LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

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PUBLIC LAWS

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(5) Organizational theory and planning;

(6) Educational leadership;

(7) Educational philosophy and theory;

(8) Effective instruction;

(9) Curriculum development;

(10) Staff development; ~~and~~

(11) Cultural differences and discriminatory and nondiscriminatory hiring practices; and

~~(11)~~ (12) Other competency areas as determined by state board rule; and

Sec. 10. 20-A MRSA §13019-B, sub-§1, ¶C, as enacted by PL 1985, c. 287, §5, is amended to read:

C. A basic level of knowledge in the following areas:

(1) Community relations;

(2) School finance and budget;

(3) Supervision and evaluation of personnel;

(4) Federal and state civil rights and education laws;

(5) Organizational theory and planning;

(6) Educational leadership;

(7) Educational philosophy and theory;

(8) Effective instruction;

(9) Curriculum development;

(10) Staff development; ~~and~~

(11) Cultural differences and discriminatory and nondiscriminatory hiring practices; and

~~(11)~~ (12) Other competency areas as determined by state board rule; and

Sec. 11. Study of incentive programs. The State Board of Education and the Commissioner of Educational and Cultural Services shall conduct a study and recommend to the 115th Legislature a program to establish and partially fund local internships in educational administration. These internships must be specifically aimed at providing an opportunity for women in the positions of assistant principal, principal and assistant superintendent. The state board and the commissioner shall design the program so that individuals who apply are selected for participation by school administrative units on a competitive basis. The state board and the commissioner shall design the program to enhance each participating unit's compliance with each unit's affirmative action plan. The state board and the commissioner shall recommend an appropriate level of funding for the program.

Sec. 12. Report on staffing needs. The Commissioner of Educational and Cultural Services shall report to the 115th Legislature on the level of additional staffing necessary to implement this Act.

Sec. 13. University of Maine System study of gender equity curriculum. The Trustees of the University of Maine System shall study and report to the 115th Legislature and the Joint Standing Committee on Education on:

1. How the University of Maine System, in cooperation with the Department of Educational and Cultural Services and the Maine Human Rights Commission, will address the recommendations of the Blue Ribbon Task Force to Promote Equity of Opportunity for Women in the Public School System; and

2. How the University of Maine System will develop and implement a curriculum on cultural differences that is a requirement of program certification.

The University of Maine System, through its undergraduate and graduate programs in the College of Education, shall include the study of gender equity and cultural differences. The University of Maine System shall support its campuses in the delivery of this curriculum.

See title page for effective date.

CHAPTER 890

H.P. 1602 - L.D. 2214

An Act to Clarify the Role of the Board of Environmental Protection

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

PART A

Sec. A-1. 2 MRSA §6, sub-§4, as repealed and replaced by PL 1989, c. 502, Pt. A, §2, and c. 585, Pt. A, §2, is repealed and the following enacted in its place:

4. Range 88. The salaries of the following state officials and employees shall be within salary range 88:

State Purchasing Agent;

Director, Arts and Humanities Bureau;

Director, State Museum Bureau;

Director of the Bureau of Parks and Recreation;

State Director of Alcoholic Beverages;

Director of Public Lands;

State Librarian;

Director of Employee Relations;

Director, Bureau of Air Quality Control;

Director, Bureau of Land Quality Control;

Director, Bureau of Water Quality Control;

Director, Bureau of Oil and Hazardous Materials Control;

Director, Bureau of Solid Waste Management;

Director, Bureau of Administration;

Director, Office of Planning;

Director, Office of Waste Reduction and Recycling;

Director, Office of Siting and Disposal Operations; and

Executive Director, Board of Environmental Protection.

Sec. A-2. 5 MRSA §938-A is enacted to read:

§938-A. Board of Environmental Protection

1. Major policy-influencing positions. The following positions are major policy-influencing positions within the Board of Environmental Protection. Notwithstanding any other provision of law, these positions and their successor positions shall be subject to this chapter.

A. Executive Director.

Sec. A-3. 5 MRSA §12004-D, sub-§2, as amended by PL 1989, c. 503, Pt. A, §8, is further amended to read:

2. Board of Environmental Protection	Legislative Per Diem	38 MRSA ~~§361~~ §341-A

Sec. A-4. 32 MRSA §§4172, 4173 and 4174, as amended by PL 1971, c. 618, §12, are further amended to read:

§4172. Classification

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

§4173. Certification

The ~~board~~ commissioner shall certify persons as to their competency to supervise successfully the operation of wastewater treatment plants. ~~No~~ A certification ~~shall be~~ is not required of an operator who is a registered professional engineer.

§4174. Examination; criteria; standards

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

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

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

Sec. A-5. 32 MRSA §4175, as amended by PL 1977, c. 694, §635, is further amended to read:

§4175. Certificates

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

Certificates shall continue in effect unless revoked by the Administrative Court.

The Administrative Court may revoke the certificate of an operator, in accordance with Title 4, chapter 25, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment or the application of ~~his~~ the operator's knowledge or ability was not used in the performance of ~~his~~ the operator's duties; or that the operator is incompetent or unable properly to perform ~~his~~ the operator's duties.

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

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

Sec. A-6. 32 MRSA §4176, as amended by PL 1971, c. 618, §12, is further amended to read:

§4176. Without examination, other states

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

Sec. A-7. 32 MRSA §4179, as repealed and replaced by PL 1977, c. 300, §8, is amended to read:

§4179. Rules

The Board of Environmental Protection shall ~~make~~ adopt rules ~~and regulations~~ which include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 4172 and provisions establishing requirements for certification and procedures for examination of candidates.

Sec. A-8. 32 MRSA §4181, as amended by PL 1973, c. 625, §224, is further amended to read:

§4181. Penalty

~~On or after one year following October 1, 1969, it shall be~~ It is unlawful for any person, firm or corporation, both municipal and private, ~~operating~~ to operate a wastewater treatment plant ~~to operate same~~ unless the competency of the operator ~~only~~ is certified to by the ~~board~~ commissioner under this chapter. It ~~shall be~~ is unlawful for any person to perform the duties of an operator, as defined, without being duly certified under this chapter. The ~~board~~ commissioner may further grant a waiver for a period not exceeding one year for the operation of a wastewater treatment plant serving not more than 500 services in the event that the certification requirements cannot be met.

Sec. A-9. 36 MRSA §656, sub-§1, ¶E, as amended by PL 1985, c. 298, is further amended to read:

E. Pollution control facilities.

(1) Water pollution control facilities having a capacity to handle at least 4,000 gallons of waste per day, certified as such by the ~~Board~~ Commissioner of Environmental Protection, and all parts and accessories thereof.

As used in this paragraph~~:~~, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Facility" means any disposal system or any treatment works, appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling or eliminating water pollution caused by industrial, commercial or domestic waste.

(b) "Disposal system" means any system used primarily for disposing of or isolating industrial, commercial or domestic waste and includes thickeners, incinerators, pipelines or conduits, pumping stations, force mains and all other constructions, devices, appurtenances and facilities used for collecting or conducting water borne industrial, commercial or domestic waste to a point of disposal, treatment or isolation, except that which is necessary to the manufacture of products.

(c) "Industrial waste" means any liquid, gaseous or solid waste substance capable of polluting the waters of the State and resulting from any process, or the development of any process, of industry or manufacture.

(d) "Treatment works" means any plant, pumping station, reservoir or other works used primarily for the purpose of treating, stabilizing, isolating or holding industrial, commercial or domestic waste.

(e) "Commercial waste" means any liquid, gaseous or solid waste substance capable of polluting the waters of the State and resulting from any activity which is primarily commercial in nature.

(f) "Domestic waste" means any liquid, gaseous or solid waste substance capable of polluting the waters of the State and resulting from any activity which is primarily domestic in nature.

(2) Air pollution control facilities, certified as such by the ~~Board~~ Commissioner of Environmental Protection, and all parts and accessories thereof.

As used in this paragraph~~:~~, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Facility" means any appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling, eliminating or disposing of industrial air pollutants.

Facilities such as air conditioners, dust collectors, fans and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of ~~such~~ that person shall not be deemed air pollution control facilities.

(3) The ~~Department~~ Commissioner of Environmental Protection shall issue a determination regarding certification by April 1st for any air or water pollution control facility for which it has received a complete application by December 15th of the preceding year.

Sec. A-10. 36 MRSA §1760, sub-§29, as amended by PL 1975, c. 618, §12, is further amended to read:

29. Water pollution control facilities. Sales of any water pollution control facility, certified as such by the ~~Board~~ Commissioner of Environmental Protection, and any part or accessories thereof, or any materials for the construction, repair or maintenance of ~~such~~ a facility.

As used in this subsection:, unless the context otherwise indicates, the following terms have the following meanings.

A. "Disposal system" means any system used primarily for disposing of or isolating industrial or other waste and includes thickeners, incinerators, pipelines or conduits, pumping stations, force mains and all other constructions, devices, appurtenances and facilities used for collecting or conducting water borne industrial or other waste to a point of disposal, treatment or isolation, except that which is necessary to the manufacture of products.

B. "Facility" means any disposal system or any treatment works, appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling or eliminating water pollution caused by industrial or other waste, except septic tanks and the pipelines and leach fields connected or appurtenant thereto.

C. "Industrial waste" means any liquid, gaseous or solid waste substance capable of polluting the waters of the State and resulting from any process, or the development of any process, of industry or manufacture.

D. "Treatment works" means any plant, pumping station, reservoir or other works used primarily for the purpose of treating, stabilizing, isolating or holding industrial or other waste.

Sec. A-11. 36 MRSA §1760, sub-§30, as amended by PL 1973, c. 575, §2, is further amended to read:

30. Air pollution control facilities. Sale of any air pollution control facility, certified as such by the ~~Board~~ Commissioner of Environmental Protection, and any part or accessories thereof, or any materials for the construction, repair or maintenance thereof.

As used in this subsection:, unless the context otherwise indicates, the following terms have the following meanings.

A. "Facility" means any appliance, equipment, machinery, installation or structures installed, acquired or placed in operation primarily for the purpose of reducing, controlling, eliminating or disposing of industrial or other air pollutants.

Facilities such as air conditioners, dust collectors, fans and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions shall not be deemed air pollution control facilities for purposes of this subsection.

Sec. A-12. 38 MRSA §341, as amended by PL 1983, c. 812, §289, is repealed.

Sec. A-13. 38 MRSA §§341-A to 341-G are enacted to read:

§341-A. Department of Environmental Protection

There is established a Department of Environmental Protection, in this Title called the "department."

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.

2. Composition. The department shall consist of the Board of Environmental Protection, in the laws administered by the department called "board," and of a Commissioner of Environmental Protection, in the laws administered by the department called "commissioner."

3. Commissioner. The commissioner shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters and to confirmation by the Legislature.

A. The commissioner shall serve at the pleasure of the Governor.

B. When the State receives authority to issue permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as commissioner who receives, or during the 2 years prior to appointment has received, a significant portion

of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act.

C. The commissioner may delegate duties assigned to the commissioner under this Title to staff of the department.

4. Licenses and permits. For purposes of this Title, licenses or permits issued by the department may be issued by either the commissioner or the board subject to the provisions of section 341-D, subsection 2.

§341-B. Purpose of the board

The purpose of the Board of Environmental Protection is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions. The board shall fulfill its purpose through rulemaking, decisions on selected permit applications, review of the commissioner's licensing and enforcement actions and recommending changes in the law to the Legislature.

§341-C. Board membership

Membership of the Board of Environmental Protection is governed by this section.

1. Appointments. The board shall consist of 10 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters and to confirmation by the Legislature.

2. Qualifications and requirements. Members of the board must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of this Title and all other laws which the board is charged with administering. At least 4 members must be residents of the First Congressional District and at least 4 members must be residents of the Second Congressional District. The boundaries of the congressional districts are defined in Title 21-A, chapter 15.

3. Terms. The members must be appointed for staggered 4-year terms, except that a vacancy must be filled for the unexpired portion of the term. A member may not serve more than 2 consecutive 4-year terms.

4. Chair. The Governor shall appoint one member to serve as chair.

5. Expired terms. Any member who has not been renominated by the Governor within 90 days of the expiration of that member's term may not continue to serve on the board unless the Governor notifies the Legislature, in writing and within 90 days of the expiration of that member's term, that extension of the member's term is required to ensure fair consideration of specific major applications pending before the board. That member's term terminates upon final board actions on the specific applications identified in the Governor's communication.

6. Compensation. Members are entitled to compensation according to the provisions of Title 5, section 12004-D.

7. Conflict of interest. Members are governed by the conflict of interest provisions of Title 5, section 18.

8. Federal Water Pollution Control Act requirements. When the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as a board member who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act.

§341-D. Board responsibilities and duties

The board is charged with the following duties and responsibilities.

1. Rulemaking. Subject to the Maine Administrative Procedure Act, Title 5, chapter 375, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

2. Permit and license applications. The board shall decide each application for approval of permits and licenses that in its judgment:

A. Involves a policy, rule or law that the board has not previously interpreted;

B. Involves important policy questions that the board has not resolved;

C. Involves important policy questions or interpretations of a rule or law that require reexamination; or

D. Have generated substantial public interest.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A, when it finds that the criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that one or more of the criteria in this subsection have been met.

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

3. Modification, revocation or suspension. After written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds that:

A. The licensee has violated any condition of the license;

B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;

C. The licensed discharge or activity poses a threat to human health or the environment;

D. The license fails to include any standard or limitation legally required on the date of issuance;

E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license; or

F. The licensee has violated any law administered by the department.

For the purposes of this subsection, the term "license" includes any license, permit, order, approval or certification issued by the department and the term "licensee" means the holder of the license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Enforcement. The board shall:

A. Advise the commissioner on enforcement priorities and activities;

B. Advise the commissioner on the adequacy of penalties and enforcement activities;

C. Approve administrative consent agreements pursuant to section 347-A, subsection 1; and

D. Hear appeals of emergency orders pursuant to section 347-A, subsection 3.

7. Reports to the Legislature. The board shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters by January 15th of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.

8. Other duties. The board shall carry out other duties as required by law.

§341-E. Board meetings

Board meetings held under section 341-D, subsections 1 to 7, are governed by the following provisions.

1. Quorum. Six members of the board constitute a quorum for a vote of the board, 6 members constitute a quorum for rule-making hearings held by the board and 3 members constitute a quorum for other hearings held by the board.

2. Proceedings recorded. All proceedings before the board must be recorded electronically.

§341-F. Administration

Responsibility for the administration of the board lies with the chair.

1. Staff. Staff of the board must be hired by the chair with the consent of the board. The executive director shall direct the daily operations of the board staff.

2. Unclassified employees. Professional staff of the board are unclassified and may be removed, only for cause, by the chair with consent of the board.

3. Conflict of interest. Notwithstanding Title 5, section 18, subsection 1, each professional staff member of the board is an "executive employee" solely for the purposes of Title 5, section 18.

4. Budget. The board shall prepare and adopt a biennial operating budget to be submitted to the commissioner for inclusion in the department's budget.

5. Consultants. The board may obtain the services of consultants on a contractual basis or otherwise as necessary to carry out the responsibilities under this Title.

6. Cooperation with other agencies. The board may cooperate with other state or federal departments or agencies to carry out the responsibilities under this Title.

§341-G. Board of Environmental Protection Fund

There is established the Board of Environmental Protection Fund to be used by the board as a nonlapsing fund to carry out its duties under this Title. Notwithstanding any other provision of law, the funds identified in subsection 1 shall transfer annually to the Board of Environmental Protection Fund an amount not to exceed $150,000. Money in the Board of Environmental Protection Fund may only be expended in accordance with allocations approved by the Legislature.

1. Transfer funds. The amount transferred from each fund must be proportional to that fund's contribution to the total special revenues received by the department under chapter 2, subchapter 2; section 551; section 569; and chapter 13, subchapter 4. Any funds received by the board from the General Fund must be credited towards the amount owed by the Maine Environmental Protection Fund, chapter 2, subchapter 2.

2. Investment of funds. Money in the Board of Environmental Protection Fund not currently needed to meet the obligations of the board in the exercise of its responsibilities under this Title must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund.

