person liable for the fee imposed by
44 subsection 4 shall pay 3 times the fee specified in subsection 4
if the initial fee payment and registration form has not been
46 submitted to the department commissioner on or before May 1,
1986, or if the annual registration fee has not been submitted on
48 or before January 1st of each calendar year. This does not
preclude the department commissioner from seeking civil penalties
50 from any person who fails to register a facility or tank. The
owner or operator of an underground oil storage facility not used
52 in the marketing and distribution of oil shall pay a fee of \$50
for each tank that is not registered by May 1, 1986, except that

2 the board may establish, by rule, an annual late registration
period not to exceed 10 business days in duration during which
time no registration fee may be assessed.

4
6 **Sec. B-136. 38 MRSA §563-A, sub-§§1, 2, 3 and 7, as enacted by PL**
1987, c. 491, §10, are amended to read:

8 **1. Compliance schedule.** No person may operate, maintain or
store oil in a registered underground oil storage facility or
10 tank which that is not constructed of fiberglass, cathodically
protected steel or other noncorrosive material approved by the
12 department commissioner after:

14 A. October 1, 1989, if that facility or tank is more than
15 years old and is located in a sensitive geological area;

16 B. October 1, 1991, if that facility or tank is more than
18 25 years old or if that facility or tank is more than 15
years old and is located in a sensitive geological area;

20 C. October 1, 1994, if that facility or tank is more than
22 20 years old or if that facility or tank is more than 15
years old and is located in a sensitive geological area; and

24 D. October 1, 1997.

26
28 **2. Consideration of sensitive geological areas.** For the
purposes of this section, an underground oil storage facility is
not subject to subsection 1, paragraph A, regarding sensitive
30 geological areas if the board commissioner finds that:

32 A. The applicant has demonstrated that:

34 (1) The facility is located in a municipality with a
population of more than 10,000;

36 (2) All persons within 500 feet of the facility are
38 served by a public drinking water supply;

40 (3) The facility is not located within 2,000 feet of
any source of supply of a public drinking water supply
42 system; and

44 (4) The facility is not located within 300 feet of any
source of supply of a private drinking water supply
46 system.

48 **3. Violations.** After reasonable notice and hearing, if the
board commissioner finds that an owner of an underground oil
50 storage facility has failed to correct any violations of this
subchapter, the board commissioner may impose on the owner a

2 schedule that provides for the early application of any or all of
the prohibitions contained in subsection 1.

4 7. **Report to Legislature.** The department commissioner shall
6 report to the joint standing committee of the Legislature having
jurisdiction over natural resources on or before January 1, 1989,
8 on the progress made toward achieving the compliance schedule
established by this section.

10 **Sec. B-137. 38 MRSA §564, sub-§1, ¶A,** as amended by PL 1985,
c. 626, §3, is further amended to read:

12 A. All new and replacement tanks shall must be constructed
14 of fiberglass, cathodically protected steel or other
noncorrosive material approved by the ~~Department--of
16 Environmental---Protection~~ commissioner. All new and
18 replacement piping shall must be constructed of fiberglass,
cathodically protected steel or other noncorrosive material
20 approved by the ~~Department--of--Environmental--Protection~~
commissioner.

22 **Sec. B-138. 38 MRSA §564, sub-§1, ¶B,** as amended by PL 1989,
c. 312, §17, is further amended to read:

24 B. All new and replacement facilities shall must be
26 installed by an underground oil storage tank installer who
has been properly certified pursuant to Title 32, chapter
28 104-A, and shall must be registered with the department
commissioner prior to installation pursuant to section 563.
30 Underground gasoline storage tanks may be removed by an
underground gasoline storage tank remover who has been
32 properly certified pursuant to Title 32, chapter 104-A.

34 **Sec. B-139. 38 MRSA §564, sub-§2,** as amended by PL 1987, c.
491, §11, is further amended to read:

36 2. **Monitoring, maintenance and operating procedures for**
38 **existing, new and replacement facilities and tanks.** The board's
rules may require:

40 A. Collection of inventory data for each day that oil is
42 being added to or withdrawn from the facility or tank,
reconciliation of the data, with monthly summaries, and
44 retention of records containing all such data for a period
of at least 3 years either at the facility or at the
46 facility owner's place of business;

48 B. Annual statistical inventory analysis, the results of
which shall must be reported to the department commissioner;

50 C. Annual voltage readings for cathodically protected
52 systems;

- 2 D. Monthly inspections of the rectifier meter on impressed
4 current systems;
- 6 E. Precision testing of any tanks and hydrostatic testing
8 of all piping showing evidence of a possible leak. Results
10 of all tests conducted shall must be submitted to the
12 department commissioner by the facility owner and the person
14 who conducted the test;
- 16 F. Evidence of financial responsibility for taking
18 corrective action and for compensating 3rd parties for
20 bodily injury and property damage caused by sudden and
22 nonsudden accidental discharges from an underground oil
24 storage facility or tank; and
- 26 G. Reporting to the department commissioner any of the
28 following indications of a possible leak or discharge of
30 oil:
- 32 (1) Unexplained differences in daily inventory
34 reconciliation values which that, over a 30-day period,
36 exceed .5% of the product delivered;
 - 38 (2) Unexplained losses detected through statistical
40 analysis of inventory records;
 - 42 (3) Detection of product in a monitoring well; and
 - 44 (4) Failure of a tank precision test or hydrostatic
46 pipe test.

48 The requirements in paragraphs A and B do not apply to a
50 double-walled tank containing interstitial space monitoring which
52 that has been installed and is operated in accordance with the
requirements of this subchapter, including rules adopted under
this subchapter, and utilizing double-walled piping or a product
delivery system using a suction pump or other system approved by
the department--which commissioner that has been installed and is
operated in accordance with the requirements of this subchapter,
including rules adopted under this subchapter.

42 **Sec. B-140. 38 MRSA §564, sub-§3**, as amended by PL 1985, c.
44 626, §4, is further amended to read:

46 **3. Replacement of tanks at facilities where leaks have been**
48 **detected.** If replacement or removal is required as a result of a
50 ~~corrosion-induced~~ corrosion-induced leak in an unprotected steel
52 tank, the owner or operator of the facility may either replace
all other tanks and piping at that facility not meeting the
design and installation standards promulgated pursuant to
subsection 1 or comply with the following:

2 A. Remove all bare steel and asphalt-coated steel tanks and
3 all piping which is not constructed of noncorrosive material
4 or is not cathodically protected against corrosion at the
5 facility that are more than 20 years old;

6
7 B. Perform a statistical inventory analysis of the entire
8 facility and submit the results of that analysis to the
9 department commissioner. If a statistical inventory
10 analysis of the entire facility had been was performed
11 within 60 days prior to the required replacement, then the
12 results of that analysis may be submitted to the department
13 commissioner instead. If the results of the statistical
14 inventory analysis indicate evidence of a leak at the
15 facility or that the data is not sufficiently reliable to
16 make a determination that the facility is or is not leaking,
17 the department commissioner may require that all remaining
18 tanks and piping at the facility be precision tested, except
19 that precision testing shall may not be required where it
20 can be demonstrated that the same tanks and piping passed a
21 precision test conducted within the previous 6 months; and

22
23 C. Install a minimum of 2 ground water monitoring wells, as
24 deemed determined necessary by the department commissioner
25 to monitor the facility, unless all remaining tanks and
26 piping at the facility were installed in accordance with the
27 standards promulgated pursuant to subsection 1.

28
29 Results of all precision tests conducted pursuant to paragraph B
30 shall must be submitted to the department commissioner, and all
31 tanks and piping found to be leaking shall must be removed
32 pursuant to section 566 566-A, or repaired to the satisfaction of
33 the department commissioner.

34
35 **Sec. B-141. 38 MRSA §564, sub-§4**, as enacted by PL 1985, c.
36 496, Pt. A, §14, is amended to read:

37
38 **4. Sampling of monitoring wells.** Where If a monitoring
39 well is installed at an underground oil storage facility used for
40 the marketing and distribution of oil, the owner or operator
41 shall be is required to sample that well at least every 6 months;
42 to maintain records of all sampling results at the facility or at
43 the facility owner's place of business; and to report to the
44 department commissioner any sampling results showing evident
45 evidence of a possible leak or discharge of oil.

46
47 **Sec. B-142. 38 MRSA §565, sub-§2, ¶A**, as enacted by PL 1985,
48 c. 496, Pt. A, §14, is amended to read:

49
50 A. The owner or operator shall be is required to report
51 promptly upon discovery to the department commissioner any
52 evidence of a leak or discharge of oil.

2 **Sec. B-143. 38 MRSA §565, sub-§2, ¶B**, as amended by PL 1987,
c. 491, §12, is further amended to read:

4
6 B. Underground oil storage tanks that are used for storing
motor fuels for consumptive use shall must be precision
8 tested for leaks every 5 years until abandonment when they
are 15 years old, except that the owner or operator may
10 elect to install monitoring wells as an alternative to
precision testing. Results of the precision tests shall must
12 be submitted promptly to the department commissioner and all
tanks and piping found to be leaking shall must be removed
14 pursuant to section 566-A or repaired to the department's
commissioner's satisfaction.

16 **Sec. B-144. 38 MRSA §565, sub-§2, ¶C**, as enacted by PL 1985,
c. 496, Pt. A, §14, is amended to read:

18
20 C. ~~Where~~ When a monitoring well is installed at a facility
governed by this section, the owner or operator of the
22 facility shall ~~be~~ is required to sample that well at least
every 6 months; to maintain records of all sampling results
24 at the facility or at the facility owner's place of
business; and to report to the department commissioner any
26 sampling results showing evidence of a possible leak or
discharge of oil.

28 **Sec. B-145. 38 MRSA §566-A, sub-§§2 and 4**, as enacted by PL
1987, c. 491, §14, are amended to read:

30
32 2. **Notice of intent.** The owner or operator of an
underground oil storage facility or tank or, if the owner or
operator is unknown, the current owner of the property where the
34 facility or tank is located shall provide written notice of an
intent to abandon an underground oil storage facility or tank to
36 the department commissioner and the fire department in whose
jurisdiction the underground oil facility or tank is located at
38 least 10 days prior to abandonment.

40 4. **Commissioner role.** If the owner of an underground oil
storage facility or tank fails to properly abandon the facility
42 or tank within a reasonable time period, the department
commissioner may undertake the abandonment. The department
44 commissioner shall collect any reimbursement due the Ground Water
Oil Clean-up Fund in accordance with section 569.

46 **Sec. B-146. 38 MRSA §568**, as amended by PL 1987, c. 787, §14,
48 is further amended to read:

50 **§568. Cleanup and removal of prohibited discharges**

2 1. **Removal.** Any person discharging or suffering a
3 discharge of oil, ~~petroleum products or their by products~~ to
4 ground water in the manner prohibited by section 543 shall
5 immediately undertake to remove that discharge to the
6 department's commissioner's satisfaction. Notwithstanding this
7 requirement, the commissioner may order the removal of that
8 discharge pursuant to subsection 3, or ~~the department may~~
9 undertake the removal of that discharge and retain agents and
10 contractors for that purpose who shall operate under the
11 commissioner's direction ~~of the department~~. Any unexplained
12 discharge of oil, ~~petroleum products or their by products~~ to
13 ground water within state jurisdiction shall must be removed by
14 or under the direction of the department commissioner. Any
15 expenses involved in the removal of discharges, whether by the
16 person causing the ~~same discharge~~, the person reporting the ~~same~~
17 ~~discharge~~ or ~~the department by itself~~ by the commissioner or
18 through ~~its~~ the commissioner's agents or contractors, may be paid
19 in the first instance from the Ground Water Oil Clean-up Fund and
20 any reimbursements due that fund shall must be collected in
accordance with section 569.

22 2. **Restoration of water supplies.** The department
23 commissioner may clean up any discharge of oil and take temporary
24 and permanent remedial actions at locations threatened or
25 affected by the discharge of oil, including restoring or
26 replacing water supplies contaminated or threatened by oil,
27 ~~petroleum products or their by products~~, using the most
28 cost-effective alternative that is technologically feasible and
29 reliable and ~~which that~~ effectively mitigates or minimizes damage
30 to and provides adequate protection of the public health, welfare
31 and the environment. When the remedial action taken includes the
32 installation of a public water supply, the fund may be used to
33 pay costs of operation maintenance and depreciation of the water
34 supply for a period not exceeding 20 years. The department
35 commissioner shall consult with the affected party prior to
36 selecting the alternative to be implemented.

38 3. **Issuance of clean-up orders.** The department
39 commissioner may investigate and sample sites where an oil
40 discharge has or may have occurred to identify the source and
41 extent of the discharge. During the course of the investigation,
42 the commissioner may require submission of information or
43 documents, ~~which that~~ relate or may relate to the discharge under
44 investigation, from any person who the department commissioner
45 has reason to believe may be a responsible party. If the
46 department commissioner finds, after investigation, that a
47 discharge of oil has occurred and may create a threat to public
48 health or the environment, including, but not limited to,
49 contamination of a water supply, the commissioner may order the
50 responsible party to cease the discharge immediately or to take
51 action to prevent further discharge and to mitigate or terminate
52 the threat. The commissioner may order that the responsible

2 party take temporary and permanent remedial actions at locations
threatened or affected by the discharge of oil, including a
4 requirement that the responsible party restore or replace water
supplies contaminated with oil, ~~petroleum products or their~~
6 ~~by-products~~ using the most cost-effective alternative that is
technologically feasible and reliable and which that effectively
8 mitigates or minimizes damage to, and provides adequate
protection of, the public health, welfare and the environment.
Clean-up orders ~~shall only~~ may be issued only in compliance with
10 the following requirements.

12 A. Any orders issued under this section shall must contain
findings of fact describing the manner and extent of oil
14 contamination, the site of the discharge and the threat to
the public health or environment.

16 B. A responsible party to whom such an order is directed
18 may apply to the board for a hearing on the order if the
application is made within 10 working days after receipt of
20 the order by a responsible party. The hearing shall must be
held by the board within 15 working days after receipt of
22 the application. ~~The nature of the hearing before the board~~
shall and be in the form of an appeal. At the hearing, all
24 witnesses shall must be sworn and the ~~department~~
commissioner shall first establish the basis for the order
26 and for naming the person to whom the order was directed.
The burden of going forward shall then ~~shift~~ shifts to the
28 person appealing to demonstrate, based upon a preponderance
of the evidence, that the order should be modified or
30 rescinded. Within 7 days after the hearing, the board shall
make findings of fact and shall continue, revoke or modify
32 the order. The decision of the board may be appealed to the
Superior Court in accordance with the Maine Administrative
34 Procedure Act, Title 5, chapter 375, subchapter VII.

36 **4. Enforcement; penalties; punitive damages.** Enforcement,
penalties and punitive damages are as follows.

38 A. Any person who causes, or is responsible for, a
40 discharge to ground water in violation of section 543 shall
is not be subject to any fines or penalties for the
42 discharge if that person promptly reports and removes that
discharge in accordance with the rules and orders of the
44 department ~~and the board~~.

46 B. Any responsible party who fails without sufficient cause
to undertake removal or remedial action promptly in
48 accordance with a clean-up order issued pursuant to
subsection 3 may be liable to the State for punitive damages
50 in an amount at least equal to and not more than 3 times the
amount of any sums expended from the fund as a result of
52 such failure to take prompt action.

2 **5. Acquisition of property; authority.** The department may
3 acquire, by purchase, lease, condemnation, donation or otherwise,
4 any real property or any interest in real property that the board
5 in its discretion determines, by 2/3 majority vote, is necessary
6 to conduct a remedial action under this subchapter. There shall
7 may be no cause of action to compel the board department to
8 acquire any interest in real property under this subchapter.

10 A. The board department may use the authority in this
11 subsection for a remedial action only if, before an interest
12 in real estate is acquired under this subsection, the
13 municipality in which the interest to be acquired is located
14 assures the board through a contract or other legal
15 agreement that the municipality will accept transfer of the
16 interest following completion of the remedial action.

18 **Sec. B-147. 38 MRSA §569, 2nd ¶,** as enacted by PL 1985, c.
19 496, Pt. A, §14, is amended to read:

20 The ~~Board--of--Environmental--Protection~~ commissioner may
21 authorize the borrowing of funds by and between the Maine Coastal
22 and Inland Surface Oil Clean-up Fund and the Ground Water Oil
23 Clean-up Fund to carry out the provisions of subchapters II-A and
24 II-B. All funds borrowed pursuant to this section shall must be
25 repaid with interest to the fund of origin in as prompt a manner
26 as revenues allow--~~The~~ at a rate of interest shall ~~be~~ determined
27 by the Treasurer of State, based on the average rate of interest
28 earned on funds invested during the period of the loan.

30 **Sec. B-148. 38 MRSA §569, sub-§2-A,** as enacted by PL 1987, c.
31 491, §17, is amended to read:

32 **2-A. Third-party damages.** Any person claiming to have
33 suffered actual damages to real estate or personal property or
34 loss of income directly or indirectly as a result of a discharge
35 of oil to ground water prohibited by section 543, in this
36 subsection called the claimant, may apply within 6 months after
37 the occurrence or discovery of the discharge to the board
38 commissioner stating the amount of damage alleged to be suffered
39 as a result of that discharge. The board commissioner shall
40 prescribe appropriate forms and details for the applications. The
41 board, upon petition and for good cause shown, may waive the
42 6-month limitation for filing damage claims.

43 A. If the claimant and the board commissioner are able to
44 agree as to the amount of the damage claim, the board
45 commissioner shall certify the amount of the claim and the
46 name of the claimant to the Treasurer of State and the
47 Treasurer of State shall pay the amount of the claim from
48 the Ground Water Oil Clean-up Fund.

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2 B. If the claimant and the board commissioner are not able
to agree as to the amount of the damage claim, the board
4 commissioner shall forthwith transmit the claim for action
to the department as provided in this subchapter.

6 C. A claimant shall take all reasonable measures to
minimize damages suffered by the claimant as a result of a
8 discharge of oil.

10 D. Third-party damage claims shall must be stated in their
entirety in one application. Damages omitted from any claim
12 at the time the award is made shall ~~be~~ are deemed waived.

14 E. Damage claims arising under this subchapter are
recoverable only in the manner provided under this
16 subchapter. It is the intent of the Legislature that the
remedies provided for such damage claims in this subchapter
18 are exclusive.

20 F. Awards from the fund on damage claims shall may not
include any amount which the claimant has recovered, on
22 account of the same damage, by way of settlement with or
judgment of a court of competent jurisdiction against the
24 person causing or otherwise responsible for the discharge.

26 **Sec. B-149. 38 MRSA §569, sub-§4, first ¶,** as amended by PL 1989,
c. 543, §6, is further amended to read:

28
4. **Funding.** A fee of 9¢ per barrel of gasoline and 8¢ per
30 barrel of refined petroleum products and their by-products other
than gasoline and liquid asphalt, including #6 fuel oil, #2 fuel
32 oil, kerosene, jet fuel and diesel fuel, ~~shall be~~ is assessed on
the transfer of those products by oil terminal facility
34 licensees, as defined in section 542, subsection 7. These fees
shall must be paid monthly by the oil terminal facility licensees
36 on the basis of records certified to the department. ~~All such~~
~~transfer fees shall be~~ commissioner and credited to the Ground
38 Water Oil Clean-up Fund upon receipt by the department, except
that the commissioner shall transfer the amount of these fees in
40 excess of 3¢ per barrel of gasoline and 2¢ per barrel of refined
petroleum products and their by-products, other than gasoline and
42 liquid asphalt, ~~shall be transferred by the department upon~~
receipt as follows.

44
46 **Sec. B-150. 38 MRSA §569, sub-§6,** as amended by PL 1987, c.
491, §21, is further amended to read:

48 6. **Reimbursements to the Ground Water Oil Clean-up Fund.**
The department commissioner shall seek recovery for the use of
50 the fund of all sums expended from the fund, including
overdrafts, for the purposes described in subsection 5,
52 paragraphs B, D, E and G, or for other damage incurred by the

2 State, in connection with a prohibited discharge, including
interest computed at 15% a year from the date of expenditure,
4 unless the department commissioner finds the amount involved too
small or the likelihood of success too uncertain. Requests for
6 reimbursement to the fund if not paid within 30 days of demand
shall must be turned over to the Attorney General for collection.

8 Sec. B-151. 38 MRSA §570-A, as enacted by PL 1985, c. 496,
Pt. A, §14, is amended to read:

10 **§570-A. Budget approval**

12 The department commissioner shall submit its budget
14 recommendations for disbursements from the fund in accordance
with section 569, subsection 5, paragraphs A, C, F and G for each
16 biennium. The budget shall must be submitted in accordance with
Title 5, sections 1663 to 1666. The State Controller shall
18 authorize expenditures therefrom as approved by the commissioner.
Expenditures pursuant to section 569, subsections subsection 5,
20 paragraphs B, D and E may be made, as authorized by the State
Controller following approval by the commissioner.

22 Sec. B-152. 38 MRSA §570-B, as amended by PL 1985, c. 785,
24 Pt. B, §179, is further amended to read:

26 **§570-B. Personnel and equipment**

28 The department commissioner shall establish and maintain at
such appropriate locations ~~as--it--shall--determine--to--be~~
30 ~~appropriate,--such~~ employees and equipment as in its the
commissioner's judgment may be necessary to carry out this
32 subchapter. The commissioner, subject to the Civil Service Law,
may employ such personnel ~~as--may--be~~ necessary to carry out the
34 purposes of this subchapter and shall prescribe the duties of
those employees. The salaries of those employees and the cost of
36 that equipment shall must be paid from the Ground Water Oil
Clean-up Fund established by this subchapter.

38 Sec. B-153. 38 MRSA §570-C, as enacted by PL 1985, c. 496,
40 Pt. A, §14, is amended to read:

42 **§570-C. Municipal ordinances; powers limited**

44 Nothing in this subchapter may be construed to deny any
municipality, by ordinance or by law, ~~from--exercising~~ the
46 exercise of police powers under any general or special act,
provided that ordinances and bylaws in furtherance of the intent
48 of this subchapter and promoting the general welfare, public
health and public safety ~~shall--be~~ are valid unless in direct
50 conflict with this subchapter or any rule or order of the board
or commissioner adopted under authority of this subchapter.

52

2 **Sec. B-154. 38 MRSA §570-F, first ¶**, as amended by PL 1987, c.
491, §23, is further amended to read:

4 Nothing in this subchapter shall ~~may~~ be construed to
6 authorize the ~~Board--of--Environmental--Protection~~ department to
require registration of or to regulate the installation or
operation of underground tanks used for the storage of propane.

8 **Sec. B-155. 38 MRSA §582, sub-§6**, as repealed and replaced by
10 PL 1971, c. 618, §12, is repealed.

