

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1845

H.P. 1285

House of Representatives, April 9, 2007

### **An Act To Strengthen the Laws Concerning Surface Water Ambient Toxic Monitoring**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Natural Resources suggested and ordered printed.

*Millicent M. MacFarland*  
MILLCENT M. MacFARLAND  
Clerk

Presented by Representative PERCY of Phippsburg.  
Cosponsored by Senator DAMON of Hancock and  
Representative: KOFFMAN of Bar Harbor, Senator: MARTIN of Aroostook

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

2 **Sec. 1. 38 MRSA §420-B, sub-§1, ¶B,** as enacted by PL 1993, c. 720, §1, is  
3 amended to read:

4 B. Prepare a work program each year that defines the work to be conducted that  
5 year toward the objectives of the 5-year plan. This work program must identify  
6 specific sites, the sampling media and the contaminants that will be tested.

7 (1) The commissioner shall consider the following factors when selecting  
8 monitoring sites for the annual work program:

9 (a) The importance of the water body to fisheries, wildlife and humans;

10 (b) Known or likely sources of contamination and their relative risk to  
11 human or ecological health;

12 (c) The existence of pending waste discharge licenses affecting the water  
13 body;

14 (d) The availability of reference sites that are relatively unaffected by human  
15 activity;

16 (e) Anticipated improvement or degradation of the water body; and

17 (f) The availability of current, valid data from other sources on the level of  
18 toxic contamination of the water body.

19 (2) The commissioner shall incorporate the following types of testing in the  
20 program:

21 (a) Monitoring of toxic contaminant levels in biological tissue and water  
22 body sediments, and monitoring of the water column may be included;

23 (b) Analysis of the resident biological community in the monitored water  
24 body; and

25 (c) Monitoring of the health of individual organisms that may serve as  
26 indicators of toxic contamination.

27 (3) When selecting the specific toxic substances to be monitored in the annual  
28 program, the commissioner shall consider:

29 (a) Toxic substances that have the potential to affect human or ecological  
30 health at expected concentrations;

31 (b) Toxic substances from both natural and human sources;

32 (c) Toxic substances that serve as tracers for human sources of pollution;

33 (d) Toxic substances or measures of contamination that may be more cost-  
34 effective indicators of other toxic substances; and

35 (e) Toxic substances for which there are analytical test methods approved  
36 by the United States Environmental Protection Agency or, where such  
37 methods have not been approved, for which the commissioner determines,

1 with the assistance of the technical advisory group established under this  
2 section, that proven, reliable methods have been established.

3 The commissioner shall include in the annual work program a written statement  
4 providing the factual basis for the selection of the specific toxic substances to be  
5 monitored. Prior to implementation of the annual work program, the toxic  
6 substances to be monitored and, if not approved by the United States  
7 Environmental Protection Agency, the analytical test methods to be used must be  
8 approved by the technical advisory group by a 2/3 vote.

9 (4) When determining the intensity of the monitoring effort in the annual  
10 program, the commissioner shall consider:

11 (a) The potential for annual variation in toxic contamination at a monitoring  
12 site;

13 (b) The degree of homogeneity in the materials to be sampled; and

14 (c) The uncertainty in observations due to possible systematic and analytic  
15 error.

16 (5) A technical advisory group composed of ~~44~~ 12 individuals is established.  
17 The commissioner shall appoint 2 members with scientific backgrounds in toxic  
18 contamination or monitoring, ecological assessment or public health from each of  
19 the following interests: business, municipal, conservation, public health and  
20 academic interests. The President of the Senate ~~and the Speaker of the House of~~  
21 ~~Representatives~~ shall ~~jointly~~ appoint as a nonvoting member one ~~Legislator~~  
22 Senator who serves on the joint standing committee of the Legislature having  
23 jurisdiction over natural ~~resource~~ resources matters. The Speaker of the House  
24 shall appoint as a nonvoting member one member of the House of  
25 Representatives who serves on the joint standing committee of the Legislature  
26 having jurisdiction over marine resources matters. The commissioner shall  
27 appoint the chair from among the voting members. A quorum of 6 voting  
28 members must be present for the conduct of business. Members do not receive  
29 compensation or reimbursement for expenses.

30 The members appointed by the commissioner serve for terms of 3 years except  
31 that, for the initial appointments, 2 members serve terms of one year, 4 members  
32 serve terms of 2 years and 4 members serve terms of 3 years. The ~~Legislator~~  
33 ~~serves~~ Legislators serve for the duration of the Legislature to which the  
34 ~~Legislator is~~ Legislators are elected.

35 The group shall advise the commissioner during the development of the 5-year  
36 monitoring plan and the annual work programs.

37 **Sec. 2. 38 MRSA §420-B, sub-§4**, as amended by PL 1997, c. 179, §4, is further  
38 amended to read:

39 **4. Report.** No later than March 31st of each year, the commissioner shall report on  
40 the monitoring program to the joint standing ~~committee~~ committees of the Legislature  
41 having jurisdiction over natural ~~resource~~ resources matters and marine resources matters.  
42 This report must contain:

- 1 A. At the start of each 5-year period, the 5-year monitoring plan;
- 2 B. The annual work program for the past year and the current year;
- 3 C. The commissioner's conclusions as to the levels of toxic contamination in the  
4 State's waters and fisheries;
- 5 D. Any trends of increasing or decreasing levels of contaminants found; and
- 6 E. The report on the results of the dioxin monitoring program required under  
7 section 420-A, subsection 4.

8 **Sec. 3. Continuance of program.** The Commissioner of Marine Resources and  
9 the Commissioner of Environmental Protection shall jointly prepare a report for  
10 submission to the Joint Standing Committee on Marine Resources and the Joint Standing  
11 Committee on Natural Resources no later than January 4, 2008. The report, which may  
12 include implementing legislation, must provide a detailed plan that ensures a reliable and  
13 consistent source of funding for the surface water ambient toxic monitoring program  
14 required under the Maine Revised Statutes, Title 38, section 420-B.

15 **SUMMARY**

16 This bill strengthens the surface water ambient toxic monitoring program as it relates  
17 to inland and coastal waters by:

- 18 1. Altering the membership of the technical advisory group to include a second  
19 nonvoting legislative member by adding a Legislator who serves on the joint standing  
20 committee of the Legislature having jurisdiction over marine resources matters;
- 21 2. Requiring submission of the annual report on the monitoring program to the joint  
22 standing committee of the Legislature having jurisdiction over marine resources matters;  
23 and
- 24 3. Directing the Commissioner of Environmental Protection and the Commissioner  
25 of Marine Resources to make a report to the relevant joint standing committees by  
26 January 4, 2008 identifying a reliable and consistent source of funding for the program.