Sec. A-14. 38 MRSA §342, sub-§1-A, as amended by PL 1987, c. 205, is further amended to read:

1-A. Administration of department. ~~He~~ The commissioner is the chief administrative officer of the ~~Department of Environmental Protection~~ department and responsible for all administrative matters of the department, except as otherwise specified. ~~It is the responsibility of the~~ The commissioner ~~to~~ shall assure that all determinations made by the staff of the department are promptly rendered. ~~It is the responsibility of the~~ The commissioner ~~to~~ shall resolve disputes between department staff and applicants with respect to any questions regarding requirements, interpretation or application of the laws, rules or department policy. In resolving disputes, the commissioner shall attempt to reach a fair and appropriate result given all of the circumstances of the issue ~~before him~~ and may utilize the services of such consultants or experts as ~~he~~ the commissioner determines would be helpful to resolve any disputed issue. For purposes of this subsection and section 341-A, subsection

3, paragraph C, staff of the department does not include staff of the board.

Sec. A-15. 38 MRSA §342, sub-§2, as repealed and replaced by PL 1985, c. 819, Pt. B, §§6 and 7, is amended to read:

2. Employment of personnel. ~~He~~ The commissioner may employ, subject to the Civil Service Law, ~~such~~ personnel for the department and prescribe the duties of ~~such~~ these employees, except persons occupying the positions defined in Title 5, section 938, subsection 1, as ~~he~~ the commissioner deems necessary, to fulfill the duties of the department ~~and of the Board of Environmental Protection~~. For purposes of this subsection, personnel for the department does not include staff of the board.

Sec. A-16. 38 MRSA §342, sub-§3, as enacted by PL 1971, c. 618, §8, is repealed.

Sec. A-17. 38 MRSA §342, sub-§3-A is enacted to read:

3-A. Negotiating agreements. The commissioner may negotiate and enter into agreements with federal, state and municipal agencies.

Sec. A-18. 38 MRSA §342, sub-§§8 to 12 are enacted to read:

8. Data base. The commissioner shall develop by January 1, 1991, and maintain a data base of license applications received and decisions made by the department. The data base must include information on all applications pending or received after January 1, 1990. For each application the data base must include:

A. The type of license sought;

B. The name and address of the applicant and the name of a natural person who is the representative of the applicant;

C. The location of the project;

D. The date of acceptance of the application for processing;

E. The current processing status of the application;

F. An indication of whether the commissioner or the board will decide the application;

G. A brief description of the project, including any substantial issues raised during the licensing process; and

H. A brief description of the final action taken by the department, either by the commissioner or the board, on the application.

The commissioner shall maintain a central archive of all applications received and licenses issued by the department.

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

10. Consultants. The commissioner may contract with or otherwise employ consultants for services necessary to carry out duties under this Title.

11. Administrative duties for the board. The commissioner shall meet the administrative requirements of the board including bookkeeping, expense reimbursement and payroll matters.

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

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

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

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

Sec. A-19. 38 MRSA §343-A, as enacted by PL 1983, c. 566, §4, is repealed.

Sec. A-20. 38 MRSA §344, sub-§1, as amended by PL 1985, c. 746, §7, is further amended to read:

1. Acceptance and notification. The ~~Commissioner of Environmental Protection~~ commissioner shall, within 10 working days of receipt of an application, determine whether the application is in a form acceptable for processing and shall notify the applicant of the official date on which the application was accepted or the reasons ~~why~~ the application was not accepted. The commissioner shall notify the board of all applications accepted as complete.

~~Notice shall be provided~~ The commissioner shall require the applicant to provide notice to the public for each application for a permit or license accepted ~~by the commissioner~~. ~~Comments shall be solicited~~ The commissioner shall solicit comments from the public for each application in a manner prescribed by the board in the ~~regulations~~ rules.

~~A. For those applications delegated to the commissioner under subsection 2 which do not fall under the permit by rule provisions of subsection 7, the commissioner shall, if requested by the applicant or any interested party, issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application before he takes final action on the application. The draft permit or license shall be made available to~~

~~the applicant and to all interested persons at the Augusta office of the department at least 5 working days before the commissioner takes final action on the application.~~

~~B. For those applications not delegated to the commissioner under subsection 2, the commissioner shall provide a summary of the application to the board and all interested governmental agencies and other interested parties in a manner prescribed by the board in the regulations. At least 10 working days shall be provided for the receipt of comments on the application prior to the preparation of a draft permit or license. The commissioner shall, if requested by the applicant or any interested party, prepare a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application of the date the board will act on the application. The draft permit or license shall be made available to the applicant and to all interested persons at the Augusta office of the department at least 15 working days before the board acts on the application.~~

All correspondence notifying ~~the~~ an applicant of denial of an application by the board or commissioner ~~decisions~~ shall be by certified mail, return receipt requested.

Sec. A-21. 38 MRSA §344, sub-§2, as amended by PL 1989, c. 546, §§5 and 6, is repealed.

Sec. A-22. 38 MRSA §344, sub-§§2-A and 2-B are enacted to read:

2-A. Processing time limits, decisions and appeals. After the commissioner accepts an application for processing, the commissioner may approve, approve with conditions, disapprove or refer the application as follows.

A. The commissioner shall decide as expeditiously as possible if an application meets one or more of the criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

B. The commissioner shall decide whether an application meets the permit by rule provisions under subsection 7 within 20 working days after notifying the applicant of acceptance of the application.

C. For those applications which do not fall under the permit by rule provisions of subsection 7, the commissioner shall decide upon the application as expeditiously as possible after notifying the applicant of acceptance of the application.

Any person aggrieved by a final license or permit decision of the commissioner may appeal that decision to the board. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal.

2-B. Conflict with federal requirements. The commissioner may waive the time requirements of this section for those activities which require a federal permit or license when those provisions are inconsistent with federal law.

Sec. A-23. 38 MRSA §344, sub-§3, as amended by PL 1985, c. 589, §1, is repealed.

Sec. A-24. 38 MRSA §344, sub-§4, as amended by PL 1983, c. 779, §1, is repealed.

Sec. A-25. 38 MRSA §344, sub-§4-A is enacted to read:

4-A. Draft decisions and commissioner recommendations. Draft permits and licenses and commissioner recommendations are subject to the following provisions.

A. For those applications to be decided by the commissioner that do not fall under the permit by rule provisions of subsection 7, the commissioner shall, if requested by the applicant or any interested party, issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of an interest in the application before the commissioner takes final action on the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 5 working days before the commissioner takes final action on the application.

B. For those applications to be decided by the board, the commissioner shall provide a summary of the application to the board, all interested governmental agencies and other interested parties in a manner prescribed by the board by rule. The rule must provide at least 10 working days for the receipt of comments on the application prior to the preparation of a draft permit or license. If requested by the applicant or any interested party, the commissioner shall prepare a draft permit or license and shall give reasonable notice of the date the board will act on the application to the applicant and to any other person who has notified the commissioner of an interest in the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 15 working days before the board acts on the application.

The commissioner may incorporate comments on draft permits at the discretion of the commissioner. The commissioner may make any revised draft available for

public comment. If the commissioner decides the draft is substantially revised, the commissioner shall make it available for public comment.

Sec. A-26. 38 MRSA §344, sub-§5, as amended by PL 1977, c. 694, §754, is repealed.

Sec. A-27. 38 MRSA §344, sub-§§8 and 9 are enacted to read:

8. Effective date of license. Except as provided in this subsection, a license granted by the commissioner is effective when the commissioner signs the license. The commissioner may attach a condition to the license requiring up to a 30-day delay in any physical alteration of the project area and any construction activity authorized by the license. A license granted by the board is effective when the chair of the board or the chair's designee signs the license.

9. License renewals and transfers. For purposes of this section, a request for a license or permit renewal or transfer is considered an application.

Sec. A-28. 38 MRSA §345-A, sub-§1, as amended by PL 1985, c. 589, §2, is repealed.

Sec. A-29. 38 MRSA §345-A, sub-§1-A is enacted to read:

1-A. Department hearings. The board and commissioner may hold public hearings as necessary to carry out responsibilities under this Title.

Sec. A-30. 38 MRSA §345-A, sub-§2, as enacted by PL 1983, c. 566, §6, is amended to read:

2. Maine Administrative Procedure Act. Except as provided ~~in section 347, subsection 2~~ elsewhere, all hearings of the ~~Board of Environmental Protection shall~~ department must be conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. A-31. 38 MRSA §347-A, sub-§§1 and 2, as enacted by PL 1989, c. 311, §4, are amended to read:

1. General procedures. Whenever it appears to the ~~department~~ commissioner, after investigation, that there is or has been a violation of this Title, of rules promulgated under this Title or of the terms or conditions of any ~~Department of Environmental Protection or Board of Environmental Protection~~ board or commissioner license, permit or order, the ~~department~~ commissioner may do one or more of the following, including, but not limited to:

A. Resolve the violation through an administrative consent agreement approved by the board and the Attorney General;

B. Refer the violation to the Attorney General for prosecution;

C. Schedule and hold an enforcement hearing on the alleged violation pursuant to subsection 2; or

D. With the prior approval of the Attorney General, initiate a civil action pursuant to section 342, subsection 7.

2. Hearings. The commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of any hearing held pursuant to subsection 1, paragraph C. The notice shall specify the act or omission which is claimed to be in violation of law or regulation.

Any hearing conducted under the authority of this subsection shall be in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by that person to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the ~~department~~ commissioner shall, as soon as practicable, make findings of fact based on the record and, if ~~it~~ the commissioner finds that a violation exists, shall issue an order aimed at ending the violation. The person to whom an order is directed shall immediately comply with the terms of that order.

Sec. A-32. 38 MRSA §347-A, sub-§§4 and 5 are enacted to read:

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 commissioner and approved by the board.

5. Enforcement. All orders of the department may be enforced by the Attorney General. If any order of the department is not complied with, the commissioner shall immediately notify the Attorney General.

Sec. A-33. 38 MRSA §347-B, as enacted by PL 1989, c. 311, §4, is repealed.

Sec. A-34. 38 MRSA §361, as amended by PL 1989, c. 503, Pt. B, §175, is repealed.

Sec. A-35. 38 MRSA §366, as amended by PL 1971, c. 618, §12, is repealed.

Sec. A-36. 38 MRSA §§411-B and 412-B are enacted to read:

§411-B. Planning

The department is authorized to establish and conduct a continuous planning process in cooperation

with federal, state, regional and municipal agencies consistent with the requirements of the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251, et seq., as amended.

§412-B. Consultation on waste water disposal

1. Consultation on disposal methods. The commissioner shall consult with and advise any person proposing or operating drainage, sewerage or industrial waste systems as to the best methods of disposal. In making recommendations, the commissioner shall consider the needs of the municipality, other municipalities and other persons affected.

2. Consultation on water pollution abatement and prevention. The commissioner may consult with and advise persons or corporations who are licensed or apply for a license under this subchapter on water pollution abatement and prevention.

3. Submission of plans for waste disposal. Any person who proposes a new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State shall submit plans and specifications for the system to the commissioner for approval. Purely storm water systems located in or on or draining from public ways and any alterations in existing facilities are exempt from this requirement.

Sec. A-37. 38 MRSA §554, as amended by PL 1971, c. 618, §12, is repealed.

Sec. A-38. Administrative rules. The Board of Environmental Protection shall adopt rules pursuant to this section and report to the Joint Standing Committee on Energy and Natural Resources on the following:

1. Ex parte contacts. Criteria governing what constitutes a prohibited ex parte contact for matters subject to rulemaking, hearings and matters on the board agenda, by January 1, 1992. The criteria shall address contacts between members of the board and its staff, and staff of the commissioner, the applicant, other parties and interested members of the public;

2. Adjudicatory proceedings. Criteria for establishing when an adjudicatory hearing will be held by the board, procedures for requesting an adjudicatory hearing and procedures governing requests for intervention and intervention rights, by January 1, 1992; and

3. Public participation. Procedures governing public participation in adjudicatory hearings, by June 30, 1991. After a brief presentation by each party during an adjudicatory hearing, these procedures must provide for the public to comment initially. The public comment period must precede presentation of witnesses and cross-examination by the parties. A final public comment period must be allowed after the parties have presented their case.

Sec. A-39. Board membership; transition. Members of the Board of Environmental Protection on the effective date of this Act may serve the remainder of their terms as provided in the Maine Revised Statutes, Title 38, former section 361.

Sec. A-40. Application. This Act does not apply to any license or permit proceeding, appeal, reconsideration, or other action pending before the Department of Environmental Protection on the effective date of this Act.

PART B

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

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

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

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

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

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

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

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

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

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

§347-C. Right of inspection and entry

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

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

§348. Judicial enforcement

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

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

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

B. Result in substantial environmental damage; or

C. Result in a substantial injustice.

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

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

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

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

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

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

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

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

1. Fees established. The ~~department~~ commissioner shall establish procedures to charge applicants for

costs incurred in reviewing license and permit applications. For the purposes of this subchapter, costs may include, but are not ~~be~~ limited to, personnel costs, travel, supplies, legal and computer services.

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

3. Maximum fee. Except as provided in this subsection, no fee may exceed the maximum established in Table ~~1~~ I. The commissioner shall set the actual fees. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table ~~1~~ I, ~~he~~ the commissioner may designate that application as subject to special fees. A special fee ~~shall~~ may not exceed $40,000. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. All department staff who have worked on the review of the application ~~will~~ must submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application. The processing fee for that application ~~shall~~ must be the actual cost to the department. The applicant shall be billed quarterly and all fees ~~must be~~ paid prior to receipt of the permit.

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

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

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

§353. Payment of fees

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

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

3-A. Certification fee. A certification fee ~~shall~~ must be 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. 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.

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.

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.

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.

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.

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

§354. Federal programs

~~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 program~~. If there are no similar state programs, the ~~board~~ commissioner shall adopt the appro-

priate fee schedule based upon identified costs including ~~liason~~ liaison costs.

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

§355. Lake Environmental Protection Fund

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

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

§356. Disbursements

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

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

§357. Procedure

Within 90 days of the completion of litigation or settlement for which compensation for legal expenses is available under section 356, a municipality may apply to the ~~Board of Environmental Protection~~ commissioner for reimbursement ~~of such~~ of those expenses ~~as~~ that have not been awarded to it by the court and paid pursuant to Title ~~30~~ 30-A, section ~~4966~~ 4452, subsection 3, paragraph D. The ~~board~~ commissioner shall make an award of compensation that ~~it~~ the commissioner determines to be just under the circumstances. In order to be awarded compensation, it ~~shall~~ is not ~~be~~ necessary that the municipality ~~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 on a first-come first-served basis.

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

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

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

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

Notwithstanding any other law administered or enforced by the department, the ~~department~~ board is authorized to permit 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~~ commissioner or ~~its~~ the commissioner's designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section ~~shall be~~ is subject to such terms and conditions as the ~~department deems~~ board determines necessary in order to protect the public's health, safety and general welfare, and may be terminated by the ~~department~~ board or commissioner at any time upon 24 hours' written notice.

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

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

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

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

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

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

§410-G. Report required

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

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

§411. State contribution to pollution abatement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§412. Grants by State for planning

1. Grants by State for planning. The ~~Department of Environmental Protection~~ commissioner is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense incurred by a municipality or quasi-municipal corporation in 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.

A. For the purposes of this section, "preliminary planning" means engineering studies ~~which~~ that include analysis of existing pollution problems; estimates of the cost of alternative methods of waste treatment, studies of areas to 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 estimates of alternative methods of financing, including user charges, and other studies and estimates designed to aid the municipality or quasi-municipal corporation in deciding whether and how best to proceed with a pollution abatement program.

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

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

§412-A. Technical and legal assistance

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

Whenever any state funds have been disbursed pursuant to section 411 or 412, the State, acting through the Attorney General, shall have a direct right of action against the recipient thereof, or any contractor, subcontractor, architect, engineer or manufacturer of any equipment purchased with these funds, to recover the funds, as well as any federal funds administered by the ~~department~~ commissioner for the same purposes, which may be properly awarded as actual damages in an action alleging negligence or breach of contract.

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

§413. Waste discharge licenses

1. License required. No person ~~shall~~ may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the ~~board~~ department.

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

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

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

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

B. The ~~board~~ commissioner has certified that the plan meets the objectives of this chapter.

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

2-B. Exemptions; snow dumps. The ~~Board of Environmental Protection~~ board may by rule exempt categories of snow dumps from the need to obtain a license under this section when it finds that the exempted activity would not have a significant adverse 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 offshore marine aquaculture operations in the estuarine and marine waters; and

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

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

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

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

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

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~~ wastewater to surface waters within their jurisdiction and for the inspection and enforcement of the licenses, in conformance with this chapter and applicable ~~regulation~~ rule of the board.