12 **Sec. B-156. 38 MRSA §582, sub-§7-E-2, ¶B**, as enacted by PL
1983, c. 504, §6, is amended to read:

14 B. The most stringent emission limitation ~~which-is~~ achieved
16 in practice by that class or category of source, whichever
is more stringent. In no event may "lowest achievable
18 emission rate" result in the emission of any pollutant in
excess of those standards and limitations promulgated
20 pursuant to Section 111 or 112 of the United States Clean
Air Act, as amended, or any emission standard established by
22 the department board.

24 **Sec. B-157. 38 MRSA §583-B, sub-§4**, as amended by PL 1983, c.
566, §32, is further amended to read:

26 4. **Nonattainment areas.** The department board shall have the
28 authority to designate certain regions or portions thereof as
nonattainment areas after opportunity for a public hearing and
30 determination that any ambient air quality standard is being
exceeded;

32 **Sec. B-158. 38 MRSA §585, last ¶**, as amended by PL 1989, c.
34 144, §2, is further amended to read:

36 The board shall by ~~order~~ rule establish or may amend
emission standards limiting and regulating the amount and type of
38 air contaminants ~~which~~ that may be emitted to the ambient air of
a region ~~so-as~~ to achieve the goals set forth in this section.
40 The ~~order--shall~~ rule must state the date upon which the
standards, or any ~~of-them--become~~ individual standard becomes
42 effective. In establishing the date, the board shall consider the
degree of air pollution existing within the region, the length of
44 time necessary to inform persons affected by the establishment of
these standards that these standards exist, the time needed by
46 the board to implement effective controls and the time needed by
persons affected to design and install air pollution control
48 apparatus to comply with the new standards.

50 **Sec. B-159. 38 MRSA §585-A, last ¶**, as amended by PL 1989, c.
144, §4, is further amended to read:

2 The board shall by ~~order~~ establish or amend rules which
3 shall ~~be designed~~ to achieve the purposes set forth in this
4 section. ~~The order shall state the date upon which the rules, or~~
5 ~~any of them, become effective.~~ The board may delay the effective
6 date of the rules.

7 **Sec. B-160. 38 MRSA §585-C, sub-§2,** as enacted by PL 1983, c.
8 835, §2, is amended to read:

9 **2. Emissions inventory.** ~~The Department of Environmental~~
10 ~~Protection~~ commissioner shall carry out and maintain an inventory
11 of the sources in the State emitting any substance which that may
12 be a hazardous air pollutant.

13 A. This inventory shall must include the following data for
14 each of those substances:

- 15 (1) The number of sources;
- 16 (2) The location of each source or category of source;
- 17 (3) The quantity emitted by each source or category of
18 source;
- 19 (4) The total emissions; and
- 20 (5) The percentage of total emissions generated by
21 sources with existing air licenses.

22 B. In conducting this inventory, the department
23 commissioner may rely upon questionnaires or other
24 reasonable methods, including those established by the
25 United States Environmental Protection Agency, for the
26 purpose of carrying out this duty as promptly and
27 efficiently as possible. The department commissioner shall
28 clearly indicate on any requests for information the minimum
29 amount of emissions that must be reported.

30 C. In carrying out this inventory, the department
31 commissioner may require persons to provide information on
32 forms supplied by the department commissioner. Refusal to
33 provide the information shall ~~subject~~ subjects the person of
34 whom it is requested to a civil penalty of not more than
35 \$100 for each day's delay. Submission of a false
36 information shall ~~constitute~~ constitutes a violation of
37 section 349, subsection 3, in addition to being subject to
38 remedies otherwise available by law.

39 D. Information relating to the emissions inventory
40 submitted to the department commissioner under this section
41 may be designated by the person submitting it as being only
42 for the confidential use of the department commissioner.

2 Designated confidential information shall must be handled as
3 confidential information is handled under section 1310-B,
4 with the exception of emissions data which shall ~~be~~ is
public record.

6 ~~E.--The department shall report the results of its inventory~~
7 ~~to the Governor and the Legislature on or before February~~
8 ~~15, 1985.~~

10 **Sec. B-161. 38 MRSA §587, first ¶**, as repealed and replaced by
11 PL 1979, c. 381, §8, is amended to read:

12
13 Any person who owns or is in control of any source for which
14 an air emission license was granted and construction was
15 commenced prior to January 6, 1975, or a source other than a new
16 or modified major stationary source for which an air emission
17 license is granted after January 6, 1975, may apply to the ~~board~~
18 department for a variance from ambient air quality standards or
19 emission standards promulgated under this chapter. The
20 application shall must be accompanied by such information and
21 data as the ~~board~~ department may reasonably require. The ~~board~~
22 department may grant such the variance if it finds that:

24 **Sec. B-162. 38 MRSA §587, 3rd to 6th ¶¶**, as amended by PL 1971,
25 c. 618, §12, are further amended to read:

26
27 If the variance is granted on the ground that there is no
28 practicable means known or available for the adequate prevention,
29 abatement or control of the air pollution involved, it shall ~~be~~
30 is good only until the necessary means for prevention, abatement
31 or control become known and available and subject to the taking
32 of such reasonable substitute or alternate measures as the ~~board~~
33 department may prescribe.

34
35 If the variance is granted on the ground that compliance
36 with the particular requirement or requirements from which
37 variance is sought will necessitate the taking of measures which,
38 because of their extent or cost, must be spread over a
39 considerable period of time, it shall ~~be~~ is for a period not to
40 exceed such reasonable time as the ~~board~~ department finds is
41 requisite for the taking of the necessary measures.

42
43 If the variance is granted on the ground that it is
44 justified to relieve or prevent hardship of a kind other than
45 that provided for in subsections 1 and 2, it shall ~~be~~ is only for
46 such time as the ~~board~~ department considers reasonable.

48
49 Any variance may be renewed on terms and conditions and for
50 periods which would be appropriate on initial granting of a
51 variance. If complaint is made to the ~~board~~ department on account
52 of the variance, no renewal thereof shall of the variance may be
granted, unless following public hearing on the complaint on due

notice, the board department finds that renewal is justified. No
renewal shall may be granted except on application therefor.

Sec. B-163. 38 MRSA §589, as amended by PL 1977, c. 300, §44,
is further amended to read:

§589. Registration; penalties

The board commissioner may require the registration with-it
of such persons or air contamination sources, of the type ~~it~~ the
board may by regulation rule prescribe, engaged in activities
which that 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 board by regulation rule may prescribe.

The board commissioner may also require such these persons
to make periodic reports ~~to-it~~ 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 board may by regulation rule prescribe.

Failure to register, to install, maintain and use emission
monitoring devices or to file reports ~~shall-render~~ renders
the failing party liable to the penalties prescribed in sections 348
and 349 ~~for-violation-of-board-orders~~.

Sec. B-164. 38 MRSA §590, as amended by PL 1985, c. 745, §§1
and 2, is further amended to read:

§590. Licensing

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

Application for such air emission licenses shall must be
made in such a form prescribed by the commissioner and contain
such the information relating to the proposed air contamination
source and emission of air contaminants as the board may by
regulation rule prescribe. All hearings under this section shall
must be held in some municipality within the region where the
proposed emission is to be located. At such this hearing, the
board department 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 for which license is sought at the levels

2 required by law; and the expense of purchasing and installing
3 such this apparatus. If after hearing the ~~board--shall--find~~
4 department finds that the proposed emission will be receiving the
5 best practicable treatment, will not violate applicable emission
6 standards, or can will be controlled so as not to violate the
7 same, and that ~~such~~ the proposed emission, either alone or in
8 conjunction with existing emissions, will not violate or can be
9 controlled so as not to violate applicable ambient air quality
10 standards, it shall grant the license, imposing such appropriate
11 and reasonable conditions thereon as may, in the ~~board's~~
12 department's judgment, be necessary to secure compliance with
13 such ambient air quality standards. If in the course of the
14 renewal or amendment of an air emission license ~~such~~ these
15 findings can be made only if the licensee installs additional
16 emission controls or other mitigating measures, then the licensee
17 may continue to emit pollutants from air contaminant sources
18 ~~which~~ that will receive such these controls or measures up to the
19 same levels allowed in its existing air emission license, if the
20 additional emission controls or other mitigating measures are
21 installed and are fully operational as soon as practicable, but
22 in no case later than 24 months, after the ~~board~~ department
23 issues the license renewal or amendment, except as provided in
24 this paragraph. After a showing by the licensee that it cannot
25 install and bring to full operation ~~such~~ required emission
26 controls or mitigating measures within the 24-month period, the
27 ~~board~~ department may establish a later date for the installation
28 and operation.

29
30 The ~~board~~ department shall have the authority to deny an air
31 emission license for a new or modified major emitting source when
32 it determines that the source will not comply with the
33 requirements imposed pursuant to the Federal Clean Air Act, Title
34 1, Part C, Subpart 1 relating to protection of air quality
35 related values or pursuant to the Federal Clean Air Act, Title 1,
36 Part C, Subpart 2 relating to the impairment of visibility in
37 mandatory Class 1 federal areas.

38 **Sec. B-165. 38 MRSA §590-B**, as enacted by PL 1987, c. 688, is
39 amended to read:

40 **§590-B. Testing at resource recovery facilities**

41 **1. Testing; first 2 years of commercial operation.** The
42 ~~board shall require testing~~ Testing is required at each resource
43 recovery facility burning municipal solid waste at least once in
44 every 6-month period during the first 2 years of commercial
45 operation for the presence of dioxin and heavy metals, including,
46 but not limited to, lead, cadmium and chromium in the emissions
47 of the facility. The cost of these tests shall must be paid by
48 the applicant or permittee.
49
50

2 2. Testing after first 2 years of licensure. After the
3 facility has been in operation and licensed for 2 years, the
4 ~~board shall require~~ testing is required for dioxin and heavy
5 metals, including, but not limited to, lead, cadmium and chromium
6 in the emissions of the facility at a frequency determined by the
7 board by rule. The cost of these tests shall must be paid by the
8 applicant or permittee.

9
10 A. The rules adopted by the board under this section shall
11 establish a system of monitoring the overall air emission
12 performance of ~~these types of~~ resource recovery facilities
13 employing surrogate measures of combustion efficiency and
14 other parameters ~~which that~~, in the judgment of the board,
15 may affect the creation of dioxin emissions and the emission
16 of heavy metals. The board shall provide for minimum
17 acceptable operating conditions as indicated by the
18 surrogate measures. Failure to achieve and maintain these
19 conditions shall will result in testing for dioxin and heavy
20 metals as indicated by the surrogate measures.

21
22 B. Scheduling of tests required by this subsection shall
23 must reflect the operating conditions ~~which that~~ originally
24 required the testing to ensure the greatest protection of
25 public health and the environment. Seasonal differences in
26 waste stream composition and atmospheric and climatic
27 conditions shall must be taken into account in conducting
28 the tests.

29
30 C. The board shall adopt rules under this section on or
31 before January 1, 1989.

32 2-A. Testing results. The results of all tests required
33 under this section must be submitted to the commissioner within
34 30 days of testing.

35
36 3. Public and local participation. The municipal officers,
37 or their designees, of the municipality within which the facility
38 is located or, in the case of a facility located within an
39 unorganized territory or plantation, the county commissioners, or
40 their designees, may conduct an independent review of any testing
41 protocol, test results and their interpretations and any
42 standards or assumptions upon which the test protocol or results
43 are based, which items are required by this section.

44
45 The review authorized in this subsection may make use of the
46 services of independent consultants and may include, without
47 limitation, review of the testing protocol, test results and
48 their interpretations and any standards or assumptions upon which
49 the test protocol or results are based. The cost of each such
50 review shall must be paid by the applicant or permittee in an
51 amount not to exceed \$1,000 per test.

52

2 4. Authority for further tests. The ~~board~~ department shall
have the authority to make such further tests for compliance as
the ~~board-deems~~ department determines necessary and the board may
4 reinstate a license when tests indicate compliance.

6 Sec. B-166. 38 MRSA §591, as amended by PL 1983, c. 835, §3,
is further amended to read:

8 **§591. Prohibitions**

10 No person may discharge air contaminants into ambient air
12 within a region in such manner as to violate ambient air quality
standards established ~~by-the-board-pursuant-to-section-584~~ under
14 this chapter or emission standards ~~so~~ established pursuant to
section 585 or section 585-B.

16 Where When the board, pursuant to section 590, has by
18 regulation rule provided that no person shall may operate or
maintain within a region any air contamination source or emit any
20 air contaminants without an emission license from the ~~board~~
department, ~~such~~ the operation or maintenance without that
22 license is prohibited.

24 Sec. B-167. 38 MRSA §592-A, as enacted by PL 1989, c. 155,
§2, is amended to read:

26 **§592-A. Soiling of property; nuisance**

28 1. **Total suspended particulate matter.** No person may
30 discharge total suspended particulate matter to the ambient air
in an amount or concentration that soils property or creates a
32 nuisance condition. Total suspended particulate matter
concentrations of less than 150 micrograms per cubic meter for
34 any 24-hour period in the ambient air ~~shall-be~~ are presumed not
to constitute soiling or nuisance conditions. Any person who
36 demonstrates on the basis of total suspended particulate ambient
air quality monitoring information acceptable to the ~~department~~
38 commissioner that emissions discharged by that person have not
substantially caused or contributed to total suspended
40 particulate matter concentrations in excess of 150 micrograms per
cubic meter over a 24-hour period at any applicable location may
42 not be held in violation of this subsection.

44 2. **Fugitive emissions.** Any commercial and industrial
source or facility, all municipalities and all state or federal
46 facilities, whether or not requiring a license pursuant to this
chapter, ~~which~~ that cause or contribute to the discharge of
48 fugitive emissions ~~which~~ that the ~~department~~ commissioner
determines to constitute a nuisance ~~shall-be~~ are required to
50 establish and maintain a continuing program for best management
practices for suppression of fugitive emissions during any
52 periods of construction, renovation or normal operation. The

2 department commissioner shall determine those procedures which
3 constitute best management practices. A description of a
4 source's program for suppression of fugitive emissions shall must
be made available to the department commissioner upon request.

6 **Sec. B-168. 38 MRSA 598, sub-§4,** as repealed and replaced by
7 PL 1979, c. 718, §6, is amended to read:

8
9 **4. Malfunctions.** The department commissioner is authorized
10 to exempt emissions occurring during periods of unavoidable
11 malfunction or unplanned shutdown from civil penalty under
12 section 349, subsection 2, if the malfunction was not caused,
13 entirely or in part, by poor maintenance, careless operation,
14 poor design or any other reasonably preventable condition. In
15 such a case, the burden of proof shall ~~be~~ is on the person
16 seeking the exemption.

18 **Sec. B-169. 38 MRSA §599,** as amended by PL 1989, c. 174, §§10
19 to 13, is repealed.

20 **Sec. B-170. 38 MRSA §600, sub-§4,** as enacted by PL 1983, c.
21 504, §8, is amended to read:

22
23 **4. Test methods and procedures.** Compliance shall must be
24 determined by test methods and procedures approved on or before
25 December 22, 1982, or any method providing equivalent accuracy
26 and reliability subsequently approved by the ~~board~~ department.

27
28 **Sec. B-171. 38 MRSA, §601, sub-§3,** as enacted by PL 1973, c.
29 438, §8, is amended to read:

30
31 **3. Test methods and procedures.** Test methods 1, 3 and 5 as
32 promulgated by the Administrator of the United States
33 Environmental Protection Agency in Regulation 60.85 published in
34 the Federal Register, volume 36, number 247, December 23, 1971 or
35 such other methods as are deemed equivalent by the ~~board~~ shall be
36 commissioner are those used to determine compliance with this
37 section.

38
39 **Sec. B-172. 38 MRSA §602, sub-§4,** as enacted by PL 1973, c.
40 438, §8, is amended to read:

41
42 **4. Test methods and procedures.** Test methods 1 and 5 as
43 promulgated by the Administrator of the United States
44 Environmental Protection Agency in Regulation 60.85 published in
45 the Federal Register, volume 36, number 247, December 23, 1971 or
46 such other methods as are deemed equivalent by the ~~board~~ shall be
47 commissioner are used to determine compliance with this
48 regulation.

49
50 **Sec. B-173. 38 MRSA §603-A, sub-§3,** as enacted by PL 1983, c.
51 504, §10, is amended to read:

2 3. **Records.** Record-keeping requirements are as follows.

4 A. Any person importing residual oil or bituminous coal
5 into the State shall submit to the ~~Department--of~~
6 ~~Environmental--Protection~~ commissioner a quarterly report
7 itemizing the quantity, sulfur content, ash content and heat
8 content for each shipment of the fuel. Reports covering
9 each preceding quarter shall must be submitted by the end of
10 the month following the end of the calendar quarter. It
11 shall-be is the responsibility of the person importing the
12 fuel to maintain a record of the certified fuel analyses
13 upon which the quarterly reports are based and provide the
14 user a copy of the certification.

16 B. Any person achieving compliance by means of blending
17 fuels shall submit to the ~~Department--of--Environmental~~
18 ~~Protection~~ commissioner quarterly reports indicating the
19 respective fuel volumes, sulfur contents and heat contents.

20 C. Any person achieving compliance by means of flue gas
21 desulfurization or other sulfur removal processes shall
22 submit to the ~~Department--of--Environmental--Protection~~
23 ~~commissioner~~ quarterly reports indicating delivered fuel
24 sulfur contents, a summary of sulfur dioxide concentrations
25 from a continuous in-stack monitor and identifying any
26 period of equipment malfunction or other outage.

28 **Sec. B-174. 38 MRSA §605**, as amended by PL 1983, c. 566, §42,
30 is further amended to read:

32 **§605. Malfunctions**

34 Any person owning or operating any emission source that
35 suffers a malfunction or breakdown in any component part ~~which~~
36 and that malfunction or breakdown causes a violation of any
37 emission standards shall notify the ~~board~~ commissioner in writing
38 within 48 hours.

40 **Sec. B-175. 38 MRSA §607**, as amended by PL 1979, c. 535, is
41 repealed.

42 **Sec. B-176. 38 MRSA §608-A**, as enacted by PL 1989, c. 546,
43 §13, is amended to read:

44 **§608-A. Soil decontamination**

46 Any rotary drum mix asphalt plant may process up to 5,000
47 cubic yards of soil contaminated by gasoline or #2 fuel oil per
48 year. The 5,000 cubic yards per year limit may be exceeded with
49 written authorization from the ~~Department--of--Environmental~~
50 ~~Protection~~ commissioner. The plant owner or operator shall
51

2 notify the department commissioner at least 24 hours prior to
processing the contaminated soil and specify the contaminating
4 fuel and quantity, origin of the soil and fuel and the
disposition of the contaminated soil. The owner or operator
shall maintain records of these activities for 6 years.

6
8 **Sec. B-177. 38 MRSA §609, sub-§4**, as repealed and replaced by
PL 1989, c. 197, §3, is amended to read:

10 **4. Transition schedule.** The owner or operator of
fixed-roof petroleum storage vessels located in Air Quality
12 Control Regions III, IV and V shall ~~have~~ has until July 1, 1991,
to comply with the requirements under subsection 2, paragraph A.
14 In Air Quality Control Regions III, IV and V, the owner or
operator of a fixed-roof petroleum storage vessel without a
16 floating roof or other acceptable volatile organic compound
emission control equipment shall adhere to the increments of
18 progress contained in the following schedule and shall report to
the department commissioner within 15 days of the prescribed
20 deadline the status of compliance with the increment of progress.

22 A. Final plans for the floating roof, other necessary
modifications or other acceptable volatile organic compound
24 emission control equipment shall must be submitted before
November 1, 1989.

26 B. Contracts for installation of the floating roof, other
modifications or other acceptable volatile organic compound
28 emission control equipment or purchase orders for component
parts shall must be issued before March 1, 1990.

30 C. Initiation of on-site construction or installation of
acceptable volatile organic compound emission control
32 equipment shall must begin before July 1, 1990.

34 D. Final compliance shall must be achieved before July 1,
36 1991.

38
40 **Sec. B-178. 38 MRSA §609-C, sub-§§4 and 6**, as enacted by PL
1989, c. 197, §4, are amended to read:

42 **4. Annual certification test.** A tank truck subject to the
provisions of this section must be tested annually by the owner
44 or owner's agent using Reference Method 27, as amended and
defined in 40 Code of Federal Regulations, Part 60, Appendix A,
46 or any other methods approved by the commissioner and the United
States Environmental Protection Agency. The department
48 commissioner must be informed at least 24 hours in advance of
each certification test.

50

2 The owner or the owner's agent conducting the certification test
must have attended a tank truck tightness certification workshop
as approved by the commissioner.

4
6 **6. Spot inspection tests.** The department commissioner may,
at any time without announcement, measure the back pressure
during the loading of tank trucks at the loading rack or the
emissions as a percentage of the lower explosive limit from a
tank truck using a combustible gas detector to determine the
compliance of the tank trucks and vapor collection systems with
the requirements set forth in this section. The leak tightness
of a tank truck and vapor collection systems shall ~~be~~ is measured
by use of a gasoline leak detection technique which ~~that~~ uses a
combustible gas detector or by use of other means approved by the
commissioner.

16
18 **Sec. B-179. 38 MRSA §610, sub-§4,** as repealed and replaced by
PL 1989, c. 197, §5, is amended to read:

20 **4. Transition schedule.** The owners or operators of bulk
gasoline terminals located in Air Quality Control Regions III, IV
and V, as well as those facilities exempted under former section
610 as it existed on September 18, 1981, have until July 1, 1991,
to comply with the requirements of subsection 2, paragraph B. In
Air Quality Control Regions III, IV and V, the owner or operator
of a bulk gasoline terminal without a vapor recovery system or
other acceptable volatile organic compound emission control
equipment approved under subsection 2, paragraph B, shall adhere
to the increments of progress contained in the following schedule
and shall report to the department commissioner within 15 days of
the prescribed deadline the status of compliance with the
increment of progress.

34 A. Final plans for acceptable volatile organic compound
emission control equipment shall must be submitted before
November 1, 1989.

38 B. Contracts for installation of acceptable volatile
organic compound emission control equipment or purchase
orders for component parts shall must be issued before March
1, 1990.

42 C. Initiation of on-site construction or installation of
acceptable emission control equipment shall must begin
before July 1, 1990.

46 D. Final compliance shall must be achieved before July 1,
48 1991.

50 **Sec. B-180. 38 MRSA §632, sub-§1-A** is enacted to read:

1-A. Commissioner. "Commissioner" means the Commissioner of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Regulation Commission, "commissioner" means the Director of the Maine Land Use Regulation Commission.

Sec. B-181. 38 MRSa §632, sub-§2, as enacted by PL 1983, c. 458, §18, is amended to read:

2. Department. "Department" means the Department of Environmental Protection, except that, for any hydropower project within the jurisdiction of the Maine Land Use Regulation Commission, "department" means the Maine Land Use Regulation Commission.