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

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 30 days of receipt, approve the license as issued, disapprove or modify the license. If the commissioner fails to take action within 30 days of receipt, that inaction constitutes a decision to approve the license as written. Within 30 days of ~~the receipt of the~~ a license decision by the ~~department~~ commissioner, any person aggrieved by the decision of the municipality, or the ~~department~~ commissioner, may appeal to the board to reverse the decision of the municipality or the commissioner.

Municipalities delegated authority pursuant to this subsection may prescribe, by ordinance, standards for the issuance of waste 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 establish standards and procedures that are less stringent than those required under relevant state and federal law and departmental rule.

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

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 department ~~shall~~ may not collect fees associated with those licenses delegated under this subsection.

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

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 rules promulgated by the board, ~~it~~ the board shall notify the municipality of the specific alleged deficiencies and shall order a public hearing, of which adequate public notice ~~shall~~ must be given, to be held in the municipality to solicit public or official comment on those alleged deficiencies. Following the hearing, if ~~it~~ the board finds ~~such~~ deficiencies, ~~it~~ the board may revoke the municipality's license-granting authority. The municipality may reapply for authority at any time. Nothing in this subsection limits the ~~board's or department's~~ commissioner's authority to inspect or initiate enforcement action against any discharge within a municipality.

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

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

§414. Applications for licenses

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

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

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 discharge originates or is located, for the purposes of inspection, testing and sampling. The ~~board~~ department may order a discharger to produce and shall have the right to copy any records relating to the handling, treatment or discharge of pollutants and may require any licensee to keep such records relating thereto as ~~it deems~~ the department determines necessary.

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

to undertake the inspections required under this subsection.

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

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

Sec. B-30. 38 MRSA §414-A, as amended by PL 1989, c. 442, §3, is further amended to read:

§414-A. Conditions of licenses

1. Generally. The ~~board~~ department shall issue a license for the discharge of any pollutants only if it finds that:

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

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

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

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 limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other ~~constitutents which~~ constituents that are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources ~~which~~ that the ~~board~~ department determines are best calculated to protect and improve the quality of the receiving water and ~~which~~ that are consistent with the requirements of the Federal Water Pollution Control Act, as amended. In determining best practicable treatment for each ~~such~~ category or class, the ~~board~~ department shall consider the ~~then~~ existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives.; and

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.

1-A. Emergency license for copper sulfate applications in public water supplies. The commissioner shall issue upon application, an emergency license within 48 hours of application to treat public water supplies with copper sulfate or related compounds. The ~~board~~ commissioner may not issue more than 2 consecutive emergency licenses for the same body of water.

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

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

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

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

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

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

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

1-B. Relicensing of overboard discharges. The following provisions ~~shall~~ govern the relicensing of overboard discharges.

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

B. For the purposes of this subsection, the department ~~shall~~ may not require the installation or use of ~~waste-water~~ wastewater holding tanks as a "technologically proven alternative method of ~~waste-water~~ wastewater disposal" except in the following cases:

(1) Seasonal residential overboard discharges ~~which~~ that are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service; and

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

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

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

Current Expiration Date	New Date
1991, 1992	1990
1993, 1994	1991
1995, 1996	1992
1997, 1998	1993

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

2. Schedules of compliance. The ~~board~~ department may establish schedules, within the terms and conditions of licenses, for compliance with best practicable treatment, as defined in subsection 1, paragraph D, which includes the application of best conventional pollutant control technology or best available technology economically achievable. Schedules ~~shall~~ must be consistent with the times permitted for compliance with the United States Water Pollution Control Act, as amended, and may include such interim and final dates for attainment of specific 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. Federal law. ~~At such time as~~ When the Administrator of the United States Environmental Protection Agency ~~determines to cease~~ 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 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.

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.

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 incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, without a permit from the ~~board~~ department as described in subsection 2.

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

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

If the ~~board is able to find~~ department finds, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to con-

duct that use will impose undue economic 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 judgment, may be necessary to protect the quality, standards and rights.

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.

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 standards and the public rights of fishing and navigation and the economic implications upon the applicant of the use. If, after hearing, the ~~board~~ department determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct the use will impose undue economic 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 judgment~~,~~ may be necessary to protect the quality, standards and rights.

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

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

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

No person, firm, corporation or other legal entity shall place, deposit, discharge or spill, directly or indirectly, into the ~~inland gound or~~ ground water, inland surface waters or tidal waters of this State, or on the ice thereof, or on the banks 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:

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

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

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

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

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

2. Monitoring locations and subjects. The ~~department~~ commissioner shall:

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

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

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

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

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

If the ~~board shall determine~~ department determines that soil conditions, ~~groundwater~~ ground water conditions, topography or other conditions indicate that any boundary of any such area should be further than 300 feet from any classified body of surface water, it may, after notice to the affected party, order the relocation of such boundaries and the removal of any solid waste,

previously deposited within the original boundaries, to the confines of the new boundaries.

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

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

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

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

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

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

3. Commissioner approval. Municipal ordinances, amendments and any repeals of ordinances ~~shall~~ are not ~~be~~ effective unless approved by the ~~board~~ commissioner. In determining whether to approve municipal ordinances or amendments, the ~~board~~ commissioner shall consider the legislative purposes described in section 435, the minimum guidelines and any special local conditions which, in the judgment of the ~~board~~ commissioner, justify a departure from the requirements of the minimum guidelines in a manner ~~which is~~ not inconsistent with the legislative purposes described in section 435. Recognizing that the guidelines are intended as minimum standards, the ~~board~~ commissioner shall approve a municipal ordinance ~~which~~ that imposes more restrictive standards than those in the guidelines. If an ordinance or an amendment adopted by a municipality contains standards ~~which are~~ inconsistent with or less stringent than the minimum guidelines, the ~~board~~ commissioner, after notice and hearing, may approve the proposed ordinances or amendment with conditions imposing the minimum guidelines in place of the inconsistent or less stringent standard or standards. Those conditions ~~shall be~~ are effective and binding within the municipality and ~~shall~~ must be administered and enforced by the municipality. If the ~~board~~ commissioner fails to act on any proposed municipal ordinance or amendment within 45 days of the ~~board's~~ commissioner's receipt of the proposed ordinance or amendment, the ordinance or amendment is automatically approved. Any application for a shoreland zoning permit submitted to a municipality within the 45-day period ~~shall be~~ is governed by the terms of the proposed ordinance or amendment if the ordinance or amendment is approved under this subsection. A municipality may appeal to the board a decision of the commissioner under this subsection.

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

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

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

5. Exemptions. Any areas within a municipality ~~which~~ that are subject to nonmunicipal zoning and land use controls may be exempted from the operation of this section upon a finding by the ~~board~~ commissioner that the

purposes of this chapter have been accomplished by nonmunicipal measures.

6. Variances. A copy of each request for a variance under an ordinance approved or imposed by the ~~Board of Environmental Protection~~ commissioner or board under this article ~~shall~~ must be forwarded by the municipality to the commissioner at least 20 days prior to action by the municipality. The material submitted ~~shall~~ must include the application plus all supporting information provided by the applicant. The commissioner may comment when the commissioner determines that the municipal issuance of the variance would be in noncompliance with the requirements of state law for a zoning variance or the variance would undermine the legislative purposes declared in section 435. ~~Such~~ These comments, if submitted by the commissioner prior to the action by the municipality, ~~shall~~ must be made part of the record, and ~~shall~~ must be considered by the municipality prior to taking action on the variance request.

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

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

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

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

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

1. Commissioner assistance. A description of the assistance and supervision that the ~~Department of Environmental Protection~~ commissioner has provided to the municipalities in carrying out their shoreland zoning responsibilities;

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

§451. Enforcement generally

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

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

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

Where no mixing zones have been established by the ~~board~~ department, it ~~shall be~~ is unlawful for any

person, corporation, municipality or other legal entity to dispose of any pollutants, either alone or in conjunction with another or others, into any classified surface waters, tidal flats or sections thereof, in such manner as will, after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere, lower the quality of any significant segment of those waters, tidal flats or sections thereof, affected by such discharge, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 413 to 414-B.

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

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

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

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

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

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

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the 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.

Variances ~~shall be~~ are issued for a term certain not to exceed 3 years, and may be renewed, except that no variance may run longer than the time specified for completion of the municipal waste treatment facility. Notwithstanding the provisions of this subsection, no variance issued under this section may extend beyond July 1, 1988. Upon notice of the availability of federal 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.

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.

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

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 in violation of any ground water classification or reclassification adopted on or after January 1, 1980, at any time prior to October 1, 1996, with respect to discharges to the ground water from those facilities, if by that time the owner or operator has completed all steps then required to be completed by the schedules set forth in this subchapter. The ~~department~~ commissioner shall administer this schedule according to the project priority list adopted by the board pursuant to section 411 and the provisions of this subsection.

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

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

(2) For Priority 3 project - January 1990;

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

(4) For Priority 5 project - January 1992.

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

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

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

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

In no case ~~shall~~ may violations of the lowest ground water classification be allowed. In addition, no violations of any ground water classifications adopted after January 1, 1980, may 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.

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

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

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

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

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

Persons, firms, corporations, quasi-municipal corporations, municipalities, state agencies and other legal entities shall file with the ~~board such~~ commissioner information relative to their present method of collection, disposal, composition and volume of all wastes discharged by them into any waters of the State, in ~~such~~ a manner and on ~~such~~ forms ~~as the board may by regulation prescribe~~ prescribed by the commissioner, within 30 days of receipt of ~~such~~ those forms.

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

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

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

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

3. Reports to the Legislature. The ~~board and the~~ department shall periodically report to the Legislature as governed by the following provisions.

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

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

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

~~D. The department, in cooperation with the Land Use Regulation Commission, shall conduct a study of indirect discharges and the problems posed by those discharges to the waters of the State. The study shall incorporate the results of previous investigations conducted pursuant to the United States Water Pollution Control Act, Section 208. The study shall include recommendations for land use management and other related techniques designed to mitigate the effects of indirect discharges. The study shall commence on July 1, 1987. The study shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources by February 29, 1988.~~

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

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

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

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

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

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

(5) Discharge of pollutants to any water of the State ~~which~~ that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range; or causes fish for human consumption to be injurious to human health as determined by the United States Food and Drug Administration under the procedures established by United States Code, Title 21, section 342 or as determined by the Department of Human Services. The Department of Human Services shall establish a protocol for determining risk in these situations. The protocol ~~shall~~ must be promulgated as a rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375; and

(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 facilities. For the purposes of this subparagraph, "new discharge" means any overboard discharge ~~which was~~ not licensed as of June 1, 1987, except those discharges ~~which~~ that were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the ~~board~~ department with clear and convincing evidence. For purposes of licensing, the ~~board~~ department shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge will take place as a new discharge of domestic pollutants.

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

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

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

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

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

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

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

(b) Wildlife that utilize the water body;

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

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or 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 not result in significant degradation of the existing use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Direct discharges to these waters licensed after January 1, 1986, ~~shall be~~ are permitted only if, in addition to satisfying all the requirements of this article, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the ~~board~~ department shall require the applicant to objectively demonstrate to the ~~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.

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

B. The dissolved oxygen content of Class C water ~~shall~~ may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes ~~shall~~ must be maintained. Between May 15th and September 30th, the 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.

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

The ~~board~~ department shall have one standard for the classification of great ponds and natural lakes and ponds less 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.

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

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

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

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

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

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

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

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

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 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.

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:

(3) The Legislature recognizes, however, that at certain times portions of the waters in the impoundments created by Mattaceunk Dam, also known as Weldon Dam, and Dolby Dam have not and may continue to not meet the Class C requirements for aquatic life and dissolved oxygen due to hydrologic conditions related to the creation of the impoundments, including, but not limited to, impaired mixing of water columns, historical accumulation of sediment and elevated water temperature. The Legislature further recognizes that, for the purposes of this subparagraph, these impoundments constitute a valuable indigenous and renewable energy resource for hydroelectric energy which provide a significant contribution to the economic development and general welfare of the 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.

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

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

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

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

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

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

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:

In determining whether there is unreasonable harm to significant wildlife habitat, the ~~board~~ department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or

compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

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

§480-E. Permit processing requirements

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

1. Municipal notification. The ~~board~~ department may not ~~issue~~ review a permit without notifying the municipality in which the proposed activity is to occur and considering any comments filed by the municipality within a reasonable period as established by the ~~board~~ commissioner.

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, the applicant for the permit shall, at the time of filing an application, forward a copy of the application to the water company, municipality or water district by certified mail and the ~~board~~ department shall consider any comments concerning the application filed with the ~~department~~ commissioner within a reasonable period, as established by the ~~board~~ commissioner.

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

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

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

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

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

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

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

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

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

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

A. Established a planning board;

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

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

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

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

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

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

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

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

§480-H. Rules; performance and use standards

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

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

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

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

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

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

§480-K. Data bank

The ~~Department of Environmental Protection~~ commissioner shall maintain, in cooperation with other state agencies, a data bank containing all the known information pertaining to all resources of state significance, as enumerated in this article, 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.

§480-L. Research

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

§480-M. Funds

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

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

1. Fund purposes and administration. There is established a nonlapsing Lake Restoration and Protection Fund, from which the ~~department~~ commissioner may pay up to 50% of the eligible costs incurred in a lake restoration or protection project, except that projects addressing technical assistance, public education or research issues may be paid up to 100%. Eligible costs include all costs except those related to land acquisition, legal fees and debt service. All money credited to that fund ~~shall~~ must be used by the ~~department~~ commissioner for projects to improve or maintain the quality of lake waters in the State and for no other purpose. The ~~Commissioner of Environmental Protection~~ commissioner may authorize the State Controller to draw a warrant for such funds as may be necessary to pay the lawful expenses of the lake restoration or protection project, up to the limits of 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 for no other purpose.

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:

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. The ~~department~~ commissioner shall provide technical information and guidance and the regional agencies shall assist with the adoption of revised comprehensive plans, standards and local ordinances by local governments.

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

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

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

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

C. New lake and watershed diagnostic tools.

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

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

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

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

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

§480-S. Fee for significant wildlife habitat review

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

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

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

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

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

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

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

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

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

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

§483-A. Prohibition

No person may construct or cause to be constructed or 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 leased, any development requiring approval under this article without first having obtained approval for ~~such~~ this construction, operation, lease or sale from the ~~Board of Environmental Protection~~ department.

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

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

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

2. Traffic movement. The developer has made adequate provision for traffic movement of all types into, out of or within the development area. The ~~board~~ department shall consider traffic movement both on-site and off-site. Before issuing a permit, the ~~board~~ department shall determine that any traffic increase attributable to the proposed development will not result in unreasonable congestion or unsafe conditions on a road in the vicinity

of the proposed development. The Department of Transportation shall provide the ~~board~~ department with an analysis of traffic movement of all types into, out of or within the development area. In making its determination under this subsection, the ~~board~~ department shall consider the analysis provided by the Department of Transportation;

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

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

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

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

1. Application. Any person intending to construct or operate a development shall, before commencing construction or operation, notify the ~~department~~ commissioner in writing of the intent, nature and location of the development, together with such other information as the board may by rule require. The ~~board or the commissioner~~ department shall ~~either~~ approve the proposed development, setting forth such terms and conditions as 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.

2. Hearing request. If the ~~board~~ department has issued an order without a hearing regarding any person's development, that person may request, in writing, a hearing before the board within 30 days after notice of the ~~board's~~ department's decision. This request ~~shall~~ must set forth, in detail, the findings and 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.

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

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:

1. Hearings. If the department determines to hold a hearing on a notification submitted pursuant to section 485-A, the department shall solicit and receive testimony to determine whether that development will in fact substantially affect the 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.

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

2. Developer; burden of proof. At the hearings held under this section, the burden is upon the person proposing the 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.

3. Findings of fact; order. ~~Within 30 days after~~ After the ~~board~~ department adjourns any hearing held under this section, ~~it~~ the department shall make findings of fact and issue an order granting or denying permission to the person proposing the development to construct or operate the development, as proposed, or granting that permission upon such terms and conditions as the ~~board deems~~ department considers advisable to protect and preserve the environment and the public's health, safety and general welfare, except in the case of any low-level radioactive waste storage or disposal facility, in which case the board shall act in accordance with section 1478.

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

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

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:

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~~ commissioner and the municipal offi-

cers of any municipality affected. The preliminary notice ~~shall~~ must contain a brief description of:

(1) The nature of the proposed development; and

(2) The location of the proposed development.

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

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

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

(2) The quality and quantity of the significant ground water aquifer;

(3) Existing and potential uses of the aquifer;

(4) The nature and quantity of potentially hazardous materials to be handled; and

(5) The nature and quantity of pollutants to be discharged.

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

2. Power generating facilities. In case of a permanently installed power generating facility of more than 1,000 kilowatts or a transmission line carrying 100 kilovolts, or more, proposed to be erected within this State by an electric utility or utilities, the proposed development, in addition to meeting the 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.

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

4. Notice to landowners; transmission line or gas pipeline. Any person making application ~~for site location of development approval pursuant to sections 481 to 483~~ under this article, for approval for a transmission line or gas pipeline shall, prior to filing a notification pursuant to this article, provide notice to each owner of real property upon whose land the applicant proposes to locate a gas pipeline or transmission line. Notice ~~shall~~ must be sent by ~~registered~~ certified mail, postage prepaid, to the landowner's last known address contained in the applicable tax assessor's records. The applicant shall file a map with the town clerk of each municipality through which the pipeline or transmission line is proposed to be located, indicating the intended approximate location of the pipeline or transmission line within the municipality. The applicant is not required to provide notice of intent to construct a gas pipeline or transmission line other than as set forth in this subsection. The ~~board~~ department shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline. In addition to finding that the requirements of section 484~~, subsections 1 to 9~~ have been met, the ~~board~~ department, in the case of the transmission line or pipeline, shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. The ~~board~~ department may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.

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

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

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

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

A. A municipal planning board or reviewing authority is established;

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

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

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

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

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

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

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

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

(4) Satisfactory hearing procedures;

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

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

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

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

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

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

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

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

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

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

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

A. The commissioner finds that the project:

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

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

(3) Could affect more than one municipality.

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

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

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

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

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

10. Appeal of decision by commissioner to review. An aggrieved party may appeal the decision by the commissioner to exert or not exert state jurisdiction over the proposed project to the board. Review and actions taken by the department ~~or the board~~ are subject to appeal procedures governing the department ~~and board~~ under section 341-D, subsections 4 and 5.

11. Joint enforcement. Any person who violates any permit issued under this section is subject to the provisions of section 349, in addition to any penalties which the municipality may 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.

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

§490. Reclamation

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

2. Bonds. The ~~board~~ department may require a bond payable to the State with sureties satisfactory to the ~~board~~ department or such other security as the ~~board~~ department may determine will adequately secure compliance with this chapter, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules ~~and regulations~~ of the board. Other security may include a security deposit with the State, an escrow account and agreement, insurance or an irrevocable trust. In determing 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 and the cost of grading and reclamation to be required. All proceeds of forfeited bonds or other security ~~shall~~ must be expended by the ~~board~~ department for the reclamation of the area for which the bond was posted, and any remainder ~~shall be~~ returned to the operator.

2-A. Metallic ore mines. Security ~~shall be~~ is required of a person engaged in the mining of metallic ores. However, if the ~~board~~ department finds that the person's ~~networth~~ net worth or that of any affiliated person who guarantees performance, as shown on audited financial statements, exceeds 5 times the estimated costs of reclamation, it may waive this requirement. If security is not required, that person or the affiliated person guaranteeing performance shall submit to the ~~board~~ commissioner annually, copies of ~~his~~ that person's audited financial statements. The ~~board~~ commissioner shall review these statements annually and, if ~~it~~ the commissioner finds at any time that that person's or affiliated person's financial capacity is insufficient to secure adequately compliance with this chapter, ~~it~~ the commissioner shall require a bond or other security.

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

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

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

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

The ~~board~~ department is designated the public agency of the State for the purpose of cooperating with appropriate departments and agencies of the Federal Government concerning reclamation of lands in connection with development and mining of minerals in the State, and for the purpose of cooperating and consulting with federal agencies in carrying out this chapter. For these purposes, the

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

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

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

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

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

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

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

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

Notwithstanding the prohibition of this section, the ~~Board of Environmental Protection~~ department may license the discharge of waste, refuse or effluent, including natural drainage contaminated by oil~~, petroleum products or their by-products,~~ into or upon any coastal waters if, and only if, it finds that such discharge will be receiving the best available treatment and that such dis-

charge will not degrade existing water quality nor perceptibly violate the classification of the receiving waters, nor create any visible sheen upon the receiving waters.

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

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

§544. Powers and duties of the department

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

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

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

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

1. Expiration of license. Licenses shall be issued upon 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 ~~board~~ department may issue a temporary license for a shorter period of time if it finds that the applicant has substantially complied but has failed to comply with one or more provisions of existing ~~regulations~~ rules. Licenses shall be issued subject to such terms and conditions ~~as the board may determine~~ determined by the department as necessary to carry out the purposes of this subchapter.

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

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

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

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

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

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

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

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

§548. Removal of prohibited discharges

Any person discharging or suffering the discharge of oil~~, 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. Notwithstanding the above requirement, the ~~department~~ commissioner may undertake the removal or cleanup of that discharge and may retain agents and ~~contracts~~ contractors for those purposes who shall operate under the direction of the ~~department~~ commissioner. The ~~department~~ commissioner may implement remedies to restore or replace water supplies contaminated by a discharge of oil~~, petroleum products or their by-products~~ prohibited by section 543, including all discharges from interstate pipelines, using the most cost-effective 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 environment.

Any unexplained discharge of oil~~, petroleum products or their by-products~~ within state jurisdiction or discharge of oil~~, petroleum products or their by-products~~ occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction ~~shall~~ must be removed by or under the direction of the ~~department~~ commissioner. Any expenses involved in the removal or cleanup of discharges, including the restoration of water supplies contaminated by discharges from interstate pipelines and other discharges prohibited by section 543, whether by the person causing the ~~same~~ discharge, the person reporting the ~~same or~~ discharge, the ~~board by itself~~ commissioner or ~~through its~~ the commissioner's

agents or contractors, ~~shall~~ must be paid in the first instance from the Maine Coastal and Inland Surface Oil Clean-up Fund and any reimbursements due that fund ~~shall~~ must be collected in accordance with section 551.

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

§549. Personnel and equipment

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

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

§550. Enforcement; penalties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. An act of war;

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

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

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

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

§552-A. Detention of vessels

Whenever there is probable cause to believe that a vessel has violated or been the means of a violation of this subchapter 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 thereunder, the vessel ~~shall~~ must be detained in any port of the State until payment of any fine or penalty assessable under the law has been paid or secured to the satisfaction of the Attorney General. Any justice or judge of the Superior Court or the District Court may issue such orders as are necessary to carry out the purposes of this section.

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

§555. Budget approval

The ~~department~~ commissioner shall submit ~~its~~ budget recommendations for disbursements from the

fund in accordance with section 551, subsection 5, paragraphs A, C, F and H 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 551, subsection 5, paragraphs B, D, E and G may be made as authorized by the State Controller following approval by the commissioner.

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

§556. Municipal ordinances; powers limited

Nothing in this subchapter ~~shall~~ may be construed to deny any municipality, by ordinance or by law, from exercising police powers under any general or special Act; provided that ordinances and bylaws in furtherance of the intent of this subchapter and 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 adopted under authority of this subchapter.

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

§557. Construction

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

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

§560. Vessels at anchorage

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

2. Definitions.

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

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

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

A. The location, duration and type of anchorage;

B. The type and capacity of vessels permitted anchorage;

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

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

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

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

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

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

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

7. Licenses and fees. ~~The board shall require a license~~ A license is required for anchorage of a vessel in

Maine waters and ~~charge~~ a fee of 1/2¢ per deadweight ton is due for each 30 days of anchorage or part thereof. The ~~board~~ department may license properly treated effluents and emissions regulated by this section consistent with the other environmental laws of the State ~~of Maine~~.

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

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

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

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

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

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

A. No person may install, or cause to be installed, a new or replacement underground oil storage facility without first having registered the facility with the ~~department~~ commissioner in accordance with the requirements of subsection 2, and having paid the registration fee in accordance with the requirements of subsection 4, at least 5 business days prior to installation. If compliance with this time requirement is impossible due to an emergency situation, the owner or operator of the facility at which the new or replacement facility is to be installed shall inform the ~~department~~ commissioner as soon as the emergency becomes known.

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

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

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

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

Sec. B-133. 38 MRSA §563, sub-§2, as amended by PL 1987, c. 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;

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;

E. The size of the tank to be registered;

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;

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 1, paragraph A, if applicable, and a description or plan showing the layout of the facility or tank, including, for tanks in sensitive geologic areas, the form of secondary containment, monitoring wells or equipment to be installed pursuant to section 564, subsection 1, paragraph C and, where applicable, the method of retrofitting; and

H. For existing facilities and tanks, the best estimate of the age and type of tank or tanks at the facility.

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

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

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

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

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

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:

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

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

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

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

D. October 1, 1997.

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 geological areas if the ~~board~~ commissioner finds that:

A. The applicant has demonstrated that:

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

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

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

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

3. Violations. After reasonable notice and hearing, if the ~~board~~ commissioner finds that an owner of an underground oil storage facility has failed to correct any violations of this subchapter, the ~~board~~ commissioner may impose on the owner a schedule that provides for the early application of any or all of the prohibitions contained in subsection 1.

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

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

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

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

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

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

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

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

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

C. Annual voltage readings for cathodically protected systems;

D. Monthly inspections of the rectifier meter on impressed current systems;

E. Precision testing of any tanks and hydrostatic testing of all piping showing evidence of a possible leak. Results of all tests conducted ~~shall~~ must be submitted to the ~~department~~ commissioner by the facility owner and the person who conducted the test;

F. Evidence of financial responsibility for taking corrective action and for compensating 3rd parties for bodily injury and property damage caused by sudden and nonsudden accidental discharges from an underground oil storage facility or tank; and

G. Reporting to the ~~department~~ commissioner any of the following indications of a possible leak or discharge of oil:

(1) Unexplained differences in daily inventory reconciliation values ~~which~~ that, over a 30-day period, exceed .5% of the product delivered;

(2) Unexplained losses detected through statistical analysis of inventory records;

(3) Detection of product in a monitoring well; and

(4) Failure of a tank precision test or hydrostatic pipe test.

The requirements in paragraphs A and B do not apply to a double-walled tank containing interstitial space monitoring ~~which~~ 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.

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

3. Replacement of tanks at facilities where leaks have been detected. If replacement or removal is required as a result of a ~~corrosion-induced~~ corrosion-induced leak in an unprotected steel 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:

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

B. Perform a statistical inventory analysis of the entire facility and submit the results of that analysis to the ~~department~~ commissioner. If a statistical inventory analysis of the entire facility ~~had been~~ was performed within 60 days prior to the required replacement, then the results of that analysis may be submitted to the ~~department~~ commissioner instead. If the results of the statistical inventory analysis indicate evidence of a leak at the facility or that the data is not sufficiently reliable to make a determination that the facility is or is not leaking, the ~~department~~ commissioner may require that all remaining tanks and piping at the facility be precision tested, except that precision testing ~~shall~~ may

not be required where it can be demonstrated that the same tanks and piping passed a precision test conducted within the previous 6 months; and

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

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

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

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

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

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

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

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

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

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

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

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 facility or tank is located shall provide written notice of an intent to abandon an underground oil storage facility or tank to the ~~department~~ commissioner and the fire department in whose jurisdiction the underground oil facility or tank is located at least 10 days prior to abandonment.

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

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

§568. Cleanup and removal of prohibited discharges

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

2. Restoration of water supplies. The ~~department~~ commissioner may clean up any discharge of oil and take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including restoring or replacing water supplies contaminated or threatened by oil~~, petroleum products or their by-prod-~~

~~ucts,~~ using the most cost-effective alternative that is technologically feasible and reliable and ~~which~~ that effectively mitigates or minimizes damage to and provides adequate protection of the public health, welfare and the environment. When the remedial action taken includes the installation of a public water supply, the fund may be used to pay costs of operation maintenance and depreciation of the water supply for a period not exceeding 20 years. The ~~department~~ commissioner shall consult with the affected party prior to selecting the alternative to be implemented.

3. Issuance of clean-up orders. The ~~department~~ commissioner may investigate and sample sites where an oil discharge has or may have occurred to identify the source and extent of the discharge. During the course of the investigation, the commissioner may require submission of information or documents~~, which~~ that relate or may relate to the discharge under investigation, from any person who the ~~department~~ commissioner has reason to believe may be a responsible party. If the ~~department~~ commissioner finds, after investigation, that a discharge of oil has occurred and may create a threat to public health or the environment, including, but not limited to, contamination of a water supply, the commissioner may order the responsible party to cease the discharge immediately or to take action to prevent further discharge and to mitigate or terminate the threat. The commissioner may order that the responsible party take temporary and permanent remedial actions at locations threatened or affected by the discharge of oil, including a requirement that the responsible party restore or replace water supplies contaminated with oil~~, petroleum products or their by-products~~ using the most cost-effective alternative that is technologically feasible and reliable and ~~which~~ that effectively 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 the following requirements.

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

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

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

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

B. Any responsible party who fails without sufficient cause to undertake removal or remedial action promptly in accordance with a clean-up order issued pursuant to subsection 3 may be liable to the State for punitive damages 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 such failure to take prompt action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Reimbursements to the Ground Water Oil Clean-up Fund. The ~~department~~ commissioner shall seek recovery for the use of the fund of all sums expended from the fund, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E and G, or for other damage incurred by the State, in connection with a prohibited discharge, including interest computed at 15% a year from the date of expenditure, unless the ~~department~~ commissioner finds the amount involved too small or the likelihood of success too uncertain. Requests for reimbursement to the fund if not paid within 30 days of demand ~~shall~~ must be turned over to the Attorney General for collection.

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

§570-A. Budget approval

The ~~department~~ commissioner shall submit ~~its~~ budget recommendations for disbursements from the fund in accordance with section 569, subsection 5, paragraphs A, C, F and G 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 569, ~~subsections~~ subsection 5, paragraphs B, D and E may be made as authorized by the State Controller following approval by the commissioner.

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

§570-B. Personnel and equipment

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

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

§570-C. Municipal ordinances; powers limited

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

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

Nothing in this subchapter ~~shall~~ may be construed to 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.

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

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

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

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

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

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

The board shall by ~~order~~ rule establish or may amend emission standards limiting and regulating the amount and type of 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. The ~~order shall~~ rule must state the date upon which the standards~~,~~ or any ~~of them, become~~ individual standard becomes effective. In establishing the date, the board shall consider the degree of air pollution existing within the region, the length of time necessary to inform persons affected by the establishment of these standards that these standards exist, the time needed by the board to implement effective controls and the time needed by persons affected to design and install air pollution control apparatus to comply with the new standards.

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

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

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

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

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

(1) The number of sources;

(2) The location of each source or category of source;

(3) The quantity emitted by each source or category of source;

(4) The total emissions; and

(5) The percentage of total emissions generated by sources with existing air licenses.

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

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

D. Information relating to the emissions inventory submitted to the ~~department~~ commissioner under this section may be designated by the person sub-

mitting it as being only for the confidential use of the ~~department~~ commissioner. Designated confidential information ~~shall~~ must be handled as confidential information is handled under section 1310-B, with the exception of emissions data which ~~shall be~~ is public record.

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

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

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

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

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

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

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

Any variance may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the ~~board~~ department on account 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 required by law; and the expense of purchasing and installing ~~such~~ this apparatus. If after hearing the ~~board shall find~~ department finds that the proposed emission will be receiving the best practicable treatment, will not violate applicable emission standards, or ~~can~~ will be controlled so as not to violate the same, and that ~~such~~ the proposed emission, either alone or in conjunction with existing emissions, will not violate or can be controlled so as not to violate applicable ambient air quality standards, it shall grant the license, imposing such appropriate and reasonable conditions thereon as

may, in the ~~board's~~ department's judgment, be necessary to secure compliance with ~~such~~ ambient air quality standards. If in the course of the renewal or amendment of an air emission license ~~such~~ these findings can be made only if the licensee installs additional emission controls or other mitigating measures, then the licensee may continue to emit pollutants from air contaminant sources ~~which~~ that will receive ~~such~~ these controls or measures up to the same levels allowed in its existing air emission license, if the additional emission controls or other mitigating measures are installed and are fully operational as soon as practicable, but in no case later than 24 months, after the ~~board~~ department issues the license renewal or amendment, except as provided in this paragraph. After a showing by the licensee that it cannot install and bring to full operation ~~such~~ required emission controls or mitigating measures within the 24-month period~~,~~ the ~~board~~ department may establish a later date for the installation and operation.