Sec. B-182. 38 MRSa §633, sub-§1, as enacted by PL 1983, c. 458, §18, is amended to read:

1. Permit required. No person may initiate construction or reconstruction of a hydropower project, or structurally alter a hydropower project in ways which that change water levels or flows above or below the dam, without first obtaining a permit from the board department.

Sec. B-183. 38 MRSa §634, as amended by PL 1989, c. 309, §3, and c. 501, Pt. DD, §46, is further amended to read:

§634. Permit requirements

1. Coordinated permit review. Permits required under the following laws shall are not be required by any state agency for projects reviewed or exempted from review under this subarticle: natural resource protection laws, chapter 3, subchapter I, article 5-A; site location of development laws, chapter 3, subchapter I, article 6; and land use regulation laws, Title 12, chapter 206-A. Notwithstanding section 654, the board department may attach reasonable conditions consistent with this subarticle concerning the operation of hydropower projects. The board commissioner shall give written notice to the Commissioner of Inland Fisheries and Wildlife and the Commissioner of Marine Resources of the intent of any applicant for a permit to construct a dam.

2. Application. An application for a permit required by section 633 shall must be made on forms provided by the board commissioner and shall ~~be~~ filed with the board commissioner. Public notice of the filing shall must be made as required by the board.

3. Application review. Within 10 working days of receiving a completed application, the ~~Commissioner of Environmental Protection or the Director of the Maine Land Use Regulation~~

2 ~~Commissioner, as appropriate,~~ commissioner shall notify the
applicant of the official date on which the application was
accepted.

4
6 The ~~commissioner or the director, as appropriate,~~ shall circulate
the application among the Department of Environmental Protection,
Department of Conservation, Department of Inland Fisheries and
8 Wildlife, Department of Marine Resources, Department of
Transportation, Maine Historic Preservation Commission, State
10 Planning Office, Public Utilities Commission and the municipal
officials of the municipality in which the project is located.
12 The State Planning Office and the Public Utilities Commission
shall submit written comments on section 636, subsection 7,
14 paragraph F. For projects within the jurisdiction of the Maine
Land Use Regulation Commission, the director may request and
16 obtain technical assistance and recommendations from the staff of
the department. The department Commissioner of Environmental
18 Protection shall respond to the requests in a timely manner. The
department's recommendations shall of the Commissioner of
20 Environmental Protection must be considered by the commission in
acting upon a project application.

22 **Sec. B-184. 38 MRSA §635**, as amended by PL 1983, c. 779, §§2
24 and 3, is further amended to read:

26 **§635. Department decision**

28 Upon receipt of a properly completed application, the board
department shall either:

30 1. **Approval.** Approve the proposed project upon such terms
32 and conditions as are appropriate and reasonable to protect and
preserve the environment and the public's health, safety and
34 general welfare, including the public interest in replacing oil
with hydroelectric energy. These terms and conditions may
36 include, but are not limited to:

38 A. Establishment of a water level range for the body of
water impounded by a hydropower project;

40 B. Establishment of instantaneous minimum flows for the
42 body of water affected by a hydropower project; and

44 C. Provision for the construction and maintenance of fish
passage facilities.

46
48 ~~In those cases where~~ When the proposed project involves
maintenance, reconstruction or structural alteration at an
existing hydropower project and ~~where~~ when the proposed project
50 will not alter historic water levels or flows after its
completion, the board department may impose temporary terms and
52 conditions of approval relating to paragraph A or paragraph B but

shall may not impose permanent terms and conditions that alter historic water levels or flows;

2. **Disapproval.** Disapprove the proposed project setting forth in writing the reasons for the disapproval; or

3. **Hearing.** Schedule a hearing on the proposed project. Any hearing held under this subsection shall must follow the notice requirements and procedures for an adjudicatory hearing under Title 5, chapter 375, subchapter IV. After a hearing is held under this subsection, the ~~board~~ department shall make findings of facts and issue an order approving or disapproving the proposed project, as provided in subsections 1 and 2.

Sec. B-185. 38 MRSA §635-A, first ¶, as amended by PL 1985, c. 362, §1, is further amended to read:

Whenever the ~~board~~ commissioner receives a properly completed application, the ~~board~~ department shall make a decision as expeditiously as possible. ~~When the proposed project lies within the jurisdiction of the Department of Environmental Protection, the Board of Environmental Protection shall make a decision in accordance with section 344, except that, following one extension of up to 45 working days, the commissioner may waive the requirements of section 344, only at the request of the applicant.~~

Sec. B-186. 38 MRSA §635-B, as enacted by PL 1989, c. 309, §4, is amended to read:

§635-B. Procedures for water quality certification

Issuance of a water quality certificate required under the United States Water Pollution Control Act, Section 401, shall ~~be~~ is coordinated for the applicant under this subarticle by the ~~Department~~ Commissioner of Environmental Protection. The issuance of a water quality certificate shall ~~be~~ is mandatory in every case where the ~~board~~ department approves an application under this subarticle. The ~~board~~ department shall issue or deny certification at the same time it approves or disapproves the proposed project. If issued, the certification shall must state that there is a reasonable assurance that the project will not violate applicable water quality standards. The coordination function of the department with respect to water quality certification shall does not include any proceedings or substantive criteria in addition to those otherwise required by this subarticle.

Sec. B-187. 38 MRSA §636, first ¶, as enacted by PL 1983, c. 458, §18, is amended to read:

2 The board department shall approve a project when it finds
that the applicant has demonstrated that the following criteria
have been met.

4
6 **Sec. B-188. 38 MRSA §636, sub-§1**, as enacted by PL 1983, c.
458, §18, is amended to read:

8 1. **Financial capability.** The applicant has the financial
capability and technical ability to undertake the project. In
10 the event that the applicant is unable to demonstrate financial
capability, the board department may grant the permit contingent
12 upon the applicant's demonstration of financial capability prior
to commencement of the activities permitted.

14
16 **Sec. B-189. 38 MRSA §636, sub-§7**, as amended by PL 1989, c.
309, §§5 to 7, is further amended to read:

18 7. **Environmental and energy considerations.** The advantages
of the project are greater than the direct and cumulative adverse
20 impacts over the life of the project based upon the following
considerations:

22 A. Whether the project will result in significant benefit
24 or harm to soil stability, coastal and inland wetlands or
the natural environment of any surface waters and their
26 shorelands;

28 B. Whether the project will result in significant benefit
or harm to fish and wildlife resources. In making its
30 determination, the board department shall consider other
existing uses of the watershed and fisheries management
32 plans adopted by the Department of Inland Fisheries and
Wildlife, the Department of Marine Resources and the
34 Atlantic Sea Run Salmon Commission;

36 C. Whether the project will result in significant benefit
or harm to historic and archeological resources;

38 D. Whether the project will result in significant benefit
40 or harm to the public rights of access to and use of the
surface waters of the State for navigation, fishing,
42 fowling, recreation and other lawful public uses;

44 E. Whether the project will result in significant flood
control benefits or flood hazards; and

46 F. Whether the project will result in significant
48 hydroelectric energy benefits, including the increase in
generating capacity and annual energy output resulting from
50 the project, and the amount of nonrenewable fuels it would
replace.

52

2 The board department shall make a written finding of fact with
3 respect to the nature and magnitude of the impact of the project
4 on each of the considerations under this subsection, and a
5 written explanation of their use of these findings in reaching
6 their decision.

8 **Sec. B-190. 38 MRSA §636, sub-§8, ¶A,** as enacted by PL 1989,
9 c. 309, §8, is amended to read:

10 A. Notwithstanding section 464, subsection 2, the board
11 department shall reclassify the waters of the proposed
12 impoundment to Class GPA if the board department finds:

14 (1) There is a reasonable likelihood that the proposed
15 impoundment will thermally stratify;

16 (2) The proposed impoundment will exceed 30 acres in
17 surface area;

18 (3) The proposed impoundment will not have any upstream
19 direct discharges except cooling water; and

20 (4) The proposed impoundment will not violate section
21 464, subsection 4, paragraph F.

22
23
24
25
26 **Sec. B-191. 38 MRSA §817, sub-§§1, 2 and 4,** as enacted by PL
27 1983, c. 417, §6, are repealed.

28 **Sec. B-192. 38 MRSA §818, sub-§4,** as enacted by PL 1983, c.
29 417, §6, is amended to read:

30
31 **4. Damages.** No action may be brought against the State, the
32 board, the commissioner or his their agents or employees for the
33 recovery of damages caused by any order of the board or
34 commissioner or by the partial or total failure of any dam or
35 through the operation of any dam upon the ground that the State,
36 the board, the commissioner or his their agents or employees are
37 liable by virtue of any order or determination of the board or
38 commissioner.

39
40
41 **Sec. B-193. 38 MRSA §830, sub-§1,** as enacted by 1983, c. 417,
42 §6, is amended to read:

43
44 **1. Registration.** Each person owning a dam shall register
45 the dam on or before January 1, 1984, and every 5th year
46 thereafter, on forms provided by the department commissioner. For
47 dams built after January 1, 1984, initial registration ~~shall be~~
48 is due as of the date of completion of construction. The
49 registration forms shall seek from and require of the registrant
50 information reasonably required by the department to perform its
51 duties under this Article. The department commissioner shall
52 provide notice of dam registration requirements to the known or

2 suspected owners of all currently or previously registered dams
at least 30 days prior to the registration deadline.

4 **Sec. B-194. 38 MRSA §830, sub-§5**, as amended by PL 1987, c.
118, §10, is further amended to read:

6
8 **5. Notice of failure to register.** Notice of failure to
register a dam and of the consequences described in this
subsection shall must be mailed by certified mail after January
10 1st of the registration year to the last known address of the
owner and any lessee or other person in control of the dam. The
12 department commissioner shall make a reasonable effort to
determine the identity, where unknown, of an owner, lessee or
14 person in control of a dam by:

16 A. Consulting prior dam registration records;

18 B. Consulting the registry of deeds of the county in which
the dam is located;

20 C. Consulting the municipal tax list of the municipality in
22 which the dam is located; and

24 D. Consulting the tax list maintained by the State Tax
Assessor under Title 36, chapter 115 for a dam located in an
26 unorganized territory.

28 If a dam is not registered within 90 days following the mailing
of the first notice of failure to register, a 2nd notice of
30 failure to register and of the consequences described in this
subsection shall must be mailed by registered certified mail
32 within an additional 30 days to the person to whom the first
notice was sent and to any other person or persons whom the
34 department commissioner has reason to believe may be an owner,
lessee or person in control of the dam.

36 **Sec. B-195. 38 MRSA §831, first ¶**, as enacted by PL 1983, c.
38 417, §6, is amended to read:

40 The owner, lessee or person in control of a dam shall
provide written notice to the department commissioner of:

42 **Sec. B-196. 38 MRSA §837**, as amended by PL 1987, c. 737, Pt.
44 C, §§92 and 106; and 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8
and 10, is further amended to read:

46 **§837. Awards of new ownership**

48 **1. Initiation of proceedings; action.** Within 30 days after
50 the date on which the State assumes ownership of any dam under
this Article, the board commissioner shall initiate proceedings
52 to award ownership of the dam. Within one year after the date on

2 which the State assumes ownership of any such dam, the board
commissioner shall either:

4 A. Award ownership of the dam to a new owner under this
6 section; or

8 B. In the event that no person petitions for ownership of
10 the dam or the board commissioner determines under
12 subsection 5 that none of the petitioners is qualified to
14 accept ownership and control of the dam, retain ownership of
16 the dam. Upon ~~its~~ the commissioner's decision to retain
ownership of the dam, the board commissioner shall cause the
dam to be maintained and operated in such a manner as to
protect the public safety and public resources. This
maintenance and operation may include, but is not limited
to:

18 (1) The opening of the dam and draining of the
20 impoundment;

22 (2) The operation of the dam in a specified manner; or

24 (3) The destruction of the dam.

26 The board commissioner may initiate further proceedings at
28 any time to award ownership of any dam that has remained in
state ownership by a decision of the board commissioner
under this paragraph.

30 2. **Public notice.** The board commissioner shall give notice
32 inviting petitions for the award of ownership of the dam at least
twice in a newspaper of general circulation in the county or
34 counties in which the dam is located ~~and-at-least-once-in-the~~
~~state--paper~~. The board commissioner shall also give written
36 notice to any municipality or municipalities in which the dam or
the body of water it impounds is located and to the county
38 commissioners of any county or counties in which the dam or the
body of water it impounds is located.

40 3. **Petitions.** Petitions for the award of ownership of any
42 dam shall must be made in a form prescribed by the board
commissioner and shall must be filed with the board commissioner
44 by a date specified, which date shall must not be less than 30
days after the first publication of notice.

46 Any person may petition the board commissioner to be awarded
48 ownership of any abandoned dam.

50 4. **Ownership proceeding.** The board commissioner may
52 schedule and conduct a public hearing for the purpose of
receiving any evidence and information that may be of aid it in
making a determination. The board commissioner may subpoena such

2 witnesses and documents as it may require be required. Any
3 hearing held under this section shall ~~be~~ is an adjudicatory
4 hearing under Title 5, chapter 375, subchapter IV and the
5 procedures specified in this section.

6 **5. Criteria for determination.** The board commissioner shall
7 determine which petitioner, if any, is best qualified to accept
8 ownership and control of the dam. In reviewing any petition and
9 the qualifications of the petitioner to accept ownership and
10 control of the dam, the board commissioner shall consider the
11 following criteria:

12 A. The technical, financial and administrative ability of
13 the petitioner;

14 B. Any plans of the petitioner with regard to the operation,
15 maintenance and repair of the dam;

16 C. The effect of the petitioner's proposal upon private and
17 public property and the public resources of wildlife,
18 fisheries, water quality, recreation and other water uses;

19 D. The ability of the petitioner to comply with any order
20 issued under this Article;

21 E. The willingness of the petitioner to accept ownership of
22 the dam upon reasonable terms; and

23 F. Any other effects of the petitioner's proposal on public
24 health, safety and general welfare.

25 **6. Competing petitions.** In the event that the board
26 commissioner has determined under subsection 5 that there is more
27 than one petitioner who is otherwise equally qualified to accept
28 ownership and control of the dam, the board commissioner shall
29 hold a joint hearing on all petitions and shall award ownership
30 of the dam in the following order of priority:

31 A. To an association of at least 50% of the littoral or
32 riparian proprietors;

33 B. To a river corridor commission, lake or watershed
34 district, dam commission or other similar agency created by
35 Act of the Legislature or by an agreement among
36 municipalities or other public agencies under the interlocal
37 cooperation laws, Title 30-A, chapter 115;

38 C. To a municipality in which the dam or the body of water
39 it impounds is located;

40 D. To a county in which the dam or the body of water it
41 impounds is located;

2 E. To any state agency; and

4 F. To any other person.

6 6-A. Appeal. The award of ownership under this section may
8 be appealed to the board and is governed by the provisions of
section 341-D, subsection 4.

10 7. **Award of dam; terms.** No sooner than 45 days after notice
12 to all parties of its the commissioner's decision, the board
14 commissioner shall execute and deliver a deed awarding ownership
16 and possession of the dam to the successful petitioner. This
18 conveyance may be subject to such terms regarding the use and
20 operation of the dam by the grantee, his the grantee's heirs and
assigns as may be reasonable. The board commissioner shall not
deliver the deed until the successful petitioner has reimbursed
the department for all outstanding registration fees and all
expenses incurred by the department for the repair, operation or
transfer of the dam.

22 The grantee shall cause record a copy of the deed ~~to be recorded~~
24 in the registry of deeds for the county in which the dam is
located.

26 8. **Final agency action.** A decision by the board under this
28 section ~~shall constitute~~ constitutes final agency action for the
purposes of appeal under Title 5, chapter 375, subchapter VII.

30 **Sec. B-197. 38 MRSA §840, sub-§1,** as amended by PL 1989, c.
32 323, §1, and c. 569, §1, is repealed and the following enacted in
its place:

34 1. Power. The commissioner may on the commissioner's own
36 motion and shall at the request of the owner, lessee or person in
38 control of a dam, the Commissioner of Inland Fisheries and
40 Wildlife, or the Commissioner of Marine Resources, or upon
42 receipt of petitions from the lesser of at least 25% or 50 of the
44 littoral or riparian proprietors or from a water utility having
the right to withdraw water from the body of water for which the
water level regime is sought, conduct an adjudicatory hearing for
the purpose of establishing a water level regime and, if
applicable, minimum flow requirements for the body of water
impounded by any dam that is not:

46 A. Licensed by the Federal Energy Regulatory Commission;

48 B. Authorized under the Federal Power Act, Section 23;

50 C. Used to store water for a downstream facility licensed
52 by the Federal Energy Regulatory Commission or authorized
under the Federal Power Act, Section 23, provided that the

2 owner of the downstream facility possessed a majority
3 ownership of the upstream dam as of January 1, 1983; or

4 D. Operating with a permit setting water levels issued
5 under the protection of natural resources laws, sections
6 480-A to 480-S; the site location of development laws,
7 sections 481 to 490; the small hydroelectric generating
8 facilities laws, sections 631 to 636; the land use
9 regulation laws, Title 12, sections 681 to 689; or any other
10 statute regulating the construction or operation of dams.

11 **Sec. B-198. 38 MRSA §840, sub-§2, as enacted by PL 1983, c.**
12 **417, §6, is amended to read:**

13
14 **2. Notice.** The board commissioner shall provide public
15 written notice of ~~its-intent-to-hold-a~~ any hearing by ~~providing~~
16 ~~written-notice held pursuant to this section~~ to the owner, lessee
17 or person in control, if known, of any dam on the body of water
18 and to any petitioner who has petitioned for a hearing with
19 respect to the body of water. The board commissioner shall give
20 public notice of the hearing under Title 5, section 9052. ~~The~~
21 ~~board~~ and shall also file notice of the hearing in the municipal
22 office of any municipality and in the clerk's office of any
23 county in which the body of water is located.

24
25 **Sec. B-199. 38 MRSA §840, sub-§4, as amended by PL 1989, c.**
26 **323, §2, is further amended to read:**

27
28 **4. Evidence.** At the hearing, the board commissioner shall
29 solicit and receive testimony, as provided by Title 5, section
30 9057, for the purpose of establishing a water level regime and,
31 if applicable, minimum flow requirements for the body of water.
32 The testimony ~~shall-be~~ is limited to:

33
34 **A.** The water levels necessary to maintain the public rights
35 of access to and use of the water for navigation, fishing,
36 fowling, recreation and other lawful public uses;

37
38 **B.** The water levels necessary to protect the safety of the
39 littoral or riparian proprietors and the public;

40
41 **C.** The water levels and minimum flow requirements necessary
42 for the maintenance of fish and wildlife habitat and water
43 quality;

44
45 **D.** The water levels necessary to prevent the excessive
46 erosion of shorelines;

47
48 **E.** The water levels necessary to accommodate precipitation
49 and run off of waters;

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2 F. The water levels necessary to maintain public and private water supplies;

4 G. The water levels and flows necessary for any ongoing use of the dam to generate or to enhance the downstream generation of hydroelectric or hydromechanical power; and

8 H. The water levels necessary to provide flows from any dam on the body of water to maintain public access and use, fish propagation and fish passage facilities, fish and wildlife habitat and water quality downstream of the body of water.

12 Sec. B-200. 38 MRSA §840, sub-§5, as amended by PL 1989, c. 323, §3, is further amended to read:

16 5. Order. Based on the evidence solicited at the hearing, the ~~beard commissioner shall, within 90 days after the hearing,~~ make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam and, if applicable, minimum flow requirements for the dam. The order shall must, insofar as practical, require the maintenance of a stable water level, but shall must include provision for variations in water level to permit sufficient ~~draw-down~~ drawdown of the body to accommodate precipitation and ~~run-off~~ runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The ~~beard commissioner shall cause~~ deliver a copy of the order to be ~~delivered to~~ the owner, lessee or person in control of the dam, the municipal officers of any municipality in which the dam or the body of water it impounds is located and each petitioner, if any, and shall file a copy of the order ~~to be filed~~ in the registry of deeds in the county where the dam is located.

36 Sec. B-201. 38 MRSA §840, sub-§6 is enacted to read:

38 6. Appeal. The commissioner's order may be appealed to the board. The appeal is governed by the provisions of section 341-D, subsection 4.

42 Sec. B-202. 38 MRSA §841, as amended by PL 1987, c. 118, §12, is further amended to read:

46 **§841. Maintenance of dams**

48 1. Prohibition. After issuance of an order under section 50 840, subsection 5, establishing a water level regime for any body of water, no owner, lessee or person in control of any dam 52 impounding the body of water, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be

2 operated or maintained in any manner that will cause the level of
water to be higher or lower than that permitted by order of the
board or commissioner or to otherwise violate the terms of the
4 order of the board or commissioner.

6 2. **Exception.** No owner, lessee or person in control of a
dam may be in violation of subsection 1, where the water level
8 fluctuation not permitted by the order was caused by
unforeseeable and unpredictable meteorological conditions or
10 operating failures of the dam or any associated equipment or by
valid order of federal, state or local authorities and where the
12 person could not have avoided the fluctuation by promptly
undertaking all reasonably available steps to regulate water flow
14 through or over any dam under ~~his~~ the person's control. The
burden of proof ~~shall be~~ is on the owner, lessee or person in
16 control of the dam to demonstrate the applicability of this
subsection.

18 3. **Enforcement.** The ~~board~~ commissioner or any littoral or
20 riparian proprietor may commence an action to enjoin the
violation of any provision of this subarticle. The ~~board~~
22 commissioner may enforce any order issued under section 840,
subsection 5 or subsection 6 by any other appropriate remedy,
24 including, but not limited to, entering the dam premises to carry
out the terms of the order.

26 The violation of any order issued under section 840, subsection 5
28 or subsection 6, ~~shall be~~ is punishable by a forfeiture of not
less than \$100 and not more than \$10,000. Each day of violation
30 ~~shall be~~ is considered a separate offense.

32 4. **Unregistered dam.** In the event that a dam impounding a
body of water for which a water level regime is sought to be
34 established under section 840 is unregistered under this article,
the provisions of section 830, subsection 5, ~~shall~~ must be
36 implemented, and any order of the board or commissioner issued
under section 840, subsection 5 ~~shall apply~~ or subsection 6
38 applies to any proceedings under subarticle 3.

40 5. **Appeal.** Any person aggrieved by an order of the board
or commissioner under section 840, subsection 5 or 6 may appeal
42 to the Superior Court under Title 5, chapter 375, subchapter VII.

44 **Sec. B-203. 38 MRSA §842**, as enacted by PL 1983, c. 417, §6,
is amended to read:

46 **§842. Transition provision**

48 All orders of the State Soil and Water Conservation
50 Commission or the Commissioner of Agriculture, Food and Rural
Resources issued under former Title 12, section 304 ~~shall~~
52 continue in effect and ~~shall~~ must be enforced by the ~~board~~

2 commissioner until they expire or are rescinded or amended under
this subarticle.