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

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

§590-B. Testing at resource recovery facilities

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

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

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

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

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

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

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

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

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 reinstate a license when tests indicate compliance.

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

§591. Prohibitions

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

~~Where~~ When the board, pursuant to section 590, has by ~~regulation~~ rule provided that no person ~~shall~~ may operate or maintain within a region any air contamination

source or emit any air contaminants without an emission license from the ~~board~~ department, ~~such~~ the operation or maintenance without that license is prohibited.

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

§592-A. Soiling of property; nuisance

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

2. Fugitive emissions. Any commercial and industrial source or facility, all municipalities and all state or federal facilities, whether or not requiring a license pursuant to this chapter, ~~which~~ that cause or contribute to the discharge of fugitive emissions ~~which~~ that the ~~department~~ commissioner determines to constitute a nuisance ~~shall be~~ are required to establish and maintain a continuing program for best management practices for suppression of fugitive emissions during any periods of construction, renovation or normal operation. The ~~department~~ commissioner shall determine those procedures which constitute best management practices. A description of a source's program for suppression of fugitive emissions ~~shall~~ must be made available to the ~~department~~ commissioner upon request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§605. Malfunctions

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

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

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

§608-A. Soil decontamination

Any rotary drum mix asphalt plant may process up to 5,000 cubic yards of soil contaminated by gasoline or #2 fuel oil per year. The 5,000 cubic yards per year limit may be exceeded with written authorization from the ~~Department of Environmental Protection~~ commissioner. The plant owner or operator shall notify the ~~department~~ commissioner at least 24 hours prior to processing the contaminated soil and specify the contaminating 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.

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

4. Transition schedule. The owner or operator of fixed-roof petroleum storage vessels located in Air Quality Control Regions III, IV and V ~~shall have~~ has until July 1, 1991, to comply with the requirements under subsection 2, paragraph A. In Air Quality Control Regions III, IV and V, the owner or operator of a fixed-roof petroleum storage vessel without a floating roof or other acceptable volatile organic compound emission control equipment 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.

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

B. Contracts for installation of the floating roof, other modifications or other acceptable volatile organic compound emission control equipment or purchase orders for component parts ~~shall~~ must be issued before March 1, 1990.

C. Initiation of on-site construction or installation of acceptable volatile organic compound emission control equipment ~~shall~~ must begin before July 1, 1990.

D. Final compliance ~~shall~~ must be achieved before July 1, 1991.

Sec. B-178. 38 MRSA §609-C, sub-§§4 and 6, as enacted by PL 1989, c. 197, §4, are amended to read:

4. Annual certification test. A tank truck subject to the provisions of this section must be tested annually by the owner or owner's agent using Reference Method 27, as amended and defined in 40 Code of Federal Regulations, Part 60, Appendix A, or any other methods approved by the commissioner and the United States Environmental Protection Agency. The ~~department~~ commissioner must be informed at least 24 hours in advance of each certification test.

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.

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.

Sec. B-179. 38 MRSA §610, sub-§4, as repealed and replaced by PL 1989, c. 197, §5, is amended to read:

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.

A. Final plans for acceptable volatile organic compound emission control equipment ~~shall~~ must be submitted before November 1, 1989.

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.

C. Initiation of on-site construction or installation of acceptable emission control equipment ~~shall~~ must begin before July 1, 1990.

D. Final compliance ~~shall~~ must be achieved before July 1, 1991.

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 Commission, as appropriate,~~ commissioner shall notify the applicant of the official date on which the application was accepted.

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 Wildlife, Department of Marine Resources, Department of Transportation, Maine Historic Preservation Commission, State Planning Office, Public Utilities Commission and the municipal officials of the municipality in which the project is located. The State Planning Office and the Public Utilities Commission shall submit written comments on section 636, subsection 7, paragraph F. For projects within the jurisdiction of the Maine Land Use Regulation Commission, the director may request and obtain technical assistance and recommendations from the staff of the department. The ~~department~~ Commissioner of Environmental Protection shall respond to the requests in a timely manner. The ~~department's~~ recommendations ~~shall~~ of the Commissioner of Environmental Protection must be considered by the commission in acting upon a project application.

Sec. B-184. 38 MRSA §635, as amended by PL 1983, c. 779, §§2 and 3, is further amended to read:

§635. Department decision

Upon receipt of a properly completed application, the ~~board~~ department shall ~~either~~:

1. Approval. Approve the proposed project upon such terms and conditions as are appropriate and reasonable to protect and preserve the environment and the public's health, safety and general welfare, including the public interest in replacing oil with hydroelectric energy. These terms and conditions may include, but are not limited to:

A. Establishment of a water level range for the body of water impounded by a hydropower project;

B. Establishment of instantaneous minimum flows for the body of water affected by a hydropower project; and

C. Provision for the construction and maintenance of fish passage facilities~~;~~.

~~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 will not alter historic water levels or flows after its completion, the ~~board~~ department may impose temporary terms and 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:

The ~~board~~ department shall approve a project when it finds that the applicant has demonstrated that the following criteria have been met.

Sec. B-188. 38 MRSA §636, sub-§1, as enacted by PL 1983, c. 458, §18, is amended to read:

1. Financial capability. The applicant has the financial capability and technical ability to undertake the project. In the event that the applicant is unable to demonstrate financial capability, the ~~board~~ department may grant the permit contingent upon the applicant's demonstration of financial capability prior to commencement of the activities permitted.

Sec. B-189. 38 MRSA §636, sub-§7, as amended by PL 1989, c. 309, §§5 to 7, is further amended to read:

7. Environmental and energy considerations. The advantages of the project are greater than the direct and cumulative adverse impacts over the life of the project based upon the following considerations:

A. Whether the project will result in significant benefit or harm to soil stability, coastal and inland wetlands or the natural environment of any surface waters and their shorelands;

B. Whether the project will result in significant benefit or harm to fish and wildlife resources. In making its determination, the ~~board~~ department shall consider other existing uses of the watershed and fisheries management plans adopted by the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Atlantic Sea Run Salmon Commission;

C. Whether the project will result in significant benefit or harm to historic and archeological resources;

D. Whether the project will result in significant benefit or harm to the public rights of access to and use of the surface waters of the State for navigation, fishing, fowling, recreation and other lawful public uses;

E. Whether the project will result in significant flood control benefits or flood hazards; and

F. Whether the project will result in significant hydroelectric energy benefits, including the increase in generating capacity and annual energy output resulting from the project, and the amount of nonrenewable fuels it would replace.

The ~~board~~ department shall make a written finding of fact with respect to the nature and magnitude of the impact of the project on each of the considerations under this subsection, and a written explanation of their use of these findings in reaching their decision.

Sec. B-190. 38 MRSA §636, sub-§8, ¶A, as enacted by PL 1989, c. 309, §8, is amended to read:

A. Notwithstanding section 464, subsection 2, the ~~board~~ department shall reclassify the waters of the proposed impoundment to Class GPA if the ~~board~~ department finds:

(1) There is a reasonable likelihood that the proposed impoundment will thermally stratify;

(2) The proposed impoundment will exceed 30 acres in surface area;

(3) The proposed impoundment will not have any upstream direct discharges except cooling water; and

(4) The proposed impoundment will not violate section 464, subsection 4, paragraph F.

Sec. B-191. 38 MRSA §817, sub-§§1, 2 and 4, as enacted by PL 1983, c. 417, §6, are repealed.

Sec. B-192. 38 MRSA §818, sub-§4, as enacted by PL 1983, c. 417, §6, is amended to read:

4. Damages. No action may be brought against the State, the board, the commissioner or ~~his~~ their agents or employees for the recovery of damages caused by any order of the board or commissioner or by the partial or total failure of any dam or through the operation of any dam upon the ground that the State, the board, the commissioner or ~~his~~ their agents or employees are liable by virtue of any order or determination of the board or commissioner.

Sec. B-193. 38 MRSA §830, sub-§1, as enacted by PL 1983, c. 417, §6, is amended to read:

1. Registration. Each person owning a dam shall register the dam on or before January 1, 1984, and every 5th year thereafter, on forms provided by the ~~department~~ commissioner. For dams built after January 1, 1984, initial registration ~~shall be~~ is due as of the date of completion of construction. The registration forms shall seek from and require of the registrant information reasonably required by the department to perform its duties under this Article. The ~~department~~ commissioner shall provide notice of dam registration requirements to the known or suspected owners of all currently or previously registered dams at least 30 days prior to the registration deadline.

Sec. B-194. 38 MRSA §830, sub-§5, as amended by PL 1987, c. 118, §10, is further amended to read:

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 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 ~~department~~ commissioner shall make a reasonable effort to determine the identity, where unknown, of an owner, lessee or person in control of a dam by:

A. Consulting prior dam registration records;

B. Consulting the registry of deeds of the county in which the dam is located;

C. Consulting the municipal tax list of the municipality in which the dam is located; and

D. Consulting the tax list maintained by the State Tax Assessor under Title 36, chapter 115 for a dam located in an unorganized territory.

If a dam is not registered within 90 days following the mailing of the first notice of failure to register, a 2nd notice of failure to register and of the consequences described in this subsection ~~shall~~ must be mailed by ~~registered~~ certified mail within an additional 30 days to the person to whom the first notice was sent and to any other person or persons whom the ~~department~~ commissioner has reason to believe may be an owner, lessee or person in control of the dam.

Sec. B-195. 38 MRSA §831, first ¶, as enacted by PL 1983, c. 417, §6, is amended to read:

The owner, lessee or person in control of a dam shall provide written notice to the ~~department~~ commissioner of:

Sec. B-196. 38 MRSA §837, as amended by PL 1987, c. 737, Pt. C, §§92 and 106; and PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

§837. Awards of new ownership

1. Initiation of proceedings; action. Within 30 days after the date on which the State assumes ownership of any dam under this Article, the ~~board~~ commissioner shall initiate proceedings to award ownership of the dam. Within one year after the date on which the State assumes ownership of any such dam, the ~~board~~ commissioner shall either:

A. Award ownership of the dam to a new owner under this section; or

B. In the event that no person petitions for ownership of the dam or the ~~board~~ commissioner determines under subsection 5 that none of the petitioners is qualified to accept ownership and control of the dam, retain ownership of 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:

(1) The opening of the dam and draining of the impoundment;

(2) The operation of the dam in a specified manner; or

(3) The destruction of the dam.

The ~~board~~ commissioner may initiate further proceedings at any time to award ownership of any dam that has remained in state ownership by a decision of the ~~board~~ commissioner under this paragraph.

2. Public notice. The ~~board~~ commissioner shall give notice inviting petitions for the award of ownership of the dam at least twice in a newspaper of general circulation in the county or counties in which the dam is located ~~and at least once in the state paper~~. The ~~board~~ commissioner shall also give written notice to any municipality or municipalities in which the dam or the body of water it impounds is located and to the county commissioners of any county or counties in which the dam or the body of water it impounds is located.

3. Petitions. Petitions for the award of ownership of any dam ~~shall~~ must be made in a form prescribed by the ~~board~~ commissioner and ~~shall~~ must be filed with the ~~board~~ commissioner by a date specified, which date ~~shall~~ must not be less than 30 days after the first publication of notice.

Any person may petition the ~~board~~ commissioner to be awarded ownership of any abandoned dam.

4. Ownership proceeding. The ~~board~~ commissioner may 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 witnesses and documents as ~~it~~ may ~~require~~ be required. Any hearing held under this section ~~shall be~~ is an adjudicatory hearing under Title 5, chapter 375, subchapter IV and the procedures specified in this section.

5. Criteria for determination. The ~~board~~ commissioner shall determine which petitioner, if any, is best qualified to accept ownership and control of the dam. In reviewing any petition and the qualifications of the petitioner to accept ownership and control of the dam, the ~~board~~ commissioner shall consider the following criteria:

A. The technical, financial and administrative ability of the petitioner;

B. Any plans of the petitioner with regard to the operation, maintenance and repair of the dam;

C. The effect of the petitioner's proposal upon private and public property and the public resources of wildlife, fisheries, water quality, recreation and other water uses;

D. The ability of the petitioner to comply with any order issued under this Article;

E. The willingness of the petitioner to accept ownership of the dam upon reasonable terms; and

F. Any other effects of the petitioner's proposal on public health, safety and general welfare.

6. Competing petitions. In the event that the ~~board~~ commissioner has determined under subsection 5 that there is more than one petitioner who is otherwise equally qualified to accept ownership and control of the dam, the ~~board~~ commissioner shall hold a joint hearing on all petitions and shall award ownership of the dam in the following order of priority:

A. To an association of at least 50% of the littoral or riparian proprietors;

B. To a river corridor commission, lake or watershed district, dam commission or other similar agency created by Act of the Legislature or by an agreement among municipalities or other public agencies under the interlocal cooperation laws, Title 30-A, chapter 115;

C. To a municipality in which the dam or the body of water it impounds is located;

D. To a county in which the dam or the body of water it impounds is located;

E. To any state agency; and

F. To any other person.

6-A. Appeal. The award of ownership under this section may be appealed to the board and is governed by the provisions of section 341-D, subsection 4.

7. Award of dam; terms. No sooner than 45 days after notice to all parties of ~~its~~ the commissioner's decision, the ~~board~~ commissioner shall execute and deliver a deed awarding ownership and possession of the dam to the successful petitioner. This conveyance may be subject to such terms regarding the use and 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.

The grantee shall ~~cause~~ record a copy of the deed ~~to be recorded~~ in the registry of deeds for the county in which the dam is located.

8. Final agency action. A decision by the board under this section ~~shall constitute~~ constitutes final agency action for the purposes of appeal under Title 5, chapter 375, subchapter VII.

Sec. B-197. 38 MRSA §840, sub-§1, as amended by PL 1989, c. 323, §1, and c. 569, §1, is repealed and the following enacted in its place:

1. Power. The commissioner may on the commissioner's own motion and shall at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife, or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the 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:

A. Licensed by the Federal Energy Regulatory Commission;

B. Authorized under the Federal Power Act, Section 23;

C. Used to store water for a downstream facility licensed by the Federal Energy Regulatory Commission or authorized under the Federal Power Act, Section 23, provided that the owner of the downstream facility possessed a majority ownership of the upstream dam as of January 1, 1983; or

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams.

Sec. B-198. 38 MRSA §840, sub-§2, as enacted by PL 1983, c. 417, §6, is amended to read:

2. Notice. The ~~board~~ commissioner shall provide ~~public~~ written notice of ~~its intent to hold a~~ any hearing ~~by providing written notice~~ held pursuant to this section to the owner, lessee or person in control, if known, of any dam on the body of water and to any petitioner who has petitioned for a hearing with respect to the body of water. The ~~board~~ commissioner shall give public notice of the hearing under Title 5, section 9052. ~~The board~~ and shall also file notice of the hearing in the municipal office of any municipality and in the clerk's office of any county in which the body of water is located.

Sec. B-199. 38 MRSA §840, sub-§4, as amended by PL 1989, c. 323, §2, is further amended to read:

4. Evidence. At the hearing, the ~~board~~ commissioner shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. The testimony ~~shall be~~ is limited to:

A. The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses;

B. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public;

C. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality;

D. The water levels necessary to prevent the excessive erosion of shorelines;

E. The water levels necessary to accommodate precipitation and run off of waters;

F. The water levels necessary to maintain public and private water supplies;

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

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.

Sec. B-200. 38 MRSA §840, sub-§5, as amended by PL 1989, c. 323, §3, is further amended to read:

5. Order. Based on the evidence solicited at the hearing, the ~~board~~ commissioner shall~~, within 80 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~~ run-off 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 ~~board~~ 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 ~~cause~~ file a copy of the order ~~to be filed~~ in the registry of deeds in the county where the dam is located.

Sec. B-201. 38 MRSA §840, sub-§6 is enacted to read:

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.

Sec. B-202. 38 MRSA §841, as amended by PL 1987, c. 118, §12, is further amended to read:

§841. Maintenance of dams

1. Prohibition. After issuance of an order under section 840, subsection 5, establishing a water level regime for any body of water, no owner, lessee or person in

control of any dam impounding the body of water, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be 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 order of the board or commissioner.

2. Exception. No owner, lessee or person in control of a dam may be in violation of subsection 1, where the water level fluctuation not permitted by the order was caused by unforeseeable and unpredictable meteorological conditions or operating failures of the dam or any associated equipment or by valid order of federal, state or local authorities and where the person could not have avoided the fluctuation by promptly undertaking all reasonably available steps to regulate water flow 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 control of the dam to demonstrate the applicability of this subsection.

3. Enforcement. The ~~board~~ commissioner or any littoral or riparian proprietor may commence an action to enjoin the violation of any provision of this subarticle. The ~~board~~ commissioner may enforce any order issued under section 840, subsection 5 or subsection 6 by any other appropriate remedy, including, but not limited to, entering the dam premises to carry out the terms of the order.

The violation of any order issued under section 840, subsection 5 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 ~~shall be~~ is considered a separate offense.

4. Unregistered dam. In the event that a dam impounding a body of water for which a water level regime is sought to be established under section 840 is unregistered under this article, the provisions of section 830, subsection 5, ~~shall~~ must be implemented, and any order of the board or commissioner issued under section 840, subsection 5 ~~shall apply~~ or subsection 6 applies to any proceedings under subarticle 3.

5. Appeal. Any person aggrieved by an order of the board or commissioner under section 840, subsection 5 or 6 may appeal to the Superior Court under Title 5, chapter 375, subchapter VII.

Sec. B-203. 38 MRSA §842, as enacted by PL 1983, c. 417, §6, is amended to read:

§842. Transition provision

All orders of the State Soil and Water Conservation Commission or the Commissioner of Agriculture, Food and Rural Resources issued under former Title 12, section 304 ~~shall~~ continue in effect and ~~shall~~ must be enforced by the ~~board~~ commissioner until they expire or are rescinded or amended under this subarticle.

Sec. B-204. 38 MRSA §961, as enacted by PL 1979, c. 459, §1, is amended to read:

§961. Relation to municipal, state and federal regulations

Nothing in this chapter ~~shall prevent~~ prevents municipal, state or federal authorities from adopting and administering more stringent requirements regarding performance standards or permitted uses within use districts established by the commission or within districts overlapping the districts established pursuant to this chapter. Where there is a conflict between a provision adopted under this chapter and any other municipal, state or federal requirement applicable to the same land or water areas within the corridor, the more restrictive provision ~~shall take~~ takes precedence. All performance standards, rules and regulations proposed for hearing by the commission ~~shall~~ must be submitted to the ~~Department~~ Commissioner of Environmental Protection, the State Planning Office, the Greater Portland Council of Governments and the Southern Maine Regional Planning Commission at least 7 days prior to the hearing for review and comment. The commission shall not promulgate any rule ~~or regulation~~ establishing air or water quality standards within the corridor in conflict with the rules ~~and regulations~~ of the Department of Environmental Protection without the prior approval of the ~~Director of the Department of Environmental Protection or the~~ Board of Environmental Protection.

Sec. B-205. 38 MRSA §966, 2nd ¶, as enacted by PL 1979, c. 459, §1, is amended to read:

Nothing in this section ~~shall~~ may be construed so as to 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 reasonable rules and regulations as the ~~commissioner~~ commission may ~~hereafter~~ establish.

Sec. B-206. 38 MRSA §1022, first ¶, as amended by PL 1983, c. 731, §4, is further amended to read:

Any person intending to build or extend any wharf, fish weir or trap in tidewaters, within the limits of any city or town, may 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 ~~commissioner~~ Commissioner of Marine Resources, limits and boundaries, as nearly as may be, of ~~such~~ the intended erection or extension, and asking license therefor. Upon receiving ~~such~~ an application, the officers shall give at least 3 days' public notice thereof in a newspaper, published in the town, or, if there is no newspaper published in the town, in a newspaper published within the county, and shall therein designate a day and time on which they will meet on or near the premises described, to examine the same and hear all parties interested. If, upon such examination and hearing of all parties interested, the officers decide that such erection or extension would not be 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 make such an erection or extension, and to maintain the same within the limits mentioned in such license. The applicant for 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, conditioned that upon the termination of such license ~~he~~ the applicant shall remove all stakes and brush from the location therein described. The municipal officers shall, within 10 days after the date of hearing, give written notice by registered mail of their decision to all parties interested. Any person aggrieved by the decision of the municipal officers, in either granting or refusing to grant a license as provided, may appeal to the Superior Court within 10 days after the mailing of such written notice. The court shall set a time and place for hearing and give notice thereof in the same manner as provided for a hearing before the municipal officers. The decision of the court ~~shall~~ must be communicated within 10 days after the date of hearing to the appellant and to the municipal officers of the town in which the proposed wharf, weir or trap is to be located. This decision ~~shall be~~ is binding on the municipal officers, who shall issue a license, if so directed by the decision of the court, within 3 days after the decision has been communicated to them. If the appeal is sustained by the court in whole or in part, the appellant ~~shall~~ will have ~~his~~ costs against the appellee. If the appeal is not so sustained, the appellee ~~shall~~ will have ~~his~~ 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 remove all stakes and brush within a period of one year after the termination of the license, as provided in section 1023, any person can remove the same without charge against the owner~~, his~~ or the owner's heirs or assigns.

Sec. B-207. 38 MRSA §1022, 3rd ¶, as enacted by PL 1979, c. 631, §2, is amended to read:

In the case of waters adjacent to unorganized or deorganized territory that is not an island, the ~~commissioner~~ Commissioner of Marine Resources shall have the powers of municipal officers to issue licenses under this section. Notwithstanding the provisions of this section governing procedures, the ~~commissioner~~ Commissioner of Marine Resources shall review the application and hold a hearing as if this were a lease application under Title 12, section 6072, subsections 5 and 6.

Sec. B-208. 38 MRSA §1023, sub-§3, as enacted by PL 1985, c. 97, §1, is amended to read:

3. Report. The licensee shall complete these actions by July 15th of each year and shall report that completion to the ~~commissioner~~ Commissioner of Marine Resources and to the municipality within 7 days of that date on forms provided by the commissioner.

Sec. B-209. 38 MRSA §1023, last ¶, as enacted by PL 1985, c. 97, §1, is amended to read:

The ~~commissioner~~ Commissioner of Marine Resources shall, by December 31st each year, report to the municipality the name of the licensed owner and location of each weir and whether the weir was maintained in good faith in that year.

Sec. B-210. 38 MRSA §1025, as amended by PL 1983, c. 731, §5, is further amended to read:

§1025. Recording of documents; compensation to officers

The application provided for in section 1022, with the notice and proceedings thereon and the license granted, ~~shall~~ must be recorded in the town and a copy provided to the ~~commissioner~~ Commissioner of Marine Resources by the applicant. Reasonable compensation ~~shall~~ must be paid by the applicant to the municipal officers for their services and expenses and to the clerk for recording, and if license is granted, $5 additional ~~shall~~ must be paid ~~therefor~~ by the applicant to the town.

Sec. B-211. 38 MRSA §1101, first ¶, as repealed and replaced by PL 1971, c. 400, §2, is amended to read:

The formation of a sanitary district ~~shall be~~ is accomplished as follows:.

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:

1. Application. The municipal officers of the municipality or municipalities, or portions thereof, or the residents of unorganized territory, that desire to form a sanitary district shall file an application with the Board of Environmental Protection on a form or forms to be prepared by ~~said board~~ the commissioner, setting forth the name or names of the municipality or municipalities, or portions thereof, or, in the case of residents of unorganized territory, the names of ~~such~~ the residents, that propose to be included in ~~said~~ a proposed district, and ~~they~~ shall furnish ~~such~~ other data as the board may determine necessary and proper. The application ~~shall~~ must 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 described in the original application, provided that another municipality or fewer municipalities, or other or fewer sections thereof are involved, or that a different area of unorganized 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.

6. Joint meeting. The persons to whom the notice described in subsection 3 is directed shall meet at the time and place appointed. In the case where more than one municipality or where unorganized territory is involved, they shall organize by electing a ~~chairman~~ chair and a secretary. No action ~~shall~~ may be taken at ~~any such~~ this meeting unless at the time of convening thereof there are present at least 1/2 of the total number of municipal officers eligible to attend and participate at ~~said~~ the meeting, and, where the proposed district includes or is composed solely of unorganized territory, at least 2/3 of the persons signing the application mentioned in subsection 1 and at least 2 commissioners of the county wherein such unorganized territory is located, other than to report to the ~~Board~~ Commissioner of Environmental Protection that a quorum was not present and to request ~~said board~~ the commissioner to issue a new notice for another meeting. The purpose of the meeting ~~shall be~~ is to 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 ~~such~~ 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.

7. Submission. When the record of the municipality or the record of the joint meeting, where municipalities are or unorganized territory is involved, has been received by the ~~board~~ Commissioner of Environmental Protection and found by ~~it~~ the commissioner to be in order, the ~~board~~ commissioner shall order the question of the formation of the proposed sanitary district and other questions relating thereto to be submitted to the legal voters residing within ~~such~~ the portion of the municipality, municipalities or unorganized territory ~~which~~ that falls within the proposed sanitary district. The order ~~shall~~ must be directed to the municipal officers of the municipality or municipalities ~~which~~ that propose to form said sanitary district, and, where the proposed sanitary district includes or is composed solely of unorganized territory, to the commissioners of the county ~~wherein such~~ in which the unorganized territory is located, directing them to forthwith call town meetings, city elections~~;~~ or a meeting of the residents of the unorganized territory within the 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 following articles or questions, as they may apply, in substantially the following form:

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 (name) Sanitary District~~;~~;

B. To see if the residents of the following described section of the town (or city) of (name of town or city) will vote to incorporate as a sanitary district to be called (name) Sanitary District: (legal description of the bounds of section to be included)~~;~~;

C. To see if the residents of the (following described section of) (name of town or city) (unorganized territory) will vote to join with the residents

of the (following described section of) (name of town or city) (unorganized territory) to incorporate as a sanitary district to be called (name) Sanitary District: (legal description of the bounds of the proposed sanitary district, except where district is to be composed of entire municipalities)~~.~~;

D. To see if the inhabitants of the following described section of that unorganized territory known as Township (number), Range (number) will vote to incorporate as a sanitary district to be called (name) Sanitary District: (legal description of the bounds of the proposed sanitary district)~~.~~;

E. To see if the residents of (the above described section of) (name of town or city) will vote to approve the total number of trustees and the allocation of representation among the municipalities (and included section of unorganized territory) on the board of trustees as determined by the municipal officers (and the persons representing the included area of unorganized territory) and listed as follows:

Total number of trustees ~~shall~~ will be (number) and the residents of (the above described section of) (town or city) ~~shall be~~ are entitled to (number) trustees (and the 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 ~~board~~ 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 ~~Board~~ 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 unorganized territory~~, such trustees~~ shall serve until an election to fill the vacancy caused by the expiration of their terms ~~shall be~~ is called by the county commissioners; and ~~such~~ those commissioners shall call ~~such~~ the election in the same manner as is provided for the initial election of trustees and ~~cause the same to be held~~ on a date ~~as~~ closely following the date upon which ~~such~~ those terms expire ~~as may be~~.

Sec. B-215. 38 MRSA §1106, as amended by PL 1971, c. 618, §12, is further amended to read:

§1106. Operational date of sanitary districts

Notwithstanding the prior issuance of a certificate of organization, a sanitary district ~~shall~~ is not ~~be~~ in operation and ~~shall~~ may not exercise any of its powers granted in this chapter until the date set by the ~~Board~~ Commissioner of Environmental Protection as provided in section 1105. On ~~the~~ that date ~~so set~~, the sanitary district ~~shall become~~ becomes operative and the trustees shall assume the management and control of the operation of all of the public sewers, storm and surface water drains, treatment plants and related structures within the sanitary district, and the municipalities and residents of unorganized territory within ~~said~~ the sanitary district on and after ~~said~~ the operational date ~~shall~~ have no responsibility for the operation or control of the public sewers and storm and surface water drains and treatment plants within their respective jurisdictions other than to pay for services rendered to the municipality or ~~to such~~ residents by the sanitary district.

Sec. B-216. 38 MRSA §1272, sub-§10, as enacted by PL 1987, c. 448, §1-C, is amended to read:

10. Certificate. "Certificate" means a document issued by the ~~Department of Environmental Protection~~ commissioner affirming that an individual has successfully completed the training and other requirements set forth in this chapter to qualify as an asbestos project manager, an asbestos evaluation specialist or asbestos abatement specialist, whether held by an individual, business or public entity.

Sec. B-217. 38 MRSA §1272, sub-§11, as enacted by PL 1987, c. 448, §1-C, is repealed.

Sec. B-218. 38 MRSA §1272, sub-§15, as amended by PL 1989, c. 630, §4, is further amended to read:

15. License. "License" means a document issued by the ~~Department~~ Commissioner of Environmental Protection to a business entity or public entity affirming that the entity has met the requirements set forth in this chapter to engage in asbestos abatement activities as an asbestos abatement contractor or in-house asbestos abatement unit.

Sec. B-219. 38 MRSA §1274, first ¶, as enacted by PL 1987, c. 448, §1-C, is amended to read:

The commissioner shall ~~develop~~ administer a program ~~which establishes~~, pursuant to adopted criteria and procedures, for the licensing or certification of the following.

Sec. B-220. 38 MRSA §1277, first ¶, as enacted by PL 1987, c. 448, §1-C, is amended to read:

The Department of Administration shall provide supporting services to the ~~Department of Environmental Protection~~ commissioner for the implementation of this chapter, including:

Sec. B-221. 38 MRSA §1279, first ¶, as enacted by PL 1987, c. 448, §1-C, is amended to read:

Each license or certificate issued under this chapter ~~shall expire~~ expires one year after the date of issue. Licensees or certificate holders may apply to the ~~Department of Environmental Protection~~ commissioner for the renewal of a license or certificate. No renewal may be granted if the application is received more than 2 years following expiration of the previously issued license or certificate.

Sec. B-222. 38 MRSA §1279, sub-§2, as enacted by PL 1987, c. 448, §1-C, is amended to read:

2. Training. Evidence of completion of any continuing education or training that may be required by rules promulgated by the ~~commissioner~~ board; and

Sec. B-223. 38 MRSA §1280, first ¶, as enacted by PL 1987, c. 448, §1-C, is amended to read:

The ~~Board of Environmental Protection~~ board shall promulgate rules~~, subject to Title 5, chapter 375, subchapter II,~~ which establish criteria and procedures of acceptable work practices for licensees and certificate holders engaged in the following asbestos hazard abatement activities.

Sec. B-224. 38 MRSA §1280, sub-§1, as enacted by PL 1987, c. 448, §1-C, is amended to read:

1. Removal; encapsulation; enclosure. For any asbestos project that involves more than 100 linear feet of pipe covered or coated with asbestos-containing material or 100 square feet of asbestos-containing material used to cover or coat any duct, boiler, tank, reactor, turbine, structure, structural member or structural component, the ~~commissioner~~ board shall consider the following:

A. Proper work practices for the removal of asbestos-containing materials;

B. Proper work practices for the encapsulation of asbestos-containing materials;

C. Proper work practices for enclosure of asbestos-containing materials;

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;

E. Proper work practices for the storage, transport and disposal of asbestos-containing materials; and

F. Administrative penalties and cessation of operations to ensure compliance with this subsection.

Sec. B-225. 38 MRSA §1303-C, sub-§§2 and 11, as enacted by PL 1989, c. 585, Pt. E, §4, are repealed.

Sec. B-226. 38 MRSA §1304, sub-§2, as repealed and replaced by PL 1979, c. 383, §4, is amended to read:

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.

Sec. B-227. 38 MRSA §1304, sub-§4, as amended by PL 1989, c. 585, Pt. E, §7, is further amended to read:

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.