4 **Sec. B-204. 38 MRSA §961**, as enacted by PL 1979, c. 459, §1,
is amended to read:

6 **§961. Relation to municipal, state and federal regulations**

8
10 Nothing in this chapter shall ~~prevent~~ prevents municipal,
state or federal authorities from adopting and administering more
12 stringent requirements regarding performance standards or
permitted uses within use districts established by the commission
or within districts overlapping the districts established
14 pursuant to this chapter. Where there is a conflict between a
provision adopted under this chapter and any other municipal,
16 state or federal requirement applicable to the same land or water
areas within the corridor, the more restrictive provision shall
18 take ~~takes~~ precedence. All performance standards, rules and
regulations proposed for hearing by the commission shall must be
20 submitted to the Department Commissioner of Environmental
Protection, the State Planning Office, the Greater Portland
22 Council of Governments and the Southern Maine Regional Planning
Commission at least 7 days prior to the hearing for review and
24 comment. The commission shall not promulgate any rule ~~or~~
~~regulation~~ establishing air or water quality standards within the
26 corridor in conflict with the rules ~~and--regulations~~ of the
Department of Environmental Protection without the prior approval
28 of the ~~Director of the Department of Environmental Protection or~~
the Board of Environmental Protection.

30
32 **Sec. B-205. 38 MRSA §966, 2nd ¶**, as enacted by PL 1979, c.
459, §1, is amended to read:

34 Nothing in this section shall may be construed so as to
36 limit the right of any member of the public to appear or be heard
at any public hearing of the commission, subject only to such
38 reasonable rules and regulations as the ~~commissioner~~ commission
may hereafter establish.

40 **Sec. B-206. 38 MRSA §1022, first ¶**, as amended by PL 1983, c.
731, §4, is further amended to read:

42
44 Any person intending to build or extend any wharf, fish weir
or trap in tidewaters, within the limits of any city or town, may
46 apply in writing to the municipal officers thereof, stating the
location of the weir, the boundaries of the cove in which the
weir will be constructed as identified on a map prepared by the
48 ~~commissioner~~ Commissioner of Marine Resources, limits and
boundaries, as nearly as may be, of such the intended erection or
50 extension, and asking license therefor. Upon receiving such an
application, the officers shall give at least 3 days' public
52 notice thereof in a newspaper, published in the town, or, if

2 there is no newspaper published in the town, in a newspaper
published within the county, and shall therein designate a day
4 and time on which they will meet on or near the premises
described, to examine the same and hear all parties interested.
6 If, upon such examination and hearing of all parties interested,
the officers decide that such erection or extension would not be
8 an obstruction to navigation or injury to the rights of others,
and determine to allow the same, they shall issue a license under
their hands to the applicant, authorizing ~~him~~ the applicant to
10 make such an erection or extension, and to maintain the same
within the limits mentioned in such license. The applicant for
12 license to build or extend a fish weir or trap shall first give
bond to the town, with sureties, in the sum of \$5,000,
14 conditioned that upon the termination of such license he the
applicant shall remove all stakes and brush from the location
16 therein described. The municipal officers shall, within 10 days
after the date of hearing, give written notice by registered mail
18 of their decision to all parties interested. Any person aggrieved
by the decision of the municipal officers, in either granting or
20 refusing to grant a license as provided, may appeal to the
Superior Court within 10 days after the mailing of such written
22 notice. The court shall set a time and place for hearing and give
notice thereof in the same manner as provided for a hearing
24 before the municipal officers. The decision of the court shall
must be communicated within 10 days after the date of hearing to
26 the appellant and to the municipal officers of the town in which
the proposed wharf, weir or trap is to be located. This decision
28 ~~shall be~~ is binding on the municipal officers, who shall issue a
license, if so directed by the decision of the court, within 3
30 days after the decision has been communicated to them. If the
appeal is sustained by the court in whole or in part, the
32 appellant shall will have ~~his~~ costs against the appellee. If the
appeal is not so sustained, the appellee shall will have ~~his~~
34 costs against the appellant. If any owner to whom a license has
been issued, or ~~his~~ the owner's heirs or assigns, ~~fails~~ fail to
36 remove all stakes and brush within a period of one year after the
termination of the license, as provided in section 1023, any
38 person can remove the same without charge against the owner, ~~his~~
or the owner's heirs or assigns.

40
42 **Sec. B-207. 38 MRSA §1022, 3rd ¶, as enacted by PL 1979, c.**
631, §2, is amended to read:

44 In the case of waters adjacent to unorganized or deorganized
territory that is not an island, the ~~commissioner~~ Commissioner of
46 Marine Resources shall have the powers of municipal officers to
issue licenses under this section. Notwithstanding the provisions
48 of this section governing procedures, the ~~commissioner~~
Commissioner of Marine Resources shall review the application and
50 hold a hearing as if this were a lease application under Title
12, section 6072, subsections 5 and 6.

52

2 **Sec. B-208. 38 MRSA §1023, sub-§3**, as enacted by PL 1985, c.
97, §1, is amended to read:

4 **3. Report.** The licensee shall complete these actions by
July 15th of each year and shall report that completion to the
6 ~~commissioner~~ Commissioner of Marine Resources and to the
municipality within 7 days of that date on forms provided by the
8 commissioner.

10 **Sec. B-209. 38 MRSA §1023, last ¶**, as enacted by PL 1985, c.
97, §1, is amended to read:

12 The ~~commissioner~~ Commissioner of Marine Resources shall, by
14 December 31st each year, report to the municipality the name of
the licensed owner and location of each weir and whether the weir
16 was maintained in good faith in that year.

18 **Sec. B-210. 38 MRSA §1025**, as amended by PL 1983, c. 731, §5,
is further amended to read:

20 **§1025. Recording of documents; compensation to officers**

22 The application provided for in section 1022, with the
24 notice and proceedings thereon and the license granted, shall
must be recorded in the town and a copy provided to the
26 ~~commissioner~~ Commissioner of Marine Resources by the applicant.
Reasonable compensation shall must be paid by the applicant to
28 the municipal officers for their services and expenses and to the
clerk for recording, and if license is granted, \$5 additional
30 shall must be paid ~~therefor~~ by the applicant to the town.

32 **Sec. B-211. 38 MRSA §1101, first ¶**, as repealed and replaced by
PL 1971, c. 400, §2, is amended to read:

34 The formation of a sanitary district shall--be is
36 accomplished as follows+.

38 **Sec. B-212. 38 MRSA §1101, sub-§§1, 3, 4, 6 and 7**, as amended by
PL 1971, c. 618, §12, are further amended to read:

40 **1. Application.** The municipal officers of the municipality
42 or municipalities, or portions thereof, or the residents of
unorganized territory, that desire to form a sanitary district
44 shall file an application with the Board of Environmental
Protection on a form or forms to be prepared by ~~said-board~~ the
46 ~~commissioner~~, setting forth the name or names of the municipality
or municipalities, or portions thereof, or, in the case of
48 residents of unorganized territory, the names of such the
residents, that propose to be included in said a proposed
50 district, and they shall furnish such other data as the board may
determine necessary and proper. The application shall must
52 contain, but shall is not be limited to, a description of the

territory of the proposed district, the name proposed for the district which shall must include the words "Sanitary District," a statement showing the existence in such the territory of the conditions therein requisite for the creation of a sanitary district as prescribed in section 1062. A copy of an engineering study or studies shall must be filed with said the application.

3. **Approval of application.** After the public hearing on the evidence received at said the hearing, the board shall make findings of fact and conclusions thereon and determine of record whether or not the conditions requisite for the creation of a sanitary district exist in the territory described in the application. If the board finds that such those conditions do exist, it shall issue an order approving the proposed district as conforming to the requirements of this chapter and designating the name of the proposed district. The board commissioner shall give notice to the municipal officers within the municipality or municipalities involved, and where unorganized territory is involved, to the persons signing the application mentioned in subsection 1 and to the commissioners of the county wherein such the unorganized territory is located, of a date, time and place of a meeting of the municipal officers of the municipality or municipalities involved, and, where unorganized territory is involved, a joint meeting of all the persons signing the application mentioned in subsection 1 and of the commissioners of the county wherein-such in which the unorganized territory is located. The notice shall must be in writing and sent by registered or certified mail, return receipt requested, to the addresses shown on the application mentioned in subsection 1 and, in the case of county commissioners, to the addresses of such the county commissioners as obtained from the county clerk. A return receipt properly endorsed shall be is evidence of the receipt of notice. The notice shall must be mailed at least 10 days prior to the date set for the meeting.

4. **Denial of application.** If the board after such a public hearing determines that the creation of a sanitary district in the territory described in the application is not warranted for any reason, it shall make findings of fact and conclusions thereon and enter an order denying its approval. The board shall give notice of such the denial by mailing certified copies of the decision and order to the municipal officers of the municipality or municipalities involved, and, where unorganized territory is involved, to the persons signing the application mentioned in subsection 1 and to the commissioners of the county wherein-such in which the unorganized territory is located. No application for the creation of a sanitary district, consisting of exactly the same territory, shall may be entertained within one year after the date of the issuance of an order denying approval of the formation of such the sanitary district, but this provision shall does not preclude action on an application for the creation of a sanitary district embracing all or part of the territory

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2 described in the original application, provided that another
4 municipality or fewer municipalities, or other or fewer sections
6 thereof are involved, or that a different area of unorganized
8 territory is involved, or, in the case of an application made
solely by residents of unorganized territory, that an allegation
of change in circumstances from those existing on the date of the
previous application must be furnished to the board commissioner
with the resubmitted application.

10 6. **Joint meeting.** The persons to whom the notice described
12 in subsection 3 is directed shall meet at the time and place
14 appointed. In the case where more than one municipality or where
16 unorganized territory is involved, they shall organize by
18 electing a chairman chair and a secretary. No action shall may be
20 taken at ~~any-such~~ this meeting unless at the time of convening
22 thereof there are present at least 1/2 of the total number of
24 municipal officers eligible to attend and participate at said the
26 meeting, and, where the proposed district includes or is composed
28 solely of unorganized territory, at least 2/3 of the persons
30 signing the application mentioned in subsection 1 and at least 2
32 commissioners of the county wherein such unorganized territory is
34 located, other than to report to the Board Commissioner of
36 Environmental Protection that a quorum was not present and to
38 request ~~said-board~~ the commissioner to issue a new notice for
40 another meeting. The purpose of the meeting shall ~~--be~~ is to
42 determine a fair and equitable number of trustees, subject to
section 1104, to be elected by and to represent each
participating municipality, or in the case of unorganized
territory, the residents of ~~sueh~~ the territory within the bounds
of the proposed district. When a decision has been reached on the
number of trustees and the number to represent each municipality
or the residents of the unorganized territory within the bounds
of the proposed district, subject to the limitations provided,
this decision shall must be reduced to writing by the secretary
and must be approved by a 2/3 vote of those present. Where 2 or
more municipalities are or unorganized territory is involved, the
vote so reduced to writing and the record of the meeting shall
must be signed by the chairman chair and attested by the
secretary and filed with the board commissioner. In cases where
a single municipality is involved, a copy of the vote of the
municipal officers duly attested by the clerk of the municipality
shall must be filed with the board commissioner.

44 7. **Submission.** When the record of the municipality or the
46 record of the joint meeting, where municipalities are or
48 unorganized territory is involved, has been received by the board
Commissioner of Environmental Protection and found by ~~it~~ the
50 commissioner to be in order, the board commissioner shall order
52 the question of the formation of the proposed sanitary district
and other questions relating thereto to be submitted to the legal
voters residing within ~~sueh~~ the portion of the municipality,
municipalities or unorganized territory ~~whieh~~ that falls within

2 the proposed sanitary district. The order shall must be directed
to the municipal officers of the municipality or municipalities
4 which that propose to form said sanitary district, and, where the
proposed sanitary district includes or is composed solely of
6 unorganized territory, to the commissioners of the county wherein
such in which the unorganized territory is located, directing
8 them to forthwith call town meetings, city elections, or a
meeting of the residents of the unorganized territory within the
10 bounds of the proposed sanitary district, as the case may be, for
the purpose of voting in favor of or in opposition to each of the
12 following articles or questions, as they may apply, in
substantially the following form:

14 A. To see if the town (or city) of (name of town or city)
will vote to incorporate as a sanitary district to be called
16 (name) Sanitary District.;

18 B. To see if the residents of the following described
section of the town (or city) of (name of town or city) will
20 vote to incorporate as a sanitary district to be called
(name) Sanitary District: (legal description of the bounds
22 of section to be included).;

24 C. To see if the residents of the (following described
section of) (name of town or city) (unorganized territory)
26 will vote to join with the residents of the (following
described section of) (name of town or city) (unorganized
28 territory) to incorporate as a sanitary district to be
called (name) Sanitary District: (legal description of the
30 bounds of the proposed sanitary district, except where
district is to be composed of entire municipalities).;

32 D. To see if the inhabitants of the following described
34 section of that unorganized territory known as Township
(number), Range (number) will vote to incorporate as a
36 sanitary district to be called (name) Sanitary District:
(legal description of the bounds of the proposed sanitary
38 district).;

40 E. To see if the residents of (the above described section
of) (name of town or city) will vote to approve the total
42 number of trustees and the allocation of representation
among the municipalities (and included section of
44 unorganized territory) on the board of trustees as
determined by the municipal officers (and the persons
46 representing the included area of unorganized territory) and
listed as follows:

48
Total number of trustees shall will be (number) and the
50 residents of (the above described section of) (town or city)
shall--be are entitled to (number) trustees (and the
52 residents of the above described section of unorganized

territory shall ~~be~~ are entitled to (number) trustees), ~~etc.~~
and

F. To choose (number) trustees to represent the residents of (the above described section) of (town or city) (unorganized territory) on the board of trustees of the (name) Sanitary District.

At any such town meeting, city election, or election by the residents of the proposed sanitary district, trustees shall must be chosen to represent the municipality or the unorganized territory within the proposed sanitary district in the manner provided in section 1105.

Sec. B-213. 38 MRSA §1102, as amended by PL 1973, c. 537, §43, is further amended to read:

§1102. Approval and organization

When the residents of the municipality, or each municipality, where more than one is involved, or of the unorganized territory within the proposed sanitary district, have voted upon the formation of a proposed sanitary district and all of the other questions submitted therewith, the clerk of each of the municipalities, and, where the proposed district includes unorganized territory, the county clerk, shall make a return to the ~~Board~~ Commissioner of Environmental Protection in such form as the ~~board~~ commissioner shall determine. If the ~~board~~ commissioner finds from the returns that a majority of the residents within each of the municipalities involved, and, where the proposed district includes unorganized territory, that a majority of the residents of the unorganized territory within the proposed sanitary district, voting on each of the articles and questions submitted to them, have voted in the affirmative, and they have elected the necessary trustees and the names thereof to represent each municipality, or the residents of the unorganized territory within the proposed sanitary district, and that all other steps in the formation of the proposed sanitary district are in order and in conformity with law, the ~~board~~ commissioner shall make a finding to that effect and record the same upon ~~its~~ the department's records. The ~~board~~ commissioner shall, immediately after making ~~its~~ these findings, issue a certificate of organization in the name of the sanitary district in such form as the ~~commission~~ shall determine. The original certificate shall must be delivered to the trustees on the day that they are directed to organize and a copy of ~~said~~ the certificate duly attested by the ~~Commissioner--of--Environmental--Protection--shall~~ commissioner must be filed and recorded in the Office of the Secretary of State. The issuance of ~~such~~ a certificate by the ~~board--shall--be~~ commissioner is conclusive evidence of the lawful organization of ~~said~~ the sanitary district. The sanitary district

shall is not be operative until the date set by the beard
commissioner under section 1106.

Sec. B-214. 38 MRSA §1105, first ¶, as amended by PL 1987, c.
737, Pt. C, §§93 and 106 and PL 1989, c. 6; c. 9, §2; and c. 104,
Pt. C, §§8 and 10, is further amended to read:

§1105. Election of trustees

Trustees shall be nominated and elected in the same manner
as municipal officers are nominated and elected under Title 30-A,
or in accordance with a municipal charter, whichever is
applicable; or, in the case of unorganized territory, in
accordance with the procedure for the organization of larger
townships set forth in Title 30-A, section 7001, subsection 2.
Upon receipt of the names of all the trustees, the Beard
Commissioner of Environmental Protection shall set a time, place
and date for the first meeting of the trustees, notice thereof to
be given to the trustees by certified or registered mail, return
receipt requested, mailed at least 10 days prior to the date set
for the meeting, to determine the length of their terms. The
terms ~~shall be~~ are determined by lot in accordance with the
following table:

		TERM		
	Total number of Trustees	1 year	2 years	3 years
	5	1	2	2
	6	2	2	2
	7	2	2	3
	8	2	3	3
	9	3	3	3
	10	3	3	4
	11	3	4	4
	12	4	4	4
	13	4	4	5
	14	4	5	5
	15	5	5	5
	16	5	5	6
	17	5	6	6
	18	6	6	6

The trustees shall enter on their records the determination so
made. The trustees shall serve their terms as determined at the
organizational meeting, except that ~~in the case of~~ trustees
representing a municipality, ~~such trustees~~ shall serve an
additional period until the next regular election of the
municipality, and thereafter ~~such~~ those trustees' terms of office
shall date from the time of each regular municipal election; and
except that ~~in the case of~~ trustees representing residents of

2 unorganized territory, ~~---such---trustees~~ shall serve until an
election to fill the vacancy caused by the expiration of their
3 terms ~~shall-be~~ is called by the county commissioners; and ~~such~~
4 those commissioners shall call ~~such~~ the election in the same
manner as is provided for the initial election of trustees and
5 ~~cause-the-same-to-be-held~~ on a date as closely following the date
upon which ~~such~~ those terms expire ~~as-may-be~~.

8
9 **Sec. B-215. 38 MRSA §1106**, as amended by PL 1971, c. 618,
10 §12, is further amended to read:

11 **§1106. Operational date of sanitary districts**

12
13 Notwithstanding the prior issuance of a certificate of
organization, a sanitary district ~~shall~~ is not be in operation
14 and ~~shall~~ may not exercise any of its powers granted in this
chapter until the date set by the Board Commissioner of
15 Environmental Protection as provided in section 1105. On ~~the~~ that
date ~~so-set~~, the sanitary district ~~shall-become~~ becomes operative
16 and the trustees shall assume the management and control of the
operation of all of the public sewers, storm and surface water
17 drains, treatment plants and related structures within the
sanitary district, and the municipalities and residents of
18 unorganized territory within ~~said~~ the sanitary district on and
after ~~said~~ the operational date shall have no responsibility for
19 the operation or control of the public sewers and storm and
surface water drains and treatment plants within their respective
20 jurisdictions other than to pay for services rendered to the
municipality or ~~to-such~~ residents by the sanitary district.

21
22
23 **Sec. B-216. 38 MRSA §1272, sub-§10**, as enacted by PL 1987, c.
24 448, §1-C, is amended to read:

25
26 **10. Certificate.** "Certificate" means a document issued by
the ~~Department of Environmental Protection~~ commissioner affirming
27 that an individual has successfully completed the training and
other requirements set forth in this chapter to qualify as an
28 asbestos project manager, an asbestos evaluation specialist or
asbestos abatement specialist, whether held by an individual,
29 business or public entity.

30
31 **Sec. B-217. 38 MRSA §1272, sub-§11**, as enacted by PL 1987, c.
32 448, §1-C, is repealed.

33
34 **Sec. B-218. 38 MRSA §1272, sub-§15**, as amended by PL 1989, c.
35 630, §4, is further amended to read:

36
37 **15. License.** "License" means a document issued by the
Department Commissioner of Environmental Protection to a business
38 entity or public entity affirming that the entity has met the
requirements set forth in this chapter to engage in asbestos
39

2 abatement activities as an asbestos abatement contractor or
in-house asbestos abatement unit.

4 **Sec. B-219. 38 MRSA §1274, first ¶,** as enacted by PL 1987, c.
448, §1-C, is amended to read:

6
8 The commissioner shall develop administer a program which
establishes, pursuant to adopted criteria and procedures, for the
licensing or certification of the following.

10
12 **Sec. B-220. 38 MRSA §1277, first ¶,** as enacted by PL 1987, c.
448, §1-C, is amended to read:

14 The Department of Administration shall provide supporting
services to the ~~Department---of---Environmental---Protection~~
16 commissioner for the implementation of this chapter, including:

18 **Sec. B-221. 38 MRSA §1279, first ¶,** as enacted by PL 1987, c.
448, §1-C, is amended to read:

20 Each license or certificate issued under this chapter shall
22 ~~expire~~ expires one year after the date of issue. Licensees or
certificate holders may apply to the ~~Department-of-Environmental-~~
24 ~~Protection~~ commissioner for the renewal of a license or
certificate. No renewal may be granted if the application is
26 received more than 2 years following expiration of the previously
issued license or certificate.

28
30 **Sec. B-222. 38 MRSA §1279, sub-§2,** as enacted by PL 1987, c.
448, §1-C, is amended to read:

32 2. **Training.** Evidence of completion of any continuing
education or training that may be required by rules promulgated
34 by the ~~commissioner~~ board; and

36 **Sec. B-223. 38 MRSA §1280, first ¶,** as enacted by PL 1987, c.
448, §1-C, is amended to read:

38
40 The ~~Board-of-Environmental-Protection~~ board shall promulgate
rules, ~~subject to Title--5,--chapter--375,--subchapter--II,~~ which
42 establish criteria and procedures of acceptable work practices
for licensees and certificate holders engaged in the following
asbestos hazard abatement activities.

44
46 **Sec. B-224. 38 MRSA §1280, sub-§1,** as enacted by PL 1987, c.
448, §1-C, is amended to read:

48 1. **Removal; encapsulation; enclosure.** For any asbestos
project that involves more than 100 linear feet of pipe covered
50 or coated with asbestos-containing material or 100 square feet of
asbestos-containing material used to cover or coat any duct,
52 boiler, tank, reactor, turbine, structure, structural member or

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2 structural component, the ~~commissioner~~ board shall consider the following:

4 A. Proper work practices for the removal of asbestos-containing materials;

6 B. Proper work practices for the encapsulation of asbestos-containing materials;

8 C. Proper work practices for enclosure of asbestos-containing materials;

10 D. Proper work practices for the demolition of a structure or position of a structure which contains structural members or components of or covered by asbestos-containing materials;

12 E. Proper work practices for the storage, transport and disposal of asbestos-containing materials; and

14 F. Administrative penalties and cessation of operations to ensure compliance with this subsection.

16
18
20
22 **Sec. B-225. 38 MRSA §1303-C, sub-§§2 and 11, as enacted by PL 1989, c. 585, Pt. E, §4, are repealed.**

24
26 **Sec. B-226. 38 MRSA §1304, sub-§2, as repealed and replaced by PL 1979, c. 383, §4, is amended to read:**

28
30 **2. Site location.** The board may provide by ~~rules~~ rule that no person may locate, establish, construct, alter or operate any waste facility unless approved by the ~~board~~ department under sections 481 to 488.