Sec. B-228. 38 MRSA §1304, sub-§11, as amended by PL 1989, c. 585, Pt. E, §9, is further amended to read:

11. Imported waste report. The ~~board~~ commissioner shall report to the Legislature on the solid waste imported and 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 MRSA §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 proposed innovative disposal and waste management programs are consistent with the state plan. The ~~board~~ commissioner shall review proposed innovative programs for each waste category and shall apply all controls necessary to ensure the protection of the environment and public health consistent with this chapter. The board may adopt application review procedures designed to review individual applications and their individual waste sources with prior approval of classes of disposal or utilization sites. The board shall adopt provisions for municipal notification prior to use of individual utilization sites.

Sec. B-230. 38 MRSA §1304, sub-§13-A, ¶B, as enacted by PL 1989, c. 299, is amended to read:

B. The board shall establish, by rule, requirements for the siting, preparation of the site and operation

of facilities, including stockpiles, used for the storage of sludge for a period of more than 30 days. The board shall incorporate the following provisions:

(1) The maximum storage period at facilities without impervious liners and leachate collection and treatment is 6 months. The ~~board~~ department may waive this requirement on a case-by-case basis for a maximum of 2 additional months when the applicant has demonstrated that the storage facility is inaccessible or that utilization of the stored material would be in violation of any prohibition of land spreading on frozen, snow-covered or saturated ground.

(2) Sludge storage sites ~~shall~~ may not be located within 300 feet of a year-round river, stream, brook or pond nor within 75 feet of any intermittent stream or brook or any natural drainage way, including gullies, swales and ravines.

(3) Storage facilities without impervious liners and leachate collection systems may be used only once in any 10-year period.

Sec. B-231. 38 MRSA §1305, sub-§5, as amended by PL 1987, c. 737, Pt. C, §§97 and 106, and PL 1989, c. 6; c. 9, §2; c. 104, Pt. C, §§8 and 10, is further amended to read:

5. Municipal permits. All permits issued pursuant to Title 30-A, chapter 183, subchapter I, shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules ~~and regulations~~ adopted by the board concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality ~~shall~~ must be submitted to the ~~department~~ commissioner within 30 days of issue.

Sec. B-232. 38 MRSA §1306, sub-§1, as enacted by PL 1983, c. 726, §3, is amended to read:

1. General prohibition. It is unlawful for any person to establish, construct, alter or operate any waste facility without a permit issued by the ~~board or commissioner~~ department.

Sec. B-233. 38 MRSA §1310-B, sub-§2, as amended by PL 1985, c. 267, §2, is further amended to read:

2. Hazardous waste information. Information relating to hazardous waste submitted to the department under this subchapter may be designated by the person submitting it as being only for the confidential use of the department ~~and the board~~, ~~their~~ its agents and employees, the Department of Agriculture and the Department of Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and employees of the municipality in which the hazardous waste is located. The designation ~~shall~~ must be clearly indicated on each page or other portion of information. The ~~department~~ commissioner shall establish procedures to insure that information so designated is segregated from public records of the department. The department's public records ~~shall~~ must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the ~~department~~ commissioner shall notify the submittor. Within 15 days after receipt of the notice, the submittor shall demonstrate to the satisfaction of the ~~commissioner~~ department that the designated information should not be disclosed because the information is a trade secret, production, commercial or financial information, the disclosure of which would impair the competitive position of the submittor and would make available information not otherwise publicly available. Unless such a demonstration is made, the information ~~shall~~ must be disclosed and ~~shall become~~ becomes a public record. The ~~commissioner~~ department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of ~~his~~ the decision to the submittor and the person requesting the designated information. ~~A~~ Notwithstanding section 344, subsection 4, a person aggrieved by a decision of the ~~commissioner~~ department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection ~~shall~~ must be confidential and ~~shall~~ not ~~be~~ a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the ~~department~~ commissioner to be processed by the department as provided in this subsection.

Sec. B-234. 38 MRSA §1310-C, sub-§§2 and 5, as enacted by PL 1987, c. 517, §25, are amended to read:

2. Open and closed or abandoned landfills. The ~~department~~ commissioner shall organize the program into 2 components to address the problems created by:

A. Open-municipal solid waste landfills; and

B. Abandoned or improperly or inadequately closed, municipal or privately-owned solid waste landfills.

5. Coordination with uncontrolled sites program. Nothing in this article ~~shall~~ may be construed to limit the authority of the department under any other provisions of law administered by the department. At any time prior to or following the evaluations conducted pursuant to section 1310-D, subsection 2, the ~~department~~ commissioner may proceed under chapter 13-B to properly close

any landfill or mitigate any threats posed by the landfill to public health, safety or the environment.

Sec. B-235. 38 MRSA §1310-D, sub-§1, ¶C, as enacted by PL 1987, c. 517, §25, is amended to read:

C. The ~~department shall revise the~~ board may adopt a revised ranking as necessary to reflect new information developed during the course of the program.

Sec. B-236. 38 MRSA §1310-D, sub-§2, as enacted by PL 1987, c. 517, §25, is amended to read:

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 1, 1993, environmental evaluations of each open-municipal solid waste landfill. The ~~department~~ commissioner may employ private consultants to avoid additions to departmental staff and to accomplish the evaluations in a timely manner. The ~~department~~ commissioner may utilize existing analyses of facilities, subject to the provisions of this subsection. When the ~~department~~ commissioner has sufficient knowledge of existing hazards to the environment and public health posed by a specific site, ~~it~~ the commissioner may take measures necessary to effect proper remediation and closure of the landfill, notwithstanding the site's listed priority. In those cases, the ~~department~~ commissioner shall ensure that the requirements of this subsection are substantially met. The ~~department~~ commissioner shall design each evaluation to achieve the following objectives:

A. To identify the actual hazards, if any, to the environment and public health posed by the landfill and to determine the closure and remediation requirements of the landfill;

B. To establish a ground water monitoring system, including monitoring wells and test borings sufficient to assure identification and monitoring of potential hazards;

C. When hazards are identified, to provide:

(1) A complete description of the movement of surface and ground waters on or near the landfill;

(2) An identification of pollutants in those waters;

(3) An evaluation of the scope, direction and rate of movement of the contamination plume, if any; and

(4) Any other information that the ~~department deems~~ commissioner determines necessary to prepare the closure or remediation recommendations pursuant to this subchapter;

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 remediation recommendations ~~shall~~ must ensure a level or standard of control of pollutants in surface waters at least as stringent as the water quality criteria established under chapter 3, subchapter I, article 4-A. Those recommendations ~~shall~~ must also seek to achieve a level or standard of control of pollutants in ground water at least as stringent as the water quality criteria established under sections 465-C and 470, unless the ~~board~~ commissioner finds that meeting those standards is technically and economically infeasible and that other measures can be implemented to ensure protection of public health and safety; and

E. To consult with and involve the affected municipality or municipalities in the conduct of the evaluation and the analysis of its results.

Sec. B-237. 38 MRSA §1310-E, sub-§1, ¶¶C and E, as enacted by PL 1987, c. 517, §25, are amended to read:

C. The ~~department shall revise the~~ board may adopt a revised ranking as necessary to reflect new information developed during the course of the program.

E. The ~~department~~ commissioner shall report on the ranking developed pursuant to this section, together with the ~~department's~~ commissioner's recommendations for remediation and closure efforts and related costs necessary to protect the public health and the environment, to the joint standing committee of the ~~Legisalture~~ Legislature having jurisdiction over natural resources. The ~~department~~ commissioner shall submit the report on or before January 1, 1989.

Sec. B-238. 38 MRSA §1310-F, as amended by PL 1989, c. 273, is further amended to read:

§1310-F. Cost sharing

The ~~department~~ commissioner shall administer a closure and remediation grants program to assist municipalities in the implementation of the closure and remediation plans. The program is subject to the following provisions.

1. Cost-share fraction. Subject to the availability of funds, the ~~department~~ commissioner shall issue grants to eligible municipalities for 75% of the costs of closure and for 90% of the costs of remediation.

2. Eligibility. Any municipality owning a solid waste landfill for which a remediation or closure plan has been adopted is eligible for grants. A municipality, which has acted to close its solid waste landfill or to remedy

environmental and public health hazards posed by the landfill prior to the award of a grant under this section, but after January 1, 1983, is also eligible for reimbursement of past and future costs consistent with the plan adopted under this subchapter. Any interest paid by a municipality on a municipal bond issued to raise funds for remediation and closure activities during this period is a cost eligible for reimbursement under this section. The ~~board~~ commissioner shall use at least 1/3 of the available funds for municipalities eligible for reimbursement of closure and remediation costs under this subsection until all those municipalities have been reimbursed.

Sec. B-239. 38 MRSA §1310-G, sub-§2, as enacted by PL 1987, c. 517, §25, is amended to read:

2. Violation of schedule. A party responsible for closure or remediation under this article is not in violation of a time schedule~~,~~ established under this section~~,~~ if the party is eligible for a cost-sharing grant under section 1310-F and that grant is not currently available from the ~~department~~ commissioner, unless the ~~board~~ commissioner finds that the level of environmental hazard poses an immediate hazard to public health. When making a grant subsequent to such a delay, the ~~department~~ board shall revise the time schedule to reflect the delay as long as there is no immediate hazard to public health and the environment.

Sec. B-240. 38 MRSA §1310-H, first ¶, as enacted by PL 1987, c. 517, §25, is amended to read:

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, after opportunity for public hearing, that any party responsible for the implementation of a plan has failed substantially to meet the established time schedule or has failed to execute the provisions of the plan, the ~~board~~ commissioner may:

Sec. B-241. 38 MRSA §1310-I, as enacted by PL 1987, c. 517, §25, is amended to read:

§1310-I. Report to Legislature

The ~~department~~ commissioner shall report annually to the joint standing committee of the ~~Legislative~~ Legislature having jurisdiction over natural resources on the progress of the closure and remediation program. The ~~department~~ commissioner shall report on:

1. Environmental risks. The specific environmental and public health hazards, by landfill;

2. Priority ranking. The ranking of open, abandoned and closed landfills;

3. Costs. The estimated costs of implementation, together with any anticipated shortfalls in the cost-sharing portion of the program; and

4. Progress. Overall progress toward the objectives of the program, including, when appropriate, the status of the initial ranking efforts, completion of landfill evaluations, closure and remediation of landfills, any enforcement actions taken in connection with this program and any legislative recommendations the ~~department deems~~ commissioner considers necessary.

Sec. B-242. 38 MRSA §1310-N, as amended by PL 1989, c. 157, and c. 585, Pt. E, §§24 to 28, is further amended to read:

§1310-N. Site location license

No person may locate, establish, construct, expand disposal capacity or operate any solid waste facility unless approved by the ~~board~~ department under the site location of development laws, chapter 3, subchapter I, article 6 and the provisions of this chapter. Where the proposed facility is located within the jurisdiction of the Maine Land Use Regulation Commission, in addition to any other requirement, the ~~board~~ department shall require compliance with existing standards of the commission.

1. Licenses. The ~~board~~ department shall issue a license for a waste facility whenever it finds that:

A. The facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance;

B. In the case of a disposal facility, the facility provides a substantial public benefit; and

C. In the case of a disposal facility, the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal.

2-A. Aquifer protection. The ~~board~~ department shall not issue a license for a solid waste disposal facility when it finds that the proposed facility overlies a significant sand and gravel aquifer or when the ~~board~~ department finds that the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer which it does not overlie, or to an underlying fractured bedrock aquifer.

A. "Significant sand and gravel aquifer" is defined as a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water which are likely to provide drinking water supplies.

B. "Fractured bedrock aquifer" is defined as a consolidated rock formation which is fractured and which is saturated and recharged by precipitation percolating through overlying sediments to a degree which will permit wells drilled into the rock to produce a sufficient water supply for domestic use.

C. In determining whether or not the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer or to an underlying fractured bedrock aquifer, the ~~board~~ department shall require the applicant to provide:

(1) A thorough hydrogeological assessment of the proposed site and the contiguous area including any classified surface waters, significant sand and gravel aquifers and fractured bedrock aquifers which could be affected by the proposed facility during normal operation or in the event of unforeseen circumstances including the failure of any engineered barriers to ground water flow. The assessment ~~shall~~ must include a description of ground water flow rates, the direction of ground water flow in both the horizontal and vertical directions, and the degree of dilution or attenuation of any contaminants that may be released from the proposed site and flow toward any classified surface water, significant sand and gravel aquifer or fractured bedrock aquifer.

2-B. Traffic movement. In addition to any requirements under section 482, the ~~board shall~~ department may not issue a license for a solid waste facility when it finds that the developer has not made adequate provision for traffic movement of all types into, out of or within the proposed solid waste facility. The ~~board~~ department shall consider traffic movement both on-site and off-site. In making its determination, the ~~board~~ department shall consider the following factors:

A. Vehicular weight limits;

B. Road construction and maintenance standards;

C. Vehicle types;

D. Public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed facility; and

E. Other relevant factors.

The ~~board~~ department shall establish vehicle weight limits for any vehicle transporting solid waste to or from the proposed facility. The ~~board~~ department shall base the vehicle weight limits on the road construction and maintenance standards of the roads likely to be traveled by vehicles transporting solid waste to or from the proposed facility.

2-C. Proximity to residential areas. The ~~board shall~~ department may not issue a license for a municipal solid waste transfer station in which the handling site will be located within 250 feet of any property boundary.

3. Public benefit determination. The ~~board~~ department shall determine the public benefit of a proposed facility according to the following provisions.

A. Prior to the initial adoption of the state plan, the ~~board~~ department shall find that a proposed facility provides a substantial public benefit when the applicant demonstrates that the facility is designed, located and will be operated so that it is consistent with and meets the needs identified in the capacity needs analysis under former section 1310-O.

B. Subsequent to the initial adoption of the state plan and for those facilities not subject to chapter 24, subchapter IV, the ~~board~~ department shall employ a rebuttable presumption of public benefit.

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 meets the requirements of section 2157.

5. Recycling and source reduction determination. The ~~board~~ department shall find that the provisions of subsection 1, paragraph C, are satisfied when the applicant demonstrates that all requirements of this subsection have been satisfied.

A. The proposed solid waste disposal facility will accept solid waste which is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by this chapter and other provisions of state law.

(1) The ~~board~~ department shall attach this requirement as a standard condition to the license of a solid waste disposal facility governing the future acceptance of solid waste at the proposed facility.

B. The applicant has shown consistency with the recycling provisions of the state plan.

6. Terms and compliance schedules. Licenses ~~shall be~~ are issued under the terms and conditions as the ~~board~~ department may 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.

7. Criminal or civil record. The ~~board~~ department may refuse to grant a license under this article if it finds that the applicant or, if the applicant is other than a natural person, any person having legal interest in the applicant has been found 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.

Sec. B-243. 38 MRSA §1310-P, first ¶, as enacted by PL 1987, c. 517, §25, is amended to read:

The ~~board~~ department shall apply this section to every license for a new or expanded solid waste disposal facility and to the license of every existing solid waste disposal facility at the time of relicensing.

Sec. B-244. 38 MRSA §1310-P, sub-§§2 and 4, as enacted by PL 1987, c. 517, §25, are amended to read:

2. Annual report. Every owner or operator of a solid waste disposal facility shall file annually with the ~~department~~ commissioner a report containing a sworn statement providing the calendar year-end balance of the escrow account established for the closure of the facility pursuant to this section. The report ~~shall~~ must be filed with the ~~department~~ commissioner no later than March 31st of each year or such other annual date as the commissioner may designate.

4. Money remaining in account. No less than 20 years after the closure, except as otherwise provided by the board, any money remaining in the escrow account of any solid waste disposal facility after proper closure and completion of post-closure care and maintenance requirements, as determined by the ~~department~~ commissioner, ~~shall~~ must be released to the owner, operator or its designated beneficiary.

Sec. B-245. 38 MRSA §1310-Q, as repealed and replaced by PL 1987, c. 557, §2, is amended to read:

§1310-Q. Transfer of license

1. Transfer. No person may transfer a license issued pursuant to this Title without the transfer of the license being approved by the ~~board~~ department prior to transfer of the ownership of the property, facility or structure which constitutes or is part of the solid waste disposal facility. The ~~board~~ department, at its discretion, may require that the proposed new owner of the facility apply for a new license or may approve the transfer of the existing license upon a satisfactory showing that the new owner can abide its terms and conditions and will be able to comply with the provisions of this Title. The ~~board~~ department shall consider the extent to which the disposal facility was sited and developed and is currently operated to meet the capacity needs of municipalities within a specific geographic region. The ~~board~~ department shall approve the transfer of license when, in addition to all other requirements of this Title, the applicant has demonstrated that:

A. The facility will continue to be operated to meet the municipal disposal capacity needs for which the facility was sited and developed and for which it is currently operated;

B. The applicant has made substantially equivalent, alternative provisions to satisfy these disposal capacity needs; or

C. These disposal capacity needs no longer exist.

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:

A. The ~~board~~ department shall apply the provisions of section 1310-N, subsection 5, paragraph A, when relicensing any solid waste disposal facility, except that, to the extent that waste disposal contracts in effect on June 29, 1987, are inconsistent with section 1310-N, subsection 5, paragraph A, in which case those provisions ~~shall~~ apply at the expiration of the term of those contracts without consideration of any renewals or extensions of those contracts.