32
34 **Sec. B-227. 38 MRSA §1304, sub-§4, as amended by PL 1989, c. 585, Pt. E, §7, is further amended to read:**

36
38 **4. Technical assistance.** The ~~department~~ commissioner is authorized to establish guidelines for effective waste management, to provide technical assistance to persons planning, constructing or operating waste facilities, and to conduct applied research activities in the field of waste management, disposal technology and environmental effects, including methods of recycling hazardous or solid waste, sludge or septage. The ~~department~~ commissioner shall cooperate with the agency in the design and delivery of this assistance.

40
42
44
46 **Sec. B-228. 38 MRSA §1304, sub-§11, as amended by PL 1989, c. 585, Pt. E, §9, is further amended to read:**

48
50 **11. Imported waste report.** The ~~board~~ commissioner shall report to the Legislature on the solid waste imported and

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disposed of in the State. The report shall must include consideration of the following areas:

A. The categories of imported waste materials, including hazardous waste, solid waste and any other waste material designated by the board as special waste;

B. The volumes or weights, as appropriate, of imported waste;

C. The method of disposal, including, but not limited to, incineration and landfilling, the location of the disposal sites receiving the imported waste and the estimated remaining capacity of each site;

D. The states of origin of the imported waste and the regulations governing the disposal of these wastes in their respective states of origin; and

E. Any potential environmental or public health hazards posed by imported waste.

The board commissioner shall submit the report to the joint standing committee of the Legislature having jurisdiction over natural resources. ~~The first report shall be due on or before January 1, 1986, and thereafter the~~ report shall must be made to the First Regular Session of the Legislature. Beginning with the First Regular Session of the Legislature in 1991, the report shall must be developed in cooperation with the agency, ~~shall be~~ issued jointly by the agency and the department commissioner to the Legislature and ~~shall be~~ incorporated in the initial and subsequent state solid waste management plans.

The ~~commissioner~~ board may, by rule, require any person importing or disposing of imported hazardous waste, solid waste or any other imported waste designated by the board as special waste, to report the volumes, weights and types of waste imported and report on the state of origin.

Sec. B-229. 38 MRS §1304, sub-§13, as amended by PL 1989, c. 585, Pt. E, §10, is further amended to read:

13. Innovative disposal and utilization. Recognizing that environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource, the commissioner may investigate and implement with the approval of the board innovative programs for managing, utilizing and disposing of solid waste. Innovative programs may include agricultural and forest land spreading of wood-derived ash, utilization of ash resulting from combustion of municipal solid waste, paper mill sludges and municipal waste water treatment plant sludges. The agency shall first determine that the

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2 proposed innovative disposal and waste management programs are
3 consistent with the state plan. The ~~board~~ commissioner shall
4 review proposed innovative programs for each waste category and
5 shall apply all controls necessary to ensure the protection of
6 the environment and public health consistent with this chapter.
7 The board may adopt application review procedures designed to
8 review individual applications and their individual waste sources
9 with prior approval of classes of disposal or utilization sites.
10 The board shall adopt provisions for municipal notification prior
11 to use of individual utilization sites.

12 **Sec. B-230. 38 MRSA §1304, sub-§13-A, ¶B,** as enacted by PL
13 1989, c. 299, is amended to read:

14 B. The board shall establish, by rule, requirements for the
15 siting, preparation of the site and operation of facilities,
16 including stockpiles, used for the storage of sludge for a
17 period of more than 30 days. The board shall incorporate
18 the following provisions:

19 (1) The maximum storage period at facilities without
20 impervious liners and leachate collection and treatment
21 is 6 months. The ~~board~~ department may waive this
22 requirement on a case-by-case basis for a maximum of 2
23 additional months when the applicant has demonstrated
24 that the storage facility is inaccessible or that
25 utilization of the stored material would be in
26 violation of any prohibition of land spreading on
27 frozen, snow-covered or saturated ground.

28 (2) Sludge storage sites shall ~~may~~ not be located
29 within 300 feet of a year-round river, stream, brook or
30 pond nor within 75 feet of any intermittent stream or
31 brook or any natural drainage way, including gullies,
32 swales and ravines.

33 (3) Storage facilities without impervious liners and
34 leachate collection systems may be used only once in
35 any 10-year period.

36 **Sec. B-231. 38 MRSA §1305, sub-§5,** as amended by PL 1987, c.
37 737, Pt. C, §§97 and 106, and PL 1989, c. 6; c. 9, §2; c. 104,
38 Pt. C, §§8 and 10, is further amended to read:

39 5. **Municipal permits.** All permits issued pursuant to Title
40 30-A, chapter 183, subchapter I, shall, in addition to
41 requirements imposed by those sections, be conditioned on
42 compliance with rules and ~~regulations~~ adopted by the board
43 concerning the operation of solid waste disposal facilities.
44 Copies of permits issued by the municipality shall ~~shall~~ must be
45 submitted to the ~~department~~ commissioner within 30 days of issue.
46

2 Sec. B-232. 38 MRSA §1306, sub-§1, as enacted by PL 1983, c.
726, §3, is amended to read:

4 1. **General prohibition.** It is unlawful for any person to
establish, construct, alter or operate any waste facility without
6 a permit issued by the ~~board-of-commissioner~~ department.

8 Sec. B-233. 38 MRSA §1310-B, sub-§2, as amended by PL 1985, c.
267, §2, is further amended to read:

10 2. **Hazardous waste information.** Information relating to
12 hazardous waste submitted to the department under this subchapter
may be designated by the person submitting it as being only for
14 the confidential use of the department ~~and-the-board, their~~ its
agents and employees, the Department of Agriculture and the
16 Department of Human Services and their agents and employees,
other agencies of State Government, as authorized by the
18 Governor, employees of the United States Environmental Protection
Agency and the Attorney General and employees of the municipality
20 in which the hazardous waste is located. The designation shall
must be clearly indicated on each page or other portion of
22 information. The ~~department~~ commissioner shall establish
procedures to insure that information so designated is segregated
24 from public records of the department. The department's public
records shall must include the indication that information so
26 designated has been submitted to the department, giving the name
of the person submitting the information and the general nature
28 of the information. Upon a request for information, the scope of
which includes information so designated, the ~~department~~
30 commissioner shall notify the submittor. Within 15 days after
receipt of the notice, the submittor shall demonstrate to the
32 satisfaction of the ~~commissioner~~ department that the designated
information should not be disclosed because the information is a
34 trade secret, production, commercial or financial information,
the disclosure of which would impair the competitive position of
36 the submittor and would make available information not otherwise
publicly available. Unless such a demonstration is made, the
38 information shall must be disclosed and shall-~~become~~ becomes a
public record. The ~~commissioner~~ department may grant or deny
40 disclosure for the whole or any part of the designated
information requested and within 15 days shall give written
42 notice of ~~his~~ the decision to the submittor and the person
requesting the designated information. A Notwithstanding section
44 344, subsection 4, a person aggrieved by a decision of the
~~commissioner~~ department may appeal only to the Superior Court in
46 accordance with the provisions of section 346. All information
provided by the department to the municipality under this
48 subsection shall must be confidential and shall not be a public
record under Title 1, chapter 13. In the event a request for
50 such information is submitted to the municipality, the
municipality shall submit that request to the ~~department~~

2 commissioner to be processed by the department as provided in
this subsection.

4 **Sec. B-234. 38 MRSA §1310-C, sub-§§2 and 5,** as enacted by PL
1987, c. 517, §25, are amended to read:

6 2. **Open and closed or abandoned landfills.** The department
8 commissioner shall organize the program into 2 components to
address the problems created by:

10 A. Open-municipal solid waste landfills; and

12 B. Abandoned or improperly or inadequately closed,
14 municipal or privately-owned solid waste landfills.

16 5. **Coordination with uncontrolled sites program.** Nothing
in this article shall may be construed to limit the authority of
18 the department under any other provisions of law administered by
the department. At any time prior to or following the
20 evaluations conducted pursuant to section 1310-D, subsection 2,
the department commissioner may proceed under chapter 13-B to
22 properly close any landfill or mitigate any threats posed by the
landfill to public health, safety or the environment.

24 **Sec. B-235. 38 MRSA §1310-D, sub-§1, ¶C,** as enacted by PL
26 1987, c. 517, §25, is amended to read:

28 C. The department--shall--revise--the board may adopt a
revised ranking as necessary to reflect new information
30 developed during the course of the program.

32 **Sec. B-236. 38 MRSA §1310-D, sub-§2,** as enacted by PL 1987, c.
34 517, §25, is amended to read:

36 2. **Evaluation.** In the order of the priorities established
in the initial ranking and the objectives of paragraphs A to D,
the department commissioner shall conduct and complete by January
38 1, 1993, environmental evaluations of each open-municipal solid
waste landfill. The department commissioner may employ private
40 consultants to avoid additions to departmental staff and to
accomplish the evaluations in a timely manner. The department
42 commissioner may utilize existing analyses of facilities, subject
to the provisions of this subsection. When the department
44 commissioner has sufficient knowledge of existing hazards to the
environment and public health posed by a specific site, it the
46 commissioner may take measures necessary to effect proper
remediation and closure of the landfill, notwithstanding the
48 site's listed priority. In those cases, the department
commissioner shall ensure that the requirements of this
50 subsection are substantially met. The department commissioner
shall design each evaluation to achieve the following objectives:

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- 2 A. To identify the actual hazards, if any, to the
environment and public health posed by the landfill and to
4 determine the closure and remediation requirements of the
landfill;
- 6 B. To establish a ground water monitoring system, including
monitoring wells and test borings sufficient to assure
8 identification and monitoring of potential hazards;
- 10 C. When hazards are identified, to provide:
- 12 (1) A complete description of the movement of surface
and ground waters on or near the landfill;
- 14 (2) An identification of pollutants in those waters;
- 16 (3) An evaluation of the scope, direction and rate of
18 movement of the contamination plume, if any; and
- 20 (4) Any other information that the ~~department--deems-~~
commissioner determines necessary to prepare the
22 closure or remediation recommendations pursuant to this
subchapter;
- 24
- 26 D. To provide a recommended closure plan for the landfill
and, when necessary, a recommended plan for the remediation
of any hazards identified by the evaluation. Closure and
28 remediation recommendations shall must ensure a level or
standard of control of pollutants in surface waters at least
30 as stringent as the water quality criteria established under
chapter 3, subchapter I, article 4-A. Those recommendations
32 shall must also seek to achieve a level or standard of
control of pollutants in ground water at least as stringent
34 as the water quality criteria established under sections
465-C and 470, unless the ~~board~~ commissioner finds that
36 meeting those standards is technically and economically
infeasible and that other measures can be implemented to
38 ensure protection of public health and safety; and
- 40 E. To consult with and involve the affected municipality or
municipalities in the conduct of the evaluation and the
42 analysis of its results.

44 **Sec. B-237. 38 MRSA §1310-E, sub-§1, ¶¶C and E, as enacted by**
PL 1987, c. 517, §25, are amended to read:

- 46 C. ~~The department--shall--revise--the~~ board may adopt a
48 revised ranking as necessary to reflect new information
developed during the course of the program.
- 50
- 52 E. The ~~department~~ commissioner shall report on the ranking
developed pursuant to this section, together with the

2 department's commissioner's recommendations for remediation
and closure efforts and related costs necessary to protect
4 the public health and the environment, to the joint standing
committee of the Legislature Legislature having jurisdiction
6 over natural resources. The department commissioner shall
submit the report on or before January 1, 1989.

8 **Sec. B-238. 38 MRSA §1310-F**, as amended by PL 1989, c. 273,
is further amended to read:

10 **§1310-F. Cost sharing**

12 The department commissioner shall administer a closure and
14 remediation grants program to assist municipalities in the
implementation of the closure and remediation plans. The program
16 is subject to the following provisions.

18 **1. Cost-share fraction.** Subject to the availability of
funds, the department commissioner shall issue grants to eligible
20 municipalities for 75% of the costs of closure and for 90% of the
costs of remediation.

22 **2. Eligibility.** Any municipality owning a solid waste
24 landfill for which a remediation or closure plan has been adopted
is eligible for grants. A municipality, which has acted to close
26 its solid waste landfill or to remedy environmental and public
health hazards posed by the landfill prior to the award of a
28 grant under this section, but after January 1, 1983, is also
eligible for reimbursement of past and future costs consistent
30 with the plan adopted under this subchapter. Any interest paid
by a municipality on a municipal bond issued to raise funds for
32 remediation and closure activities during this period is a cost
eligible for reimbursement under this section. The board
34 commissioner shall use at least 1/3 of the available funds for
municipalities eligible for reimbursement of closure and
36 remediation costs under this subsection until all those
municipalities have been reimbursed.

38 **Sec. B-239. 38 MRSA §1310-G, sub-§2**, as enacted by PL 1987, c.
40 517, §25, is amended to read:

42 **2. Violation of schedule.** A party responsible for closure
or remediation under this article is not in violation of a time
44 schedule, established under this section, if the party is
eligible for a cost-sharing grant under section 1310-F and that
46 grant is not currently available from the department
commissioner, unless the board commissioner finds that the level
48 of environmental hazard poses an immediate hazard to public
health. When making a grant subsequent to such a delay, the
50 department board shall revise the time schedule to reflect the
delay as long as there is no immediate hazard to public health
52 and the environment.

2 **Sec. B-240. 38 MRSA §1310-H, first ¶**, as enacted by PL 1987, c.
517, §25, is amended to read:

4
6 The department commissioner shall monitor implementation of
closure and remediation plans. In addition to any other remedy
available ~~to--it~~ by law, if the board commissioner determines,
8 after opportunity for public hearing, that any party responsible
for the implementation of a plan has failed substantially to meet
10 the established time schedule or has failed to execute the
provisions of the plan, the board commissioner may:

12 **Sec. B-241. 38 MRSA §1310-I**, as enacted by PL 1987, c. 517,
14 §25, is amended to read:

16 **§1310-I. Report to Legislature**

18 The department commissioner shall report annually to the
joint standing committee of the Legislative Legislature having
20 jurisdiction over natural resources on the progress of the
closure and remediation program. The department commissioner
22 shall report on:

24 1. **Environmental risks.** The specific environmental and
public health hazards, by landfill;

26 2. **Priority ranking.** The ranking of open, abandoned and
28 closed landfills;

30 3. **Costs.** The estimated costs of implementation, together
with any anticipated shortfalls in the cost-sharing portion of
32 the program; and

34 4. **Progress.** Overall progress toward the objectives of the
program, including, when appropriate, the status of the initial
36 ranking efforts, completion of landfill evaluations, closure and
remediation of landfills, any enforcement actions taken in
38 connection with this program and any legislative recommendations
the department--deems commissioner considers necessary.

40 **Sec. B-242. 38 MRSA §1310-N**, as amended by PL 1989, c. 157,
42 and c. 585, Pt. E, §§24 to 28, is further amended to read:

44 **§1310-N. Site location license**

46 No person may locate, establish, construct, expand disposal
capacity or operate any solid waste facility unless approved by
48 the board department under the site location of development laws,
chapter 3, subchapter I, article 6 and the provisions of this
50 chapter. Where the proposed facility is located within the
jurisdiction of the Maine Land Use Regulation Commission, in

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2 addition to any other requirement, the board department shall
require compliance with existing standards of the commission.

4 1. Licenses. The board department shall issue a license
for a waste facility whenever it finds that:

6 A. The facility will not pollute any water of the State,
8 contaminate the ambient air, constitute a hazard to health
or welfare or create a nuisance;

10 B. In the case of a disposal facility, the facility
12 provides a substantial public benefit; and

14 C. In the case of a disposal facility, the volume of the
waste and the risks related to its handling and disposal
16 have been reduced to the maximum practical extent by
recycling and source reduction prior to disposal.

18 2-A. Aquifer protection. The board department shall not
20 issue a license for a solid waste disposal facility when it finds
that the proposed facility overlies a significant sand and gravel
22 aquifer or when the board department finds that the proposed
facility poses an unreasonable threat to the quality of a
24 significant sand and gravel aquifer which it does not overlie, or
to an underlying fractured bedrock aquifer.

26 A. "Significant sand and gravel aquifer" is defined as a
28 porous formation of ice-contact and glacial outwash sand and
gravel that contains significant recoverable quantities of
30 water which are likely to provide drinking water supplies.

32 B. "Fractured bedrock aquifer" is defined as a consolidated
rock formation which is fractured and which is saturated and
34 recharged by precipitation percolating through overlying
sediments to a degree which will permit wells drilled into
36 the rock to produce a sufficient water supply for domestic
use.

38 C. In determining whether or not the proposed facility
40 poses an unreasonable threat to the quality of a significant
sand and gravel aquifer or to an underlying fractured
42 bedrock aquifer, the board department shall require the
applicant to provide:

44 (1) A thorough hydrogeological assessment of the
46 proposed site and the contiguous area including any
classified surface waters, significant sand and gravel
48 aquifers and fractured bedrock aquifers which could be
affected by the proposed facility during normal
50 operation or in the event of unforeseen circumstances
including the failure of any engineered barriers to
52 ground water flow. The assessment shall must include a

2 description of ground water flow rates, the direction
of ground water flow in both the horizontal and
4 vertical directions, and the degree of dilution or
attenuation of any contaminants that may be released
6 from the proposed site and flow toward any classified
surface water, significant sand and gravel aquifer or
fractured bedrock aquifer.

8
2-B. **Traffic movement.** In addition to any requirements
10 under section 482, the ~~board--shall~~ department may not issue a
license for a solid waste facility when it finds that the
12 developer has not made adequate provision for traffic movement of
all types into, out of or within the proposed solid waste
14 facility. The ~~board~~ department shall consider traffic movement
both on-site and off-site. In making its determination, the
16 ~~board~~ department shall consider the following factors:

- 18 A. Vehicular weight limits;
- 20 B. Road construction and maintenance standards;
- 22 C. Vehicle types;
- 24 D. Public safety and congestion on any public or private
road traveled by vehicles transporting waste to or from the
26 proposed facility; and
- 28 E. Other relevant factors.

30 The ~~board~~ department shall establish vehicle weight limits for
any vehicle transporting solid waste to or from the proposed
32 facility. The ~~board~~ department shall base the vehicle weight
limits on the road construction and maintenance standards of the
34 roads likely to be traveled by vehicles transporting solid waste
to or from the proposed facility.

36
2-C. **Proximity to residential areas.** The ~~board--shall~~
38 department may not issue a license for a municipal solid waste
transfer station in which the handling site will be located
40 within 250 feet of any property boundary.

42
3. **Public benefit determination.** The ~~board~~ department
shall determine the public benefit of a proposed facility
44 according to the following provisions.

- 46 A. Prior to the initial adoption of the state plan, the
~~board~~ department shall find that a proposed facility
48 provides a substantial public benefit when the applicant
demonstrates that the facility is designed, located and will
50 be operated so that it is consistent with and meets the
needs identified in the capacity needs analysis under former
52 section 1310-O.

2 B. Subsequent to the initial adoption of the state plan and
4 for those facilities not subject to chapter 24, subchapter
IV, the board department shall employ a rebuttable
presumption of public benefit.

6
8 C. Subsequent to the adoption of the state plan and for
those facilities subject to chapter 24, subchapter IV, the
agency shall determine whether or not the proposed facility
10 meets the requirements of section 2157.

12 **5. Recycling and source reduction determination.** The board
department shall find that the provisions of subsection 1,
14 paragraph C, are satisfied when the applicant demonstrates that
all requirements of this subsection have been satisfied.

16
18 A. The proposed solid waste disposal facility will accept
solid waste which is subject to recycling and source
20 reduction programs, voluntary or otherwise, at least as
effective as those imposed by this chapter and other
provisions of state law.

22 (1) The board department shall attach this requirement
24 as a standard condition to the license of a solid waste
disposal facility governing the future acceptance of
26 solid waste at the proposed facility.

28 B. The applicant has shown consistency with the recycling
provisions of the state plan.

30
32 **6. Terms and compliance schedules.** Licenses shall ~~be~~ are
issued under the terms and conditions as the board department may
34 prescribe, and for a term not to exceed 5 years. The board
department may establish reasonable time schedules for compliance
with this article and rules promulgated by the board.

36
38 **7. Criminal or civil record.** The board department may
refuse to grant a license under this article if it finds that the
40 applicant or, if the applicant is other than a natural person,
any person having legal interest in the applicant has been found
42 guilty of a criminal or civil violation of laws administered by
the board department or other laws of the State, other states,
the United States or another country.

44
46 **Sec. B-243. 38 MRSA §1310-P, first ¶,** as enacted by PL 1987, c.
517, §25, is amended to read:

48 The board department shall apply this section to every
license for a new or expanded solid waste disposal facility and
50 to the license of every existing solid waste disposal facility at
the time of relicensing.

52

2 **Sec. B-244. 38 MRSA §1310-P, sub-§§2 and 4**, as enacted by PL
1987, c. 517, §25, are amended to read:

4 **2. Annual report.** Every owner or operator of a solid waste
disposal facility shall file annually with the department
6 commissioner a report containing a sworn statement providing the
calendar year-end balance of the escrow account established for
8 the closure of the facility pursuant to this section. The report
shall must be filed with the department commissioner no later
10 than March 31st of each year or such other annual date as the
commissioner may designate.

12 **4. Money remaining in account.** No less than 20 years after
14 the closure, except as otherwise provided by the board, any money
remaining in the escrow account of any solid waste disposal
16 facility after proper closure and completion of post-closure care
and maintenance requirements, as determined by the department
18 commissioner, shall must be released to the owner, operator or
its designated beneficiary.

20 **Sec. B-245. 38 MRSA §1310-Q**, as repealed and replaced by PL
22 1987, c. 557, §2, is amended to read:

24 **§1310-Q. Transfer of license**

26 **1. Transfer.** No person may transfer a license issued
pursuant to this Title without the transfer of the license being
28 approved by the board department prior to transfer of the
ownership of the property, facility or structure which
30 constitutes or is part of the solid waste disposal facility. The
board department, at its discretion, may require that the
32 proposed new owner of the facility apply for a new license or may
approve the transfer of the existing license upon a satisfactory
34 showing that the new owner can abide its terms and conditions and
will be able to comply with the provisions of this Title. The
36 board department shall consider the extent to which the disposal
facility was sited and developed and is currently operated to
38 meet the capacity needs of municipalities within a specific
geographic region. The board department shall approve the
40 transfer of license when, in addition to all other requirements
of this Title, the applicant has demonstrated that:

42 A. The facility will continue to be operated to meet the
44 municipal disposal capacity needs for which the facility was
sited and developed and for which it is currently operated;

46 B. The applicant has made substantially equivalent,
48 alternative provisions to satisfy these disposal capacity
needs; or

50 C. These disposal capacity needs no longer exist.
52

2 **Sec. B-246. 38 MRSA §1310-R, sub-§2, ¶¶A and B**, as amended by
PL 1989, c. 585, Pt. E, §30, are further amended to read:

4 A. The ~~board~~ department shall apply the provisions of
6 section 1310-N, subsection 5, paragraph A, when relicensing
any solid waste disposal facility, except that, to the
8 extent that waste disposal contracts in effect on June 29,
1987, are inconsistent with section 1310-N, subsection 5,
10 paragraph A, in which case those provisions shall apply at
the expiration of the term of those contracts without
12 consideration of any renewals or extensions of those
contracts.

14 B. The ~~board~~ department shall require an applicant for a
16 new or expanded solid waste disposal facility or for a
license renewal submitting a complete application prior to
18 the adoption of the state plan to demonstrate that the
facility furthers the purposes of section 2101 and satisfies
20 the regulations under section 1310-N.

22 **Sec. B-247. 38 MRSA §1310-R, sub-§3, ¶¶A-1 and C**, as enacted by
PL 1989, c. 585, Pt. E, §30, are amended to read:

24 A-1. The ~~board~~ department shall require an applicant for a
26 new or expanded solid waste disposal facility submitting a
complete application prior to the initial adoption of the
28 state plan to submit such information as the ~~board~~
department requires to demonstrate that the proposed
30 facility provides a substantial public benefit, including
the information described in former section 1310-0.

32 C. The ~~board~~ department shall apply the provisions of
34 section 1310-N, subsection 3, paragraph A, to any
application for a waste disposal facility receiving ash
36 resulting from the combustion of municipal solid waste or
from fuel derived from municipal solid waste when the
38 application was accepted as complete by the ~~department~~
commissioner prior to July 1, 1989, and is still pending
40 before the department on or after the date of the initial
adoption of the state plan under chapter 24.

42 **Sec. B-248. 38 MRSA §1310-R, sub-§4**, as enacted by PL 1989, c.
44 585, Pt. E, §31, is amended to read:

46 **4. Incineration facilities.** The ~~board~~-shall department may
not license any new incineration facility prior to the adoption
48 of the state plan and siting criteria.

50 **Sec. B-249. 38 MRSA §1310-S**, as amended by PL 1989, c. 15,
§§1 and 2 and c. 585, Pt. E, §32, is further amended to read:

52 **§1310-S. Public and local participation**

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2 In addition to provisions for public participation provided
4 pursuant to Title 5, chapter 375, the following provisions shall
apply to an application for a solid waste disposal facility.

6 1. **Notification.** A person applying for a license under
8 this article or giving notice to the department commissioner
pursuant to section 482 485-A, shall give, at the same time,
10 written notice to the agency and to the municipal officers of the
municipality in which the proposed facility may be located and
12 shall publish notice of the application in a newspaper of general
circulation in the area.

14 1-A. **Preliminary notice.** Sixty days prior to submitting an
application with to the department commissioner regarding a
16 specific site for a solid waste disposal facility, the applicant
shall notify by certified mail the municipal officers of the
18 municipality in which the site is located or, in the unorganized
territories, the county commissioners with jurisdiction over the
20 site.

22 2. **Mandatory hearing.** The board department shall hold an
adjudicatory public hearing within the municipality in which the
24 facility may be located or in such other convenient location in
the vicinity of the proposed facility as the municipal officers
26 may agree.

28 3. **Automatic municipal intervenor status.** ~~At its first~~
~~meeting following the timely submission of a request for~~
30 ~~intervention, the board shall grant intervenor status to the~~
~~municipal officers, or their designees, from the municipality in~~
32 ~~which the facility will be located. The municipal officers, or~~
~~their designees, from the municipality in which the facility~~
34 ~~would be located have intervenor status if they request it within~~
60 days of notification under subsection 1. The intervenor
36 status granted under this subsection shall ~~apply~~ applies in any
proceeding for a license under this article. Immediately upon
38 the ~~board's automatic designation of intervenor status~~
commissioner's receipt of such a request, the intervenors have
40 all rights and responsibilities commensurate with this status.
~~The board may grant this status only if requested by the~~
42 ~~municipal officers within 60 days of notification under~~
~~subsection 1.~~

44 4. **Financial assistance.** The department commissioner shall
46 reimburse or make assistance grants for the direct expenses of
intervention of any party granted intervenor status under
48 subsection 3, not to exceed \$50,000. The board shall adopt rules
governing the award and management of intervenor assistance
50 grants and reimbursement of expenses to ensure that the funds are
used in support of direct, substantive participation in the
52 proceedings before the board department. Allowable expenses

include, without limitation, hydrogeological studies, waste generation and recycling studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses otherwise eligible under this section which ~~that~~ are incurred by the municipality after notification pursuant to subsection 1, ~~shall-be~~ are eligible for reimbursement under this subsection only if a completed application is accepted by the department. The board shall also establish rules governing:

A. The process by which an intervenor under subsection 3 may gain entry to the proposed facility site for purposes of reasonable inspection and site investigations under the auspices of the ~~board~~ department; and

B. The reduction in the maximum level of reimbursable costs to the extent the municipality establishes by local ordinance any substantially similar financial requirements of the applicant.

5. Unincorporated townships and plantations. For the purposes of this section, county commissioners shall act as municipal officers for unincorporated townships, and assessors of plantations shall act as municipal officers for plantations.

Sec. B-250. 38 MRSA §1310-T, as amended by PL 1989, c. 15, §3, is further amended to read:

§1310-T. Application fee

In addition to any fees imposed pursuant to section 352, the applicant shall pay a fee of \$50,000 at the time of filing an application for a solid waste disposal facility. An application ~~shall-be~~ is considered incomplete and the department shall defer any review or processing of the application until the applicant has paid the full \$50,000 fee. The fee shall ~~shall~~ must be deposited in the Maine Environmental Protection Fund and ~~shall-be~~ used only to make reimbursements and grants to the intervenor in the applicant's license proceedings pursuant to section 1310-S. The applicant releases all control over this money and does not retain any rights to audit the spending of these funds once the fee has been deposited in the Maine Environmental Protection Fund. Any portion of the fee not disbursed by the department for these purposes ~~shall-be~~ is reimbursed to the applicant, together with any interest that may have accrued on that portion. Upon request, the ~~department~~ commissioner shall provide an audit report to the applicant after all the application and appeal proceedings before the ~~board~~ department have concluded.

Sec. B-251. 38 MRSA §1310-U, 2nd and 3rd ¶¶, as repealed and replaced by PL 1989, c. 585, Pt. E, §33, are amended to read:

2 Under the municipal home rule authority granted by the
3 Constitution of Maine, Article VIII, Part Second and Title 30-A,
4 section 3001, municipalities, except as provided in this section,
5 may enact ordinances with respect to solid waste facilities ~~which~~
6 that contain such standards as the municipality finds reasonable,
7 including, without limitation, conformance with federal and state
8 solid waste rules; fire safety; traffic safety; levels of noise
9 ~~that can be~~ heard outside the facility; distance from existing
10 residential, commercial or institutional uses; ground water
11 protection; and compatibility of the solid waste facility with
12 local zoning and land use controls, provided, ~~however,~~ that the
13 standards are not more strict than those contained in this
14 chapter and in chapter 3, articles 5-A and 6 and the rules
15 adopted thereunder. Municipal ordinances shall must use
16 definitions consistent with those adopted by the department board.

17 A municipality adopting an ordinance under this section
18 shall forward a copy of the ordinance to the department
19 commissioner within 30 days of its adoption.

20 **Sec. B-252. 38 MRSA §1310-V, first ¶,** as amended by PL 1987, c.
21 557, §4, is further amended to read:

22 Prior to 91 days after the First Regular Session of the
23 113th Legislature adjourns, the department shall may not process
24 or act upon any application ~~for, and the board shall not~~ or
25 issue, a license for a new commercial landfill facility or the
26 substantial expansion of a commercial landfill facility. In
27 processing applications after the moratorium, priority shall must
28 be given to applications for commercial landfill facilities used
29 for the disposal of solid waste ~~which~~ that is generated by an
30 energy recovery facility designed to reduce the volume or alter
31 the physical characteristics of municipal solid waste and to
32 produce electricity through incineration. Notwithstanding the
33 provisions of Title 1, section 302, any application for a new or
34 substantially expanded commercial landfill facility pending or
35 filed after the effective date of this article and any
36 application for an expanded commercial landfill facility filed
37 after October 8, 1987, shall ~~be~~ is subject to departmental rules
38 regarding solid waste adopted pursuant to section 1304 and the
39 provisions of Private and Special Law 1987, chapter 28.
40 Notwithstanding other provisions of this Title, the department
41 shall may not issue a license for a new or substantially expanded
42 commercial landfill facility under this article or for an
43 expanded commercial landfill facility, the application for which
44 was filed after October 8, 1987, until ~~it~~ the board has adopted
45 rules pursuant to the provisions of Private and Special Law 1987,
46 chapter 28.

47 **Sec. B-253. 38 MRSA §1318, sub-§2,** as enacted by PL 1979, c.
48 730, §2, is amended to read:

2. **Removal.** If the responsible party or person causing the discharge immediately reports and removes the discharge in accordance with the rules and orders of the board or commissioner, ~~he shall~~ the party or person is not be subject to criminal or civil penalties under this subchapter.

Sec. B-254. 38 MRSA §1318-B, sub-§1, as amended by PL 1981, c. 184, §1, is further amended to read:

1. **Reporting.** The responsible party or the person causing the discharge shall report a discharge immediately to the Department of Public Safety, which shall immediately notify the Department Commissioner of Environmental Protection and the public safety agency of the municipality in which the discharge takes place.

Sec. B-255. 38 MRSA §1318-B, sub-§3, as enacted by PL 1979, c. 730, §2, is amended to read:

3. **Commissioner of Environmental Protection to direct removal.** The Department Commissioner of Environmental Protection shall have authority and responsibility to plan, implement and, with the cooperation of the appropriate public safety agency, direct that part of the response to a discharge of hazardous matter ~~which~~ that involves removal.

A. The responsible party or the person causing the discharge shall immediately undertake removal of the discharge.

B. The department commissioner may undertake the removal of the discharge and may retain agents and make contracts for this purpose.

C. Any unexplained discharge of hazardous matter occurring within state jurisdiction, or on land or in water or air beyond state jurisdiction that for any reason penetrates within state jurisdiction, shall must be removed by or under the direction of the department commissioner.

Sec. B-256. 38 MRSA §1319-D, last ¶, as enacted by PL 1989, c. 546, §14, is amended to read:

The department commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 1319-E, subsection 1, paragraphs C and E for each biennium. The budget shall must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures therefrom as approved by the commissioner. Expenditures pursuant to section 1319-E, subsection 1, paragraphs A and D may be made as authorized by the State Controller following approval by the commissioner.

2 **Sec. B-257. 38 MRSA §1319-E, sub-§1**, as amended by PL 1989, c.
4 546, §15, is further amended to read:

6 **1. Money disbursed.** Money in the Maine Hazardous Waste Fund
8 may be disbursed by the department commissioner for the following
 purposes, but for no other:

10 A. Costs incurred in the removal or abatement of an
12 unlicensed discharge or threatened discharge of hazardous
14 waste or waste oil. Whenever practical, the department
 commissioner shall offer the responsible party the
 opportunity to remove or abate the discharge or threatened
 discharge;

16 C. Costs incurred for the purchase of necessary hazardous
18 waste and waste oil testing, response, inspection and
20 monitoring equipment and supplies, response and compliance
 personnel and training of personnel in accordance with an
 allocation approved by the Legislature;

22 D. Amounts necessary to reimburse municipalities as
24 required by section 1319-R, subsection 3; and

26 E. Costs incurred in the inspection or supervision of
 hazardous waste activities and hazardous waste handlers.

28 **Sec. B-258. 38 MRSA §1319-G, sub-§1**, as enacted by PL 1981, c.
30 478, §7, is amended to read:

32 **1. Recovery.** The department commissioner shall seek
34 recovery to the use of the Maine Hazardous Waste Fund all sums
36 expended therefrom, including overdrafts, for disbursements made
38 from the fund under section 1319-E, subsection 1, paragraphs A, B
 and C, including interest computed at 10% a year from the date of
 expenditure, unless the board commissioner finds the amount too
 small or the likelihood of recovery too uncertain. Requests for
 reimbursement shall must be referred to the Attorney General for
 collection.

40 The department commissioner may file a claim with or otherwise
42 seek money from federal agencies to recover to the use of the
 fund all disbursements from the fund.

44 **Sec. B-259. 38 MRSA §1319-I, sub-§4-A**, as enacted by PL 1983,
46 c. 342, §10, is amended to read:

48 **4-A. Fee on waste oil sale or disposal.** ~~Waste-oil-dealers~~
50 ~~shall pay a A~~ fee of 1¢ a gallon on each gallon of waste oil
 ~~which they transport, collect or store~~ transported, collected or
52 stored must be paid by the waste oil dealer that first
 transports, collects or stores that waste oil. ~~No-fee-may-be~~

~~imposed by this subsection with respect to the waste oil if the waste oil dealer who would be liable for the fee establishes that a prior fee has been imposed by this subsection and paid to the Maine Hazardous Waste Fund with respect to the waste oil.~~ Waste oil dealers shall maintain records sufficient to determine whether the dealer is liable for any and all fees imposed on him pursuant to this subsection and shall submit such records to the department at such times commissioner as required by rule of the board may by rule require.

Sec. B-260. 38 MRSA §1319-I, sub-§4-B, as repealed and replaced by PL 1989, c. 419, is amended to read:

4-B. Fee on hazardous materials transported by railroad. Any person who transports more than 25 tons of certain hazardous materials as specified in this subsection at any one time by rail shall register annually with the department commissioner. Fees for the transportation of hazardous materials by rail shall ~~be~~ are imposed on the registrant who first transports the materials in Maine the State by rail. Fees for the transportation of hazardous materials shall ~~be~~ are determined by one of the following methods:

A. Fifteen cents per ton of hazardous materials transported by the registrant during the period of registration and shall ~~be~~ paid quarterly by the registrant on the basis of records certified to the department commissioner; or

B. Twenty-five thousand dollars ~~to be~~ paid at the time of registration.

The registrant shall select the method of payment at the time of registration. Fees shall ~~be~~ are paid to the department and upon receipt credited to the Maine Hazardous Waste Fund. Any registrant selecting quarterly payments shall be automatically subject to the \$25,000 annual registration fee if the fee for any one quarter has not been paid to the Maine Hazardous Waste Fund within 60 days after the fee becomes due. Hazardous materials subject to the requirements of this subsection shall mean those substances identified pursuant to the federal Hazardous Materials Transportation Act, Public Law 93-633, except that, for purposes of this subsection, hazardous materials shall do not include oil as defined in Title 38, section 542, subsection 6. The registrant shall make available to the department commissioner and ~~its~~ the commissioner's authorized representatives all documents relating to the hazardous materials transported by the registrant during the period of registration.

Sec. B-261. 38 MRSA §1319-O, sub-§2, ¶A, as enacted by PL 1987, c. 517, §28, is amended to read:

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2 A. The board may adopt rules relating to the
3 transportation, collection and storage of waste oil by waste
4 oil dealers to protect public health, safety and welfare and
5 the environment. The rules may include, without limitation,
6 rules requiring licenses for waste oil dealers and the
7 location of waste oil storage sites ~~which~~ that are operated
8 by waste oil dealers, evidence of financial capability and
9 manifest systems for waste oil. A person licensed by the
10 ~~board~~ department to transport or handle hazardous waste
11 shall ~~is~~ not be required to obtain a waste oil dealer's
12 license, but ~~his~~ the hazardous waste license must include
13 any terms or conditions deemed determined necessary by the
14 ~~board~~ department relating to ~~his~~ the transportation or
15 handling of waste oil.

16 **Sec. B-262. 38 MRSA §1319-Q, sub-§§1, 3, 4 and 5, as reallocated**
17 **by PL 1987, c. 517, §13, are amended to read:**

18 **1. Data collection and monitoring.** The ~~board~~ commissioner
19 shall have data on the generation, transportation and handling of
20 hazardous waste collected and monitored in a coordinated manner.
21 ~~It~~ The commissioner shall use that data to review the need for
22 adequate waste facilities for generators in this State, and ~~it~~
23 shall develop appropriate policies and recommendations to ~~insure~~
24 ensure that suitable waste facilities are available.

25 **3. Facility needs plan.** The ~~board~~ commissioner shall, prior
26 to January 1st of each year, prepare a plan ~~which shall consider~~
27 for approval by the board that considers the need for new
28 hazardous waste facilities. Specifically, ~~it shall~~ the plan must
29 include:

30 **A.** An identification of hazardous wastes generated within
31 the State for which new commercial treatment facilities
32 ~~would-be~~ are desirable, and the preferred technologies to be
33 utilized;

34 **B.** An identification of hazardous wastes by type generated
35 within the State ~~which~~ that are capable of being reused and
36 recycled, and a corresponding reference to available
37 technology or facilities;

38 **C.** An identification of the hazardous wastes generated
39 within the State for which treatment facilities are not
40 currently available ~~within~~ inside or outside the State;

41 **D.** A survey of generators of hazardous waste identified in
42 paragraph C, and facilities used by ~~them~~ those generators,
43 ~~which~~ that provides the best estimates of future waste
44 quantities, costs and capacity for the disposal of those
45 wastes; and

52

2 E. Identification of those geological areas of the State
3 which that, based on siting criteria in rules adopted by the
4 United States Environmental Protection Agency or in rules
5 adopted by the board, are unsuitable for hazardous waste
6 disposal facilities.

7
8 4. **Legislative recommendations.** The commissioner shall make
9 an annual status report to the Legislature concerning hazardous
10 waste management, ~~which shall include~~ including any
11 recommendations of the board for legislative action to develop
12 and establish needed hazardous waste facilities. These
13 recommendations may include tax and other financial incentives or
14 recommendations to directly, or through an instrumentality,
15 acquire suitable sites for hazardous waste facilities, or to
16 construct and operate hazardous waste facilities. Recommendations
17 in the annual status report shall must be based solely on the
18 information and plans prepared pursuant to this section and
19 information obtained at public hearings.

20 5. **Procedural requirements.** All policies, plans and
21 recommendations ~~adopted prepared~~ prepared by the ~~board~~ commissioner under
22 this section, ~~except for the report in subsection 2,~~ shall be ~~are~~
23 subject to the notice and hearing requirements of the Maine
24 Administrative Procedure Act, Title 5, chapter 375.

25 **Sec. B-263. 38 MRSA §1319-R**, as enacted by PL 1987, c. 517,
26 §28, is amended to read:

27 **§1319-R. Facility siting**

28
29 1. **Licenses for hazardous waste facilities.** The ~~board~~
30 department shall issue a license for a hazardous waste facility
31 whenever ~~it~~ the department finds ~~it~~ that the facility will not
32 pollute any water of the State, contaminate the ambient air,
33 constitute a hazard to health or welfare or create a nuisance.
34 Licenses shall must be issued under the terms and conditions as
35 the ~~board~~ department may prescribe and for a term not to exceed 5
36 years. The ~~board~~ department may establish reasonable time
37 schedules for compliance with this subchapter and ~~regulations~~
38 rules promulgated by the board.

39 A. The ~~board~~ department ~~shall also~~ must find that:

40
41 (1) The applicant presents evidence of sufficient
42 financial capacity, including projections of
43 utilization of the facility by hazardous waste
44 generators, to justify granting the license;

45 (2) Issuing the license is consistent with the
46 applicable standards, requirements and procedures of
47 this chapter; and
48

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2 (3) In the case of a disposal facility, the volume of
the waste and the risks related to its handling have
4 been reduced to the maximum practical extent by
treatment and volume reduction prior to disposal.

6 B. The board department shall issue an interim license for
a waste facility for hazardous waste or shall deem the
8 facility to be so licensed if:

10 (1) The waste facility is in existence on April 1,
1980;

12 (2) The owner or operator has:

14 (a) Notified the department commissioner of its
16 the location of the facility;

18 (b) Provided a detailed description of the
operation of the facility;

20 (c) Identified the hazardous waste ~~it~~ that the
22 facility handles; and

24 (d) Applied for a license to handle hazardous
waste;

26 (3) The waste facility is not altered or operated
28 except in accordance with the board's rules; and

30 (4) ~~If--the~~ The waste facility has a discharge or
emission license under sections 414 or 591, and the
32 facility is operated in accordance with that license.

34 C. Interim licenses shall expire on the earliest of the
following dates:

36 (1) The date of the final administrative disposition
38 of the application for a hazardous waste facility
license;

40 (2) The date of a finding of the board department that
42 the disposition referred to in ~~subsection~~ subparagraph
1 ~~has-not-been~~ was not made because of the applicant's
44 failure to furnish information reasonably required or
requested to process the application;

46 (3) The date of expiration of the license issued under
48 section 414 or 591; or

50 (4) The date on which the application for a noninterim
hazardous waste facility license is due and on which
52 the person operating under the interim license has

2 failed ~~fails~~ to apply for the noninterim hazardous
waste facility license.

4 2. **Municipal ordinances.** Municipalities may enact necessary
6 police power ordinances dealing with commercial hazardous waste
8 facilities, provided that ~~they~~ the ordinances are not more
10 stringent than or duplicative of the hazardous waste provisions
of this chapter or rules and orders promulgated by the board or
commissioner. The ~~board~~ department shall incorporate all
applicable local requirements to the fullest extent practicable.

12 3. **Site review.** All persons who make application for a
14 license to construct, operate or substantially expand a
commercial hazardous waste facility shall give, at the same time,
16 ~~shall-give~~ written notice to the municipal officers of the
municipality in which the proposed facility will be located. The
18 municipality through its municipal officers shall be granted
intervenor status in any proceeding for site review of a
commercial hazardous waste facility. The ~~department~~ commissioner
20 shall reimburse the municipalities' direct costs, not to exceed
\$5,000, for participation in the proceedings.

22 The Governor may appoint a person to facilitate communications
24 between the applicant and the municipality and between the
department and the municipality.

26 The State may accept public and private funds from any source for
28 the purpose of carrying out responsibilities under this section.

30 Notwithstanding section 341-D, subsection 2, the board shall
decide all applications for commercial hazardous waste facilities.

32 The board shall hold at least one public hearing within the
34 municipality in which the facility will be located.

36 During any proceeding for site review of a commercial hazardous
waste facility, the legislative body of the municipality in which
38 the facility is to be located may appoint 4 representatives to
the board. If the facility is proposed to be located within an
40 unorganized township, the county commissioners of that county may
appoint 4 representatives. These representatives may vote on
42 board decisions related to the proposed commercial hazardous
waste facility. All representatives appointed under this
44 subsection shall participate on the board only for that site
review, until final disposition of the application, including any
46 administrative or judicial appeals. The municipal members shall
~~receive~~ are entitled to the same pay for each day and expenses as
48 regular board members during the period of their service, to be
paid by the department.

50 4. **Municipal fees authorized.** A municipality, by ordinance,
52 may levy a fee on a commercial hazardous waste facility located

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2 in the municipality. These fees shall must be applied as a
percentage of the annual billings of the facility to its
4 customers. No fee so levied may exceed 2% of the annual billings.
The department commissioner may audit the accounts of a facility
to determine the amount of the fee owed to the municipality.

6
8 5. Application. Except for substantial expansion, this
section does not apply to any facility ~~which has been~~ granted an
interim or final license prior to September 18, 1981.

10 Sec. B-264. 38 MRSA §1319-S, sub-§§1 and 2, as reallocated by
12 PL 1987, c. 517, §21, are amended to read:

14 1. Closure plan. Closure of any new or existing waste
16 facility for hazardous waste and, if required, post-closure care,
shall must be in accordance with a closure plan and, if required,
18 a post-closure plan, approved by the board. An applicant for a
license for a waste facility for hazardous waste shall submit a
20 closure plan and, if required, post-closure plan, for approval
with his any application for a license. For a facility ~~which~~
that is licensed at the time of closure under an interim license,
22 the licensee shall submit a closure plan and, if required,
post-closure plan, for approval at least 180 days before the date
24 on which he the licensee begins closure. The closure plan and,
if required, post-closure plan must include measures, such as
26 leachate control, site stabilization and monitoring, to evaluate
and maintain the integrity of the facility site in order to
28 prevent harm to the public health, safety and welfare and to the
environment.

30
32 2. Closure notice. Upon approval of a closure plan for a
facility for hazardous waste, the department commissioner shall
34 file notice with the register of deeds for the county in which
the facility is located. This notice shall must contain the name
and address of the current owner of the property, its location,
36 the nature of hazardous wastes handled and the methods of
treatment, storage and disposal used at the facility.

38 Sec. B-265. 38 MRSA §1319-T, sub-§2, ¶B, as enacted by PL
40 1987, c. 517, §28, is amended to read:

42 B. Handles or transports any ~~sueh~~ substance or material
identified as hazardous waste by the board in any manner
44 ~~which,--in-fact,~~ that violates the terms of any condition,
order, ~~regulation~~ rule, license, permit, approval or
46 decision of the board or ~~order-of-the~~ commissioner with
respect to the handling or transporting of ~~sueh~~ that
48 substance or material; or

50 Sec. B-266. 38 MRSA §1364, sub-§3, as amended by PL 1985, c.
52 746, §34, is further amended to read:

2 3. Investigation and evaluation. The department
3 commissioner may investigate and sample sites where hazardous
4 substances are stored or handled to identify uncontrolled
5 hazardous substance sites. During the course of the
6 investigation, the commissioner may require submission of
7 information or documents which that relate or may relate to the
8 site under investigation from any person whom the department
9 commissioner has reason to believe may be a responsible party.
10 The information may include, ~~among other things,~~ the nature and
11 amounts of hazardous substances or other wastes which that
12 arrived or may have arrived at the site, manner of
13 transportation, treatment or disposal of the hazardous substances
14 or other wastes and any other information relating to the site or
15 to threats posed by the potential site.

16 **Sec. B-267. 38 MRSA §1364, sub-§5,** as enacted by PL 1983, c.
17 569, §1, is amended to read:

18 5. Mitigation. The department commissioner may take
19 whatever action ~~is~~ deemed necessary to abate, clean up or
20 mitigate the threats or hazards posed or potentially posed by an
21 uncontrolled site, or to protect the public health, safety or
22 welfare, or the environment, including administering or carrying
23 out measures to abate, clean up or mitigate the threats or
24 hazards, and implementing remedies to remove, store, treat,
25 dispose of or otherwise handle hazardous substances located in,
26 on or over an uncontrolled site, including soil and water
27 contaminated by hazardous substances.

28 **Sec. B-268. 38 MRSA §1365, sub-§4,** as amended by PL 1985, c.
29 746, §35, is further amended to read:

30 4. Compliance; appeal. The person to whom the order is
31 directed shall comply immediately, ~~---A person to whom it is~~
32 directed and may apply to the board for a hearing on the order if
33 the application is made within 5 days after receipt of the order
34 by a responsible party. The hearing shall must be held by the
35 board within 5 days after receipt of application. The nature of
36 the hearing before the board shall is be an appeal. At the
37 hearing, all witnesses shall be sworn and the department
38 commissioner shall first establish the basis for the order and
39 for naming the person to whom the order was is directed. The
40 burden of going forward shall then shift shifts to the person
41 appealing to demonstrate, based upon a preponderance of the
42 evidence, that the order should be modified or rescinded. Within
43 7 days after the hearing, the board shall make findings of fact
44 and shall continue, revoke or modify the order. The decision of
45 the board may be appealed to the Superior Court in accordance
46 with the Maine Administrative Procedure Act, Title 5, chapter
47 375, subchapter VII.

2 **Sec. B-269. 38 MRSA §1366, first and last ¶¶**, as enacted by PL
3 1983, c. 569, §1, are amended to read:

4 Whenever possible and practical, the department commissioner
5 shall make use of resources available under the Superfund program
6 or other federal programs to evaluate and investigate
7 uncontrolled sites and to abate, clean up or mitigate threats or
8 hazards posed or potentially posed by uncontrolled sites.

10 In the case of a site at ~~which~~ where federal resources are
11 not used, the commissioner shall ~~so~~ notify the Governor in
12 writing. The Governor may authorize the department commissioner
13 to proceed under ~~the provisions of~~ this chapter without those
14 resources. In the event the State proceeds at its own expense
15 with work eligible for federal funding, the ~~Commissioner of~~
16 ~~Environmental Protection~~ commissioner shall present the United
17 States Environmental Protection Agency with a demand for
18 reimbursement.

20 **Sec. B-270. 38 MRSA §1454, sub-§2**, as repealed and replaced by
21 PL 1987, c. 530, §3, is amended to read:

22 2. **Service fee.** Except for waste ~~which~~ that is exempt in
23 accordance with subsection 3, the ~~Board of Environmental~~
24 ~~Protection~~ commissioner shall assess each low-level radioactive
25 waste generator for a service fee on all low-level radioactive
26 waste generated in this State ~~which~~ that is shipped to commercial
27 low-level radioactive waste disposal facilities, stored awaiting
28 disposal at a commercial low-level radioactive waste disposal
29 facility or stored for any other purpose. That service fee shall
30 be is based 50% on the volume and 50% on the radioactivity of the
31 waste generated in the previous calendar year, but each generator
32 shall be assessed an annual fee of at least \$300. The ~~Board of~~
33 ~~Environmental Protection~~ board shall promulgate rules in
34 accordance with the Maine Administrative Procedure Act, Title 5,
35 chapter 375, concerning the calculation of the fee and the
36 exemptions to the fee, consistent with this section. The revenue
37 from this service fee shall ~~be~~ is credited to the fund
38 established in subsection 1 and used to carry out this chapter.

40 **Sec. B-271. 38 MRSA §1466, sub-§§1 and 2**, as enacted by PL
41 1983, c. 381, §9, are amended to read:

42 1. **Notification.** Any person planning to construct a
43 facility covered by this section shall notify the ~~Department of~~
44 ~~Environmental Protection~~ commissioner. The ~~department~~ board
45 shall, by rule, specify the form, content and timing of that
46 notice.

47 2. **Commissioner review.** Upon receipt of notice under
48 subsection 1, the ~~department~~ commissioner shall review the
49 proposed facility, as closely as possible in accordance with
50

section 1463 and report its findings and recommendations within 90 days to the Governor and the Legislature.

Sec. B-272. 38 MRSA §1478, sub-§§1 and 2, as enacted by PL 1983, c. 500, §5, are amended to read:

1. Notice. Any person intending to construct or operate a low-level radioactive waste storage or disposal facility shall file a preliminary notice with the department commissioner and the municipality in accordance with section 483 485-A, subsection 1 and ~~also notify the board of his intent in accordance with section 483, subsection 2~~ section 487-A, subsection 1.

2. Hearings. The board shall hold hearings on the proposed facility in accordance with section 484 486-A. Subject to the requirements of Title 5, section 9057, any person who resides within the State is entitled to be heard. The hearings shall ~~as~~ must, at a minimum, address the following issues:

A. The technical feasibility of the proposed waste disposal or storage facility;

B. The environmental impact of the proposed waste disposal or storage facility on the surrounding area;

C. The social impact of the proposed waste disposal or storage facility on the surrounding area; and

D. The economic impact of the proposed waste disposal or storage facility on the surrounding area; and

E. Whether the proposed facility will satisfy requirements under section 413, waste discharge licenses; section 590, air emission licensing; section 1304, licenses for waste facilities; and any other applicable laws administered by the department.

~~Whether the proposed facility will satisfy any requirements under section 413, waste discharge licenses; section 590, air emission licensing; section 1304, licenses for waste facilities; and any other laws administered by the department that may be applicable.~~

Sec. B-273. 38 MRSA §1478, sub-§2-A is enacted to read:

2-A. Board jurisdiction. Notwithstanding section 341-D, subsection 2, the board shall decide all permits for low-level radioactive waste facilities.

Sec. B-274. 38 MRSA §1603, sub-§3, ¶¶A and B, as enacted by PL 1989, c. 39, are amended to read:

2 A. All distributors engaged in the sale or distribution in
Maine the State of products covered under subsection 1,
4 shall certify to the ~~Department of Environmental Protection~~
by ~~January 31, 1989~~, commissioner their compliance with
subsection 1.

6 B. All distributors engaged in the sale or distribution in
8 Maine the State of products covered under subsection 2,
shall certify to the ~~Department of Environmental Protection~~
10 commissioner by July 1, 1990, their compliance or scheduled
compliance with subsection 2.

12 **Sec. B-275. 38 MRSA §1705, sub-§§1 and 3**, as enacted by PL
14 1983, c. 820, §2, are repealed.

16 **Sec. B-276. 38 MRSA §1721, sub-§§1 to 6**, as enacted by PL 1983,
c. 820, §2, are amended to read:

18 1. **Application by municipal officers.** The municipal
20 officers of the municipality or municipalities that desire to
form a disposal district shall file an application with the Board
22 of Environmental Protection, after notice and hearing in each
municipality, on a form or forms to be prepared by ~~that board~~ the
24 commissioner, setting forth the name or names of the municipality
or municipalities, and the municipal officers shall furnish such
26 other data as the board may determine necessary and proper. The
application shall must contain, but shall is not be limited to, a
28 description of the territory of the proposed district, the name
proposed for the district, which shall must include the words
30 "disposal district," a statement showing the existence in that
territory of the conditions requisite for the creation of a
32 disposal district, as prescribed in section 1702, and other
documents and materials as ~~may be~~ required by the Board of
34 Environmental Protection. The Board of Environmental Protection
may make adopt rules under this chapter.

36 2. **Public hearing.** Upon receipt of the application, the
38 board shall cause hold a public hearing ~~to be held~~ on the
application within 60 days of the date of receipt of the
40 application, at some convenient place within the boundaries of
the proposed district. At least 14 days prior to the date of the
42 hearing, the ~~board~~ commissioner shall cause publish notice of the
hearing ~~to be published~~ at least once in a newspaper of general
44 circulation in the area encompassed by the proposed district.

46 3. **Approval of application.** After the public hearing, on
consideration of the evidence received, the board shall, in
48 accordance with section 1702 and rules adopted by the board, make
findings of fact and conclusions and a determination of record
50 whether or not the conditions requisite for the creation of a
disposal district exist in the territory described in the
52 application. If the board finds that conditions do exist, it

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2 shall issue an order approving the proposed district as
3 conforming to the requirements of this chapter and designating
4 the name of the proposed district. The ~~board~~ commissioner shall
5 give notice to the municipal officers within the municipality or
6 municipalities involved, of a date, time and place of a meeting
7 of the representative of the municipality or municipalities
8 involved. The municipal officers shall elect a representative to
9 attend the meeting who may represent the municipality in all
10 matters relating to the formation of the district. A return
11 receipt properly endorsed ~~shall-be~~ is evidence of the receipt of
12 notice. The notice ~~shall~~ must be mailed at least 10 days prior
13 to the date set for the meeting.

14 **4. Denial of application.** If the board determines that the
15 creation of a disposal district in the territory described in the
16 application is not warranted for any reason, it shall make
17 findings of fact and conclusions and enter an order denying its
18 approval. The ~~board~~ commissioner shall give notice of the denial
19 by mailing certified copies of the decision and order to the
20 municipal officers of the municipality or municipalities
21 involved. No application for the creation of a disposal
22 district, consisting of exactly the same territory, may be
23 entertained within one year after the date of the issuance of an
24 order denying approval of the formation of that disposal
25 district, but this provision ~~shall~~ does not preclude action on an
26 application for the creation of a disposal district embracing all
27 or part of the territory described in the original application,
28 provided that another municipality or fewer municipalities are
29 involved.

30 **5. Joint meeting.** The persons selected by the municipal
31 officers, to whom the notice described in subsection 3 is
32 directed, shall meet at the time and place appointed. ~~Where~~ When
33 more than one municipality is involved, they shall organize by
34 electing a ~~chairman~~ chair and a secretary. ~~No~~ An action may not
35 be taken at any such meeting unless, at the time of convening,
36 there are present at least a majority of the total number of
37 municipal representatives eligible to attend and participate at
38 the meeting, other than to report to the ~~Board of Environmental~~
39 Protection commissioner that a quorum was not present and to
40 request the ~~board~~ commissioner to issue a new notice for another
41 meeting. A quorum ~~shall--be~~ is a simple majority of
42 representatives eligible to attend the meeting. The purpose of
43 the meeting ~~shall-be~~ is to determine the number of directors,
44 subject to section 1724, to be appointed by and to represent each
45 participating municipality and to determine the duration of terms
46 to be served by the initial directors so that, in ensuing years,
47 1/3 of the directors and their alternates ~~shall-be~~ are appointed
48 or reappointed each year, to serve until their respective
49 successors are duly appointed and qualified. Subject to section
50 1724, the number of directors to represent each municipality
51 shall must be a subject for negotiation among the municipal
52

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2 representatives. When a decision has been reached on the number
of directors and the number to represent each municipality and
4 the initial terms of the directors, subject to the limitations
provided, this decision shall ~~be to be~~ reduced to writing by the
secretary and must be approved by a 2/3 vote of those present.
6 The vote so reduced to writing and the record of the meeting
shall must be signed by the chairman ~~chair~~, attested by the
8 secretary and filed with the board commissioner. Any agreements
among the municipal representatives ~~which--are~~ considered
10 essential prerequisites to the formation of the district, whether
concerning payments in lieu of taxes to a municipality in which a
12 waste facility is to be located, or any other matter, shall must
be in writing and included in the record filed with the Board of
14 ~~Environmental--Protection~~ commissioner. Subsequent to district
formation, the board of directors of the district shall execute
16 ~~any--and~~ all documents necessary to give full effect to the
agreements reached by the municipal representatives and filed
18 with the ~~Board of Environmental Protection~~ commissioner. Where
When a single municipality is involved, a copy of the vote of the
20 municipal officers, duly attested by the clerk of the
municipality, shall must be filed with the board commissioner.
22

24 **6. Submission.** When the record of the municipality, or the
record of the joint meeting, ~~--where~~ when municipalities are
involved, ~~has--been~~ is received by the board commissioner and
26 found by ~~it~~ to be in order, the board commissioner shall order
the question of the formation of the proposed disposal district
28 and other questions relating to the formation to be submitted to
the legal voters residing within the municipalities, except as
30 provided in subsection 7, in which case the municipal officers
may determine the questions. The order shall ~~be~~ is directed to
32 the municipal officers of the municipality or municipalities
which that propose to form the disposal district, directing them
34 to call, within 60 days of the date of the order, town meetings
or city elections, as the case may be, for the purpose of voting
36 in favor of or in opposition to each of the following articles or
questions, as they may apply, in substantially the following
38 form:

40 A. To see if the town (or city) of (name of town or city)
will vote to incorporate as a disposal district to be called
42 (name) Disposal District;

44 B. To see if the residents of (name of town or city) will
vote to join with the residents of the (name of town or
46 city) to incorporate as a disposal district to be called
(name) Disposal District: (legal description of the bounds
48 of the proposed disposal district). At a minimum, the
district shall consist of (names of essential
50 municipalities); and

2 C. To see if the residents of (name of town or city) will
vote to approve the total number of directors and the
4 allocation of representation among the municipalities on the
board of directors, as determined by the municipal officers
and listed as follows: Total number of directors shall
6 be and the residents of (town or city) shall be
entitled to directors. (The number of directors to
8 which each municipality is entitled shall be listed.)

10 Directors shall be are chosen to represent municipalities in the
manner provided in section 1725.

12 Sec. B-277. 38 MRSA §1722, as enacted by PL 1983, c. 820, §2,
14 is amended to read:

16 **§1722. Approval and organization**

18 When the residents of the municipality, or each municipality
where when more than one is involved, or the municipal officers,
20 as the case may be, have voted upon the formation of a proposed
disposal district and all of the other questions submitted, the
22 clerk of each of the municipalities shall make a return to the
~~Board of Environmental Protection~~ commissioner in such form as
24 the ~~board~~ commissioner may determine. If the ~~board~~ commissioner
finds from the returns that each of the municipalities involved,
26 and, voting on each of the articles and questions submitted to
them, have voted in the affirmative, and that they have appointed
28 the necessary directors, and listed the names ~~thereof~~ of the
directors, to represent each municipality and that all other
30 steps in the formation of the proposed disposal district are in
order and in conformity with law, the ~~board~~ commissioner shall
32 make a finding to that effect and record the finding upon its
departmental records. ~~Where~~ When 3 or more municipalities are
34 concerned in the voting, and at least 2 have voted to approve
each of the articles and questions submitted ~~to them and have~~ and
36 appointed the necessary directors, and listed the names ~~thereof~~
of the directors to represent each municipality, rejection of the
38 proposed disposal district by one or more shall does not defeat
the creation of a district composed of the municipalities voting
40 affirmatively on the question, if the board determines and issues
an order stating that it is feasible or practical to constitute
42 the district as a geographic unit composed of the municipalities
voting affirmatively, unless the vote submitted to the
44 municipalities provided that specific participants or a minimum
number of participants shall approve the formation of the
46 district.

48 The ~~board~~ commissioner shall, immediately after making its
findings, issue a certificate of organization in the name of the
50 disposal district in such form as the ~~board--may--determine~~
commissioner determines. The original certificate shall must be
52 delivered to the directors on the day that they are directed to

2 organize and a copy of the certificate, duly attested by the
3 ~~Commissioner of Environmental Protection shall~~ commissioner, must
4 be filed and recorded in the office of the Secretary of State.
5 The issuance of the certificate by the ~~board--shall--be~~
6 commissioner is conclusive evidence of the lawful organization of
7 the disposal district. The disposal district ~~shall~~ is not be
8 operative until the date set by the directors under section 1726.

9
10 **Sec. B-278. 38 MRSA §1725, first ¶,** as enacted by PL 1983, c.
11 820, §2, is amended to read:

12 Directors ~~shall-be~~ are appointed by the municipal officers
13 of the municipality ~~which~~ they are to represent. Alternate
14 directors may be appointed by the municipal officers to act in
15 the absence of a director. To the extent possible, the board of
16 directors ~~shall~~ must include a mix of individuals with sufficient
17 managerial, technical, financial or business experience to
18 execute their duties efficiently and effectively. Appointments
19 ~~shall~~ must be by vote of the municipal officers, attested to by
20 the municipal clerk and presented to the clerk of the district.
21 The municipal officers, by majority vote, may remove their
22 appointed representatives during their term for stated reasons,
23 but ~~no~~ directors ~~shall~~ may not be removed except for neglect of
24 duty, misconduct or other acts ~~which~~ that indicate an unfitness
25 to serve. Upon receipt of the names of all the directors, the
26 ~~Board of Environmental Protection commissioner~~ shall set a time,
27 place and date for the first meeting of the directors, notice
28 thereof to be given to the directors by certified or registered
29 mail, return receipt requested, mailed at least 10 days prior to
30 the date set for the meeting.

31 **Sec. B-279. 38 MRSA §1727,** as enacted by PL 1983, c. 820, §2,
32 is amended to read:

33 **§1727. Admission of new member municipalities**

34
35
36 The board of directors may authorize the inclusion of
37 additional member municipalities in the district upon the terms
38 and conditions as the board, in its sole discretion, ~~shall-deem~~
39 to-be determines fair, reasonable and in the best interest of the
40 district, except that on proper application, any municipality
41 ~~which~~ that is host to a waste facility of the district shall be
42 admitted on equal terms with existing members, provided that the
43 new member municipality assumes or becomes responsible for a
44 proportionate share of liabilities of the district in a manner
45 similar to that of existing municipalities. The legislative body
46 of any nonmember municipality ~~which~~ that desires to be admitted
47 to the district shall make application for admission to the board
48 of directors of the district. The directors shall determine the
49 effects and impacts ~~which-are~~ likely to occur if the municipality
50 is admitted and shall either grant or deny authority for
51 admission of the petitioning municipality. If the directors

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2 grant the authority, they shall also specify any terms and
3 conditions, including, but not limited to, financial obligations
4 upon which the admission is predicated. The petitioning
5 municipality shall comply with the voting procedures specified in
6 section 1721. The vote, if in the affirmative, shall must be
7 certified by the clerk of that municipality to the board of
8 directors and to the ~~Board of Environmental Protection~~
9 commissioner. Upon satisfactory performance of the terms and
10 conditions of admission, the municipality shall by resolution of
11 the board of directors become and thereafter be a member
12 municipality of the district. The clerk of the district shall
13 promptly certify to the board and the Secretary of State that the
14 municipality ~~has become~~ is a member of the district. The
15 certification ~~shall become~~ becomes conclusive evidence that the
16 municipality is a lawful member of the district. Upon admission
17 of a municipality to a district, the provisions of section 1724
18 shall determine the number of votes ~~which shall be~~ that are cast
19 by the director or directors representing that municipality.

20 **Sec. B-280. 38 MRSA §2002, sub-§1**, as amended by PL 1989, c.
21 106, §2, is further amended to read:

22
23 1. **Application.** The municipal officers of the municipality
24 or municipalities, or portions of the municipality or
25 municipalities, or the residents of unorganized territory who
26 desire to form a watershed district shall file an application
27 with the Board of Environmental Protection on a form or forms to
28 be prepared by the ~~board~~ commissioner, setting forth the name or
29 names of the municipality or municipalities, or portions of the
30 municipality or municipalities, or, in the case of residents of
31 unorganized territory, the names of those residents that propose
32 to be included in the district and they shall furnish such other
33 data as the board ~~may determine~~ determines necessary and proper.
34 The application shall must contain, but is not be limited to, a
35 description of the territory of the proposed district, the names
36 of water districts ~~which~~ that utilize water from surface or
37 ground water supplies within the territory of the proposed
38 district, the name proposed for the district which shall must
39 include the words "watershed district" or "lake management
40 district" and a statement showing the existence in such that
41 territory of the need for a coordinated approach to lake
42 watershed management as provided in this chapter.

43 **Sec. B-281. 38 MRSA §2002, sub-§§2 and 3**, as enacted by PL
44 1987, c. 711, are amended to read:

45
46 2. **Application by referendum.** Residents of a municipality
47 or municipalities, or portions thereof, that desire to form a
48 watershed district may petition the municipal officers to file an
49 application for a watershed district with the Board of
50 Environmental Protection. The petition shall must contain a
51 description of the territory of the proposed district.
52

2 Upon receipt of a written petition signed by at least 10% of the
4 number of voters voting for the gubernatorial candidates at the
6 last statewide election in that proposed district, the municipal
8 officers shall submit the question to the voters of the proposed
district at the next general, primary or special election within
the proposed district. The referendum question shall must read as
follows:

10 "Shall the municipal officers representing the proposed
12 watershed district, consisting of (describe the territory of
the proposed district), file an application for a watershed
14 district with the Board of Environmental Protection on
behalf of the residents of the proposed district?"

16 If the referendum question is approved by a majority of the legal
18 voters voting at the election, provided that the total number of
votes cast for and against the referendum question equals or
20 exceeds 20% of the total number of votes cast in the proposed
district in the last gubernatorial election, the municipal
22 officers representing the residents of the proposed watershed
district shall file an application for that proposed district in
accordance with subsection 1.

24
26 **3. Public hearing.** Upon receipt of the application, the
Board of Environmental Protection shall cause hold a public
28 hearing ~~to be held on~~ regarding the application in one of the
municipalities within the proposed district or, in the case of an
30 application made solely by residents of unorganized territory, at
some convenient place within the boundaries of the proposed
district.

32
34 **Sec. B-282. 38 MRSA §2002, sub-§§4 to 6,** as amended by PL 1989,
c. 106, §2, are further amended to read:

36 **4. Approval of application.** After the public hearing on
the evidence received at the hearing, the board shall make
38 findings of fact and conclusions and determine of record whether
or not the conditions requisite for the creation of a watershed
40 district exist in the territory described in the application. If
the board finds that such conditions do exist, it shall issue an
42 order approving the proposed district as conforming to the
requirements of this chapter and designating the name of the
44 proposed district. The ~~board~~ commissioner shall give notice to
participating water districts, the municipal officers within the
46 municipality or municipalities involved and, when unorganized
territory is involved, to the persons signing the application
48 ~~mentioned described~~ in subsection 1 and the commissioners of the
county in which the unorganized territory is located of a date,
50 time and place of a meeting of the municipal officers of the
municipality or municipalities involved and, when unorganized
52 territory is involved, a joint meeting of all the persons signing

2 the application mentioned described in subsection 1 and the
3 commissioners of the county in which the unorganized territory is
4 located. The notice shall must be in writing and sent by
5 registered or certified mail, return receipt requested, to the
6 addresses shown on the application mentioned described in
7 subsection 1 and, in the case of county commissioners, to the
8 addresses of those commissioners obtained from the county clerk.
9 A return receipt properly endorsed shall ~~be~~ is evidence of the
10 receipt of notice. The notice shall must be mailed at least 10
11 days prior to the date set for the meeting.

12 **5. Denial of application.** If the board, after that public
13 hearing, determines that the creation of a watershed district in
14 the territory described in the application is not warranted for
15 any reason, it shall make findings of fact and conclusions and
16 enter an order denying its approval. The ~~board~~ commissioner shall
17 give notice of that denial by mailing certified copies of the
18 decision and order to participating water districts, the
19 municipal officers of the municipality or municipalities involved
20 and, when unorganized territory is involved, to the persons
21 signing the application mentioned described in subsection 1 and
22 the commissioners of the county in which the unorganized
23 territory is located. No application for the creation of a
24 watershed district, consisting of exactly the same territory, may
25 be entertained within one year after the date of the issuance of
26 an order denying approval of the formation of that watershed
27 district, but this provision shall does not preclude action on an
28 application for the creation of a watershed district embracing
29 all or part of the territory described in the original
30 application, provided that another municipality or fewer
31 municipalities, or other or fewer sections thereof, are involved
32 or that a different area of unorganized territory is involved or,
33 in the case of an application made solely by residents of
34 unorganized territory, that an allegation of change in
35 circumstances from those existing on the date of the previous
36 application must be furnished to the board with the resubmitted
37 application.

38 **6. Joint meeting.** The persons, other than participating
39 water districts, to whom the notice described in subsection 3 is
40 directed shall meet at the time and place appointed. When more
41 than one municipality or unorganized territory is involved, the
42 persons shall organize by electing a ~~chairman~~ chair and a
43 secretary. ~~No~~ An action may not be taken at any such meeting
44 unless, at the time the meeting is convened, there are present at
45 least 1/2 of the total number of municipal officers eligible to
46 attend and participate at the meeting and, when the proposed
47 district includes or is composed solely of unorganized territory,
48 at least 2/3 of the persons signing the application mentioned
49 described in subsection 1 and at least 2 commissioners of the
50 county in which the unorganized territory is located, other than
51 to report to the ~~Board of Environmental Protection~~ commissioner

2 that a quorum was not present and to request the board
3 commissioner to issue a new notice for another meeting. The
4 purpose of the meeting shall ~~be~~ is to determine a fair and
5 equitable number of trustees, subject to section 2004, to be
6 elected by and represent each participating municipality or, in
7 the case of unorganized territory, the residents of that
8 territory within the bounds of the proposed district. When a
9 decision has been reached on the number of trustees and the
10 number to represent each municipality or the residents of the
11 unorganized territory within the bounds of the proposed district,
12 subject to the limitations provided, this decision shall must be
13 reduced to writing by the secretary and must be approved by a 2/3
14 vote of those present. When 2 or more municipalities are, or
15 unorganized territory is, involved, the vote so reduced to
16 writing and the record of the meeting shall must be signed by the
17 chair and attested by the secretary and filed with the board
18 commissioner. When a single municipality is involved, a copy of
19 the vote of the municipal officers duly attested by the clerk of
20 the municipality shall must be filed with the board commissioner.

21 **Sec. B-283. 38 MRSA §2002, sub-§7**, as enacted by PL 1987, c.
22 711, is amended by amending the first paragraph to read:

23 7. **Submission.** When the record of the municipality or the
24 record of the joint meeting, when municipalities are, or
25 unorganized territory is, involved, has been received by the
26 board commissioner and found by ~~it~~ the commissioner to be in
27 order, the board commissioner shall order the question of the
28 formation of the proposed watershed district and other related
29 questions to be submitted to the legal voters residing within
30 that portion of the municipality, municipalities or unorganized
31 territory which ~~that~~ falls within the proposed watershed
32 district. The order shall must be directed to the municipal
33 officers of the municipality or municipalities which propose to
34 form the watershed district and, when the proposed watershed
35 district includes or is composed solely of unorganized territory,
36 to the commissioners of the county in which the unorganized
37 territory is located, directing them to call town meetings, city
38 elections or a meeting of the residents of the unorganized
39 territory within the bounds of the proposed watershed district
40 for the purpose of voting in favor of or in opposition to each of
41 the following articles or questions, as they may apply, in
42 substantially the following form:

43 **Sec. B-284. 38 MRSA §2003**, as amended by PL 1989, c. 106, §4,
44 is further amended to read:

45 **§2003. Approval and organization**

46 When the residents of the municipality or each municipality,
47 when more than one is involved, or the unorganized territory
48 within the proposed watershed district have voted upon the
49
50
51
52

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2 formation of a proposed watershed district and all of the other
3 questions submitted therewith, the clerk of each municipality
4 and, when the proposed district includes unorganized territory,
5 the county clerk shall make a return to the ~~Beard--of~~
6 ~~Environmental-Protection~~ commissioner in such form as the ~~beard~~
7 commissioner determines. If the ~~beard~~ commissioner finds from the
8 returns that a majority of the residents within each of the
9 municipalities involved and, when the proposed district includes
10 unorganized territory, that a majority of the residents of the
11 unorganized territory within the proposed watershed district,
12 voting on each of the articles and questions submitted to them,
13 have voted in the affirmative and have elected the necessary
14 trustees and the names of those elected to represent each
15 municipality, or the residents of the unorganized territory
16 within the proposed watershed district, that each participating
17 water district has appointed a trustee as provided by section
18 2002, subsection 6-A, and that all other steps in the formation
19 of the proposed watershed district are in order and in conformity
20 with law, the ~~beard~~ commissioner shall make a finding to that
21 effect and record ~~the same~~ upon ~~its~~ departmental records. The
22 ~~beard~~ commissioner shall, immediately after making ~~its~~ findings,
23 issue a certificate of organization in the name of the watershed
24 district in such form as the ~~beard~~ commissioner determines. The
25 original certificate shall must be delivered to the trustees on
26 the day that they are directed to organize and a copy of the
27 certificate duly attested by the ~~Commissioner--of--Environmental~~
28 ~~Protection--shall~~ commissioner must be filed and recorded in the
29 Office of the Secretary of State. The issuance of that
30 certificate by the ~~beard--shall--be~~ commissioner is conclusive
31 evidence of the lawful organization of the watershed district.
32 The watershed district shall is not be operative until the date
33 set by the ~~beard~~ commissioner under section 2006.

34 **Sec. B-285. 38 MRSa §2005**, as amended by PL 1989, c. 106, §§6
35 and 7, is further amended by amending the first paragraph to read:

36
37 Except for trustees representing participating water
38 districts, whose selection is governed by section 2002,
39 subsection 6-A, trustees shall be nominated and elected in the
40 same manner as municipal officers are nominated and elected under
41 Title 30-A, or in accordance with a municipal charter, whichever
42 is applicable; or, in the case of unorganized territory, in
43 accordance with the procedure for the organization of larger
44 townships set forth in Title 30-A, section 7001. Upon receipt of
45 the names of all the trustees, the ~~Beard--of--Environmental~~
46 ~~Protection~~ commissioner shall set a time, place and date for the
47 first meeting of the trustees, notice of the meeting to be given
48 to the trustees by certified or registered mail, return receipt
49 requested, mailed at least 10 days prior to the date set for the
50 meeting, to determine the length of their terms. Except for
trustees representing water districts whose term is set by

2 section 2002, subsection 6-A, the terms shall must be determined
by lot in accordance with the following table:

4 **Sec. B-286. 38 MRSA §2006**, as enacted by PL 1987, c. 711, is
amended to read:

6 **§2006. Operational date of watershed districts**

8
10 On the date set by the ~~Beard-of-Environmental-Protection~~
commissioner as provided in section 2005, the watershed district
shall-~~become~~ becomes operative.

12 **Sec. B-287. 38 MRSA §2007, sub-§4, ¶A**, as enacted by PL 1987,
14 c. 711, is amended to read:

16 A. The district has no authority to set a water level
18 regime for a body of water impounded by a dam which that is
exempt, under section 840, subsection 1, from the authority
20 of the ~~Beard-of-Environmental-Protection~~ commissioner to set
water level regimes.

22 **Sec. B-288. 38 MRSA §2103, sub-§1, ¶K**, as enacted by PL 1989,
24 c. 585, Pt. A, §7, is amended to read:

26 K. Direct solid wastes from one public or private waste
28 facility to another facility when an emergency is determined
to exist by rule or by the Governor. The agency shall
30 negotiate to provide to the receiving facility fair
compensation for the disposal or processing of waste at that
32 facility during the period of emergency. The agency shall
consult with the ~~department~~ commissioner in the exercise of
this power;

34 **Sec. B-289. 38 MRSA §2157, first ¶**, as enacted by PL 1989, c.
36 585, Pt. A, §7, is amended to read:

38 Subsequent to the adoption of the state plan, the ~~Beard~~
Department of Environmental Protection shall may not approve an
40 application of a new or expanded solid waste disposal facility
requiring review under this section until the agency has approved
42 the proposed facility under this section.

44 **Sec. B-290. 38 MRSA §2158, sub-§1**, as enacted by PL 1989, c.
585, Pt. A, §7, is amended to read:

46 1. **Previously licensed facility.** The facility had has been
48 previously licensed by the ~~Beard~~ Department of Environmental
Protection prior to the adoption of the state plan; and

50 **Sec. B-291. 38 MRSA §2171, sub-§3, ¶D**, as enacted by PL 1989,
52 c. 585, Pt. A, §7, is amended to read:

2 D. Serve as a liaison between the community and the agency,
project developer or the department commissioner to
4 facilitate communications during the development and
operation of the facility, and provide residents with
6 updated information about the project, including providing
explanations of any technical terms.

8 **Sec. B-292. 38 MRSA §2174**, as enacted by PL 1989, c. 585, Pt.
A, §7, is amended to read:

10 **§2174. Local inspection and enforcement**

12
14 **1. Certification.** The department commissioner shall
establish and conduct a training program to certify host
municipality inspectors. This program shall must be made
16 available to persons who have been designated by the
municipality. The department commissioner shall offer training
18 programs at least twice a year and shall pay for the host
inspection training program. The department commissioner may
20 certify and decertify host municipality inspectors pursuant to
rules promulgated by the Board of Environmental Protection.

22
24 **2. Information.** The host municipality of a solid waste
disposal facility owned by the agency or a regional association
shall have a right to all information from the department and the
26 solid waste disposal facility operator, pursuant to Title 1,
chapter 13, subchapter I. All information provided under this
28 subsection shall must be made available to the citizen advisory
committee and the public by the host municipality.

30
32 **A.** The department commissioner shall provide all of the
following information to the municipal officers of the host
municipality:

34
36 (1) Copies of any inspection report of the facility
within 5 working days of the preparation of the report;

38 (2) Prompt notification of all enforcement or emergency
orders for those facilities, including, but not limited
40 to, abatement orders, cessation orders, final civil
penalty assessments, consent orders and decrees and
42 notices of violation;

44 (3) Copies of all air, soil and water quality
monitoring data collected by the department
46 commissioner at such facilities, including leachate and
ash testing results, within 5 working days after
48 complete laboratory analysis becomes available to the
department commissioner; and

50
52 (4) Copies of all departmental analyses of the data
under subparagraph (3).

2 B. The operator of the facility shall provide the host
4 municipality copies of all air, soil and water quality
6 monitoring data, including leachate and ash testing results,
conducted by or on behalf of the operator, within 5 days
after that information becomes available to the operator.

8 C. The municipality shall provide all of the following
information to the department commissioner:

10 (1) Copies of any inspection report of the facility
12 within 5 working days of the preparation of the report;

14 (2) Prompt notification of all enforcement or emergency
16 orders for those facilities, including, but not limited
18 to, abatement orders, cessation orders, final civil
penalty assessments, consent orders and decrees and
notices of violation;

20 (3) Copies of all air, soil and water quality
22 monitoring data collected by the municipality at such
24 facilities, including leachate and ash testing results,
within 5 working days after complete laboratory
analysis becomes available to the municipality; and

26 (4) Copies of all analyses of the data under
subparagraph (3).

28 **3. Inspection; emergency orders.** A certified inspector is
30 authorized to enter property of the agency or any regional
32 association within the inspector's jurisdiction, inspect records
34 required by the department, take samples and conduct inspections
in accordance with departmental regulations rules applicable to
employees of the department. A certified inspector may order the
operator of the facility to cease any operation or activity at
36 the facility that constitutes an immediate threat to public
health or safety or to the environment. The inspector shall
38 notify the department commissioner and the municipal officers of
the host municipality within 2 hours of issuing such an order.

40 **4. Commissioner inspections.** Whenever any host
42 municipality notifies the department commissioner of an order
issued pursuant to a local permit requirement under section 2173
44 and gives the department commissioner reason to believe that any
solid waste disposal facility owned by the agency or regional
46 association is in violation of any law or regulation administered
by the department, or any order or the condition of any permit
48 issued pursuant thereto to any law or rule administered by the
department, the department commissioner shall promptly conduct an
50 inspection of the facility.

2 If the department commissioner finds that there is insufficient
information to believe that there is a violation, the department
4 commissioner shall, within 10 working days of a municipality's
request for an inspection, provide to the municipality a written
6 explanation of its the commissioner's decision not to conduct an
inspection.

8 **Sec. B-293. 38 MRSA §2177**, as enacted by PL 1989, c. 585, Pt.
A, §7, is amended to read:

10 **§2177. Water supply monitoring and protection**

12
14 Upon written request from persons owning land contiguous to
a waste landfill approved under subchapter IV, the operator of
the landfill shall have quarterly samplings sampling and analyses
16 analysis conducted of private water supplies used by the
requestors for drinking water. The sampling and analysis shall
18 must be conducted in a manner specified by and shall meet
criteria developed by the department.

20
22 Any person owning or operating a waste landfill that
adversely affects a public or private water supply by pollution,
degradation, diminution or other means that result in a violation
24 of the state drinking water standards as determined by the
department commissioner shall restore the affected supply at no
26 cost to the owner or replace the affected supply with an
alternative source of water that is of like quantity and quality
28 to the original supply at no cost to the owner.

30 1. **Extent of analysis.** Water supplies shall must be
analyzed for all parameters or chemical constituents determined
32 by the department commissioner to be indicative of typical
contamination from solid waste landfills. The laboratory
34 performing the sampling and analysis shall provide written copies
of sample results to the landfill owner, the landowner and to the
36 department commissioner.

38 2. **Additional sampling required.** If the analysis indicates
possible contamination from a solid waste landfill, the
40 department commissioner shall conduct, or require the landfill
operator to have the laboratory conduct, additional sampling and
42 analysis to determine more precisely the nature, extent and
source of contamination. The department commissioner shall, if
44 necessary, require this sampling beyond the boundaries of the
contiguous property.

46
48 3. **Written notice of rights.** On or before December 1,
1989, for permits issued under this chapter prior to October 1,
1989, and at or before the time of permit issuance for permits
50 issued under this chapter after October 1, 1989, the operator of
each waste landfill shall provide owners of contiguous land with

written notice of their rights under this section on a form prepared by the department commissioner.

Sec. B-294. 38 MRSa §2212, sub-§12, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

12. Government aid. Accept loans or grants for the planning, construction or acquisition of any eligible solid waste project from a municipality, an authorized agency of the State or a federal agency and enter into agreements with the agency respecting the loans or grants. In the case of all loans, grants or other aid involving pollution-control facilities, the consent of the ~~Board of Environmental Protection~~ commissioner must first be obtained, notwithstanding section 362;

Sec. B-295. 38 MRSa §2213, sub-§10, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

10. Environmental protection. Revenue obligation securities of the agency shall may not be issued for a project until the ~~department has certified~~ commissioner certifies to the agency that all licenses required by the department with respect to the project ~~have been~~ are issued or that none are required. Any subsequent enlargement or addition to the project for which approval is sought from the agency requires certification by the department commissioner.

Sec. B-296. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1990-91

**ENVIRONMENTAL PROTECTION,
DEPARTMENT OF**

Board of Environmental Protection

Positions	(2)
Personal Services	\$106,778
All Other	49,150
Capital Expenditures	9,500
TOTAL	\$165,428

Provides funds for an executive director, a Clerk Typist III position, general operating expenses and additional per diem and rule-making expenses. This appropriation is intended to establish a separate account for the board.

Administration

COMMITTEE AMENDMENT "A" to H.P. 1602, L.D. 2214

2	Positions	(-1)
	Personal Services	(\$34,500)
4	All Other	(28,000)
6	TOTAL	<u>(\$62,500)</u>
8	Provides for the transfer of a Clerk Typist III position and operating funds to the 10 Board of Environmental Protection Account.	
12	Department-wide	
14	All Other	(\$5,224)
16	Provides for the deappropriation of funds for anticipated certified mail savings and a 18 reduction in rule-making expenses.	
20	DEPARTMENT OF ENVIRONMENTAL PROTECTION	
	TOTAL	<u>\$97,704</u>

24 **FISCAL NOTE**

26 Enactment of this bill will result in:

28 1. A General Fund appropriation to the Board of
Environmental Protection within the Department of Environmental
30 Protection in the amount of \$165,428 for fiscal year 1990-91.
This appropriation provides funds for an executive director, a
32 Clerk Typist III position, general operating expenses and
additional per diem and rule-making expenses. This appropriation
34 is intended to establish a separate account for the board.

36 2. A General Fund deappropriation to the Department of
Environmental Protection (Administration Account #01530.1) in the
38 amount of (\$62,500) for fiscal year 1990-91. This
deappropriation provides for the transfer of funds currently
40 budgeted for a Clerk Typist III position, per diem, printing,
travel, advertising, postage and rent. This deappropriation will
42 allow the transfer of funds from the Administration Account
#01530.1010 to the newly established account for the board.

44 A General Fund deappropriation to the Department of
46 Environmental Protection in the amount of (\$5,224) for fiscal
year 1990-91. This deappropriation includes budget reductions
48 for anticipated certified mail savings and a reduction in
rule-making expenses.'

50

52

STATEMENT OF FACT

2 Part A of this amendment amends the original bill in several
ways.

4 1. The purpose statement of the Department of Environmental
6 Protection is redefined.

8 2. A requirement that the Board of Environmental Protection
accept public comment on proposed rule revisions is removed.

10 3. Requirements for specific processing times are removed
12 and replaced with language to have the department make license
and permitting decisions as expeditiously as possible.

14 4. The reconsideration section is amended to incorporate
16 standards for when material can be added to the record.

18 5. A requirement for a department-wide data base is delayed.

20 6. A comment period on rules submitted to the board by the
commissioner is removed.

22 7. Coordination and assistance procedures for the
24 commissioner are amended.

26 8. A requirement that all department decisions be sent by
certified mail is changed to require that denials only be sent by
28 certified mail.

30 9. The provision relating to administrative consent
agreements being open to public comment is changed to allow
32 comment only at the board's discretion.

34 10. Rule-making requirements for the board are delayed by
up to one year.

36 In addition, there are several minor changes. Part B of the
38 amendment clarifies the role of the commissioner and the board
throughout the Maine Revised Statutes, Title 38 and transfers
40 some functions from the board to the commissioner. Specifically,
the major functions transferred from the board to the commissioner
42 are:

44 1. Setting fees within statutory limits;

46 2. Approving municipal shoreland zoning ordinances within
guidelines set by the board;

48 3. Awarding ownership of abandoned dams;

50 4. Deciding water level petitions;

52