B. The ~~board~~ department shall require an applicant for a new or expanded solid waste disposal facility or for a license renewal submitting a complete application prior to the adoption of the state plan to demonstrate that the facility furthers the purposes of section 2101 and satisfies the regulations under section 1310-N.

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:

A-1. The ~~board~~ department shall require an applicant for a new or expanded solid waste disposal facility submitting a complete application prior to the initial adoption of the state plan to submit such information as the ~~board~~ department requires to demonstrate that the proposed facility provides a substantial public benefit, including the information described in former section 1310-0.

C. The ~~board~~ department shall apply the provisions of section 1310-N, subsection 3, paragraph A, to any application for a waste disposal facility receiving ash resulting from the combustion of municipal solid waste or from fuel derived from municipal solid waste when the application was accepted as complete by the ~~department~~ commissioner prior to July 1, 1989, and is still pending before the department on or after the date of the initial adoption of the state plan under chapter 24.

Sec. B-248. 38 MRSA §1310-R, sub-§4, as enacted by PL 1989, c. 585, Pt. E, §31, is amended to read:

4. Incineration facilities. The ~~board shall~~ department may not license any new incineration facility prior to the adoption of the state plan and siting criteria.

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:

§1310-S. Public and local participation

In addition to provisions for public participation provided pursuant to Title 5, chapter 375, the following provisions ~~shall~~ apply to an application for a solid waste disposal facility.

1. Notification. A person applying for a license under this article or giving notice to the ~~department~~ commissioner pursuant to section ~~483~~ 485-A, shall give, at the same time, written notice to the agency and to the municipal officers of the municipality in which the proposed facility may be located and shall publish notice of the application in a newspaper of general circulation in the area.

1-A. Preliminary notice. Sixty days prior to submitting an application ~~with~~ to the ~~department~~ commissioner regarding a specific site for a solid waste disposal facility, the applicant shall notify by certified mail the municipal officers of the municipality in which the site is located or, in the unorganized territories, the county commissioners with jurisdiction over the site.

2. Mandatory hearing. The ~~board~~ department shall hold an adjudicatory public hearing within the municipality in which the facility may be located or in such other convenient location in the vicinity of the proposed facility as the municipal officers may agree.

3. Automatic municipal intervenor status. ~~At its first meeting following the timely submission of a request for intervention, the board shall grant intervenor status to the municipal officers, or their designees, from the municipality in which the facility will be located.~~ The municipal officers, or their designees, from the municipality in which the facility would be located have intervenor status if they request it within 60 days of notification under subsection 1. The intervenor status granted under this subsection ~~shall apply~~ applies in any proceeding for a license under this article. Immediately upon the ~~board's automatic designation of intervenor status~~ commissioner's receipt of such a request, the intervenors have all rights and responsibilities commensurate with this status. ~~The board may grant this status only if requested by the municipal officers within 60 days of notification under subsection 1.~~

4. Financial assistance. The ~~department~~ commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under subsection 3, not to exceed $50,000. The board shall adopt rules governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the 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~~ 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:

Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, municipalities, except as provided in this section, may enact ordinances with respect to solid waste facilities ~~which~~ that contain such standards as the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise ~~that can be~~ heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; and compatibility of the solid waste facility with local zoning and land use controls, provided~~;~~ ~~however,~~ that the standards are not more strict than those contained in this chapter and in chapter 3, articles 5-A and 6 and the rules adopted thereunder. Municipal ordinances ~~shall~~ must use definitions consistent with those adopted by the ~~department~~ board.

A municipality adopting an ordinance under this section shall forward a copy of the ordinance to the ~~department~~ commissioner within 30 days of its adoption.

Sec. B-252. 38 MRSA §1310-V, first ¶, as amended by PL 1987, c. 557, §4, is further amended to read:

Prior to 91 days after the First Regular Session of the 113th Legislature adjourns, the department ~~shall~~ may not process or act upon any application ~~for, and the board shall not~~ or issue~~,~~ a license for a new commercial landfill facility or the substantial expansion of a commercial landfill facility. In processing applications after the moratorium, priority ~~shall~~ must be given to applications for commercial landfill facilities used for the disposal of solid waste ~~which~~ that is generated by an energy recovery facility designed to reduce the volume or alter the physical characteristics of municipal solid waste and to produce electricity through incineration. Notwithstanding the provisions of Title 1, section 302, any application for a new or substantially expanded commercial landfill facility pending or filed after the effective date of this article and any application for an expanded commercial landfill facility filed after October 8, 1987, ~~shall be~~ is subject to departmental rules regarding solid waste adopted pursuant to section 1304 and the provisions of Private and Special Law 1987, chapter 28. Notwithstanding other provisions of this Title, the department ~~shall~~ may not issue a license for a new or substantially expanded commercial landfill facility under this article or for an expanded commercial landfill facility, the application for which was filed after October 8, 1987, until ~~it~~ the board has adopted rules pursuant to the provisions of Private and Special Law 1987, chapter 28.

Sec. B-253. 38 MRSA §1318, sub-§2, as enacted by PL 1979, c. 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.

Sec. B-257. 38 MRSA §1319-E, sub-§1, as amended by PL 1989, c. 546, §15, is further amended to read:

1. Money disbursed. Money in the Maine Hazardous Waste Fund may be disbursed by the ~~department~~ commissioner for the following purposes, but for no other:

A. Costs incurred in the removal or abatement of an unlicensed discharge or threatened discharge of hazardous 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;

C. Costs incurred for the purchase of necessary hazardous waste and waste oil testing, response, inspection and monitoring equipment and supplies, response and compliance personnel and training of personnel in accordance with an allocation approved by the Legislature;

D. Amounts necessary to reimburse municipalities as required by section 1319-R, subsection 3; and

E. Costs incurred in the inspection or supervision of hazardous waste activities and hazardous waste handlers.

Sec. B-258. 38 MRSA §1319-G, sub-§1, as enacted by PL 1981, c. 478, §7, is amended to read:

1. Recovery. The ~~department~~ commissioner shall seek recovery to the use of the Maine Hazardous Waste Fund all sums expended therefrom, including overdrafts, for disbursements made 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.

The ~~department~~ commissioner may file a claim with or otherwise seek money from federal agencies to recover to the use of the fund all disbursements from the fund.

Sec. B-259. 38 MRSA §1319-I, sub-§4-A, as enacted by PL 1983, c. 342, §10, is amended to read:

4-A. Fee on waste oil sale or disposal. ~~Waste oil dealers shall pay a~~ A fee of 1¢ a gallon on each gallon of waste oil ~~which they transport, collect or store~~ transported, collected or 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:

A. The board may adopt rules relating to the transportation, collection and storage of waste oil by waste oil dealers to protect public health, safety and welfare and the environment. The rules may include, without limitation, rules requiring licenses for waste oil dealers and the location of waste oil storage sites ~~which~~ that are operated by waste oil dealers, evidence of financial capability and manifest systems for waste oil. A person licensed by the ~~board~~ department to transport or handle hazardous waste ~~shall~~ is not ~~be~~ required to obtain a waste oil dealer's license, but ~~his~~ the hazardous waste license must include any terms or conditions ~~deemed~~ determined necessary by the ~~board~~ department relating to ~~his~~ the transportation or handling of waste oil.

Sec. B-262. 38 MRSA §1319-Q, sub-§§1, 3, 4 and 5, as reallocated by PL 1987, c. 517, §13, are amended to read:

1. Data collection and monitoring. The ~~board~~ commissioner shall have data on the generation, transportation and handling of hazardous waste collected and monitored in a coordinated manner. ~~It~~ The commissioner shall use that data to review the need for adequate waste facilities for generators in this State, and ~~it~~ shall develop appropriate policies and recommendations to ~~insure~~ ensure that suitable waste facilities are available.

3. Facility needs plan. The ~~board~~ commissioner shall, prior to January 1st of each year, prepare a plan ~~which shall consider~~ for approval by the board that considers the need for new hazardous waste facilities. Specifically, ~~it shall~~ the plan must include:

A. An identification of hazardous wastes generated within the State for which new commercial treatment facilities ~~would be~~ are desirable, and the preferred technologies to be utilized;

B. An identification of hazardous wastes by type generated within the State ~~which~~ that are capable of being reused and recycled, and a corresponding reference to available technology or facilities;

C. An identification of the hazardous wastes generated within the State for which treatment facilities are not currently available ~~within~~ inside or outside the State;

D. A survey of generators of hazardous waste identified in paragraph C, and facilities used by ~~them~~ those generators, ~~which~~ that provides the best estimates of future waste quantities, costs and capacity for the disposal of those wastes; and

E. Identification of those geological areas of the State ~~which~~ that, based on siting criteria in rules adopted by the United States Environmental Protection Agency or in rules adopted by the board, are unsuitable for hazardous waste disposal facilities.

4. Legislative recommendations. The commissioner shall make an annual status report to the Legislature concerning hazardous waste management, ~~which shall include~~ including any recommendations of the board for legislative action to develop and establish needed hazardous waste facilities. These recommendations may include tax and other financial incentives or recommendations to directly, or through an instrumentality, acquire suitable sites for hazardous waste facilities, or to construct and operate hazardous waste facilities. Recommendations in the annual status report ~~shall~~ must be based solely on the information and plans prepared pursuant to this section and information obtained at public hearings.

5. Procedural requirements. All policies, plans and recommendations ~~adopted~~ prepared by the ~~board~~ commissioner under this section~~, except for the report in subsection 2, shall be~~ are subject to the notice and hearing requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. B-263. 38 MRSA §1319-R, as enacted by PL 1987, c. 517, §28, is amended to read:

§1319-R. Facility siting

1. Licenses for hazardous waste facilities. The ~~board~~ department shall issue a license for a hazardous waste facility whenever ~~it~~ the department finds ~~it~~ that the facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance. Licenses ~~shall~~ must be issued under the terms and conditions as the ~~board~~ department may prescribe and for a term not to exceed 5 years. The ~~board~~ department may establish reasonable time schedules for compliance with this subchapter and ~~regulations~~ rules promulgated by the board.

A. The ~~board shall also~~ department must find that:

(1) The applicant presents evidence of sufficient financial capacity, including projections of utilization of the facility by hazardous waste generators, to justify granting the license;

(2) Issuing the license is consistent with the applicable standards, requirements and procedures of this chapter; and

(3) In the case of a disposal facility, the volume of the waste and the risks related to its handling have been reduced to the maximum practical extent by treatment and volume reduction prior to disposal.

B. The ~~board~~ department shall issue an interim license for a waste facility for hazardous waste or shall deem the facility to be so licensed if:

(1) The waste facility is in existence on April 1, 1980;

(2) The owner or operator has:

(a) Notified the ~~department~~ commissioner of ~~its~~ the location of the facility;

(b) Provided a detailed description of the operation of the facility;

(c) Identified the hazardous waste ~~it~~ that the facility handles; and

(d) Applied for a license to handle hazardous waste;

(3) The waste facility is not altered or operated except in accordance with the board's rules; and

(4) ~~If the~~ The waste facility has a discharge or emission license under sections 414 or 591, and the facility is operated in accordance with that license.

C. Interim licenses ~~shall~~ expire on the earliest of the following dates:

(1) The date of the final administrative disposition of the application for a hazardous waste facility license;

(2) The date of a finding of the ~~board~~ department that the disposition referred to in ~~subsection~~ subparagraph 1 ~~has not been~~ was

not made because of the applicant's failure to furnish information reasonably required or requested to process the application;

(3) The date of expiration of the license issued under section 414 or 591; or

(4) The date on which the application for a noninterim hazardous waste facility license is due and on which the person operating under the interim license ~~has failed~~ fails to apply for the noninterim hazardous waste facility license.

2. Municipal ordinances. Municipalities may enact necessary police power ordinances dealing with commercial hazardous waste facilities, provided that ~~they~~ the ordinances are not more 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.

3. Site review. All persons who make application for a license to construct, operate or substantially expand a commercial hazardous waste facility shall give, at the same time, ~~shall give~~ written notice to the municipal officers of the municipality in which the proposed facility will be located. The 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 shall reimburse the municipalities' direct costs, not to exceed $5,000, for participation in the proceedings.

The Governor may appoint a person to facilitate communications between the applicant and the municipality and between the department and the municipality.

The State may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

Notwithstanding section 341-D, subsection 2, the board shall decide all applications for commercial hazardous waste facilities.

The board shall hold at least one public hearing within the municipality in which the facility will be located.

During any proceeding for site review of a commercial hazardous waste facility, the legislative body of the municipality in which the facility is to be located may appoint 4 representatives to the board. If the facility is proposed to be located within an unorganized township, the county commissioners of that county may appoint 4 representatives. These representatives may vote on board decisions related to the proposed commercial hazardous waste facility. All representatives appointed under this subsection shall participate on the board only for that site review, until final disposition of the application, including any administrative or judicial appeals. The municipal members ~~shall receive~~ are entitled to the same pay for each day and expenses as regular board members during the period of their service, to be paid by the department.

4. Municipal fees authorized. A municipality, by ordinance, may levy a fee on a commercial hazardous waste facility located in the municipality. These fees ~~shall~~ must be applied as a percentage of the annual billings of the facility to its 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.

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.

Sec. B-264. 38 MRSA §1319-S, sub-§§1 and 2, as reallocated by PL 1987, c. 517, §21, are amended to read:

1. Closure plan. Closure of any new or existing waste facility for hazardous waste and, if required, post-closure care, ~~shall~~ must be in accordance with a closure plan and, if required, a post-closure plan, approved by the board. An applicant for a license for a waste facility for hazardous waste shall submit a 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, the licensee shall submit a closure plan and, if required, post-closure plan, for approval at least 180 days before the date on which ~~he~~ the licensee begins closure. The closure plan and, if required, post-closure plan must include measures, such as leachate control, site stabilization and monitoring, to evaluate and maintain the integrity of the facility site in order to prevent harm to the public health, safety and welfare and to the environment.

2. Closure notice. Upon approval of a closure plan for a facility for hazardous waste, the ~~department~~ commissioner shall 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, the nature of hazardous wastes handled and the methods of treatment, storage and disposal used at the facility.

Sec. B-265. 38 MRSA §1319-T, sub-§2, ¶B, as enacted by PL 1987, c. 517, §28, is amended to read:

B. Handles or transports any ~~such~~ substance or material identified as hazardous waste by the board in any manner ~~which, in fact,~~ that violates the terms of any condition, order, ~~regulation~~ rule, license, permit, approval or decision of the board or ~~order of the~~ commissioner with respect to the handling or transporting of ~~such~~ that substance or material; or

Sec. B-266. 38 MRSA §1364, sub-§3, as amended by PL 1985, c. 746, §34, is further amended to read:

3. Investigation and evaluation. The ~~department~~ commissioner may investigate and sample sites where hazardous substances are stored or handled to identify uncontrolled hazardous substance sites. During the course of the investigation, the commissioner may require submission of information or documents ~~which~~ that relate or may relate to the site under investigation from any person ~~who~~ whom the ~~department~~ commissioner has reason to believe may be a responsible party. The information may include~~, among other things,~~ the nature and amounts of hazardous substances or other wastes ~~which~~ that arrived or may have arrived at the site, manner of transportation, treatment or disposal of the hazardous substances or other wastes and any other information relating to the site or to threats posed by the potential site.

Sec. B-267. 38 MRSA §1364, sub-§5, as enacted by PL 1983, c. 569, §1, is amended to read:

5. Mitigation. The ~~department~~ commissioner may take whatever action ~~is deemed~~ necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by an uncontrolled site, or to protect the public health, safety or welfare, or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances.

Sec. B-268. 38 MRSA §1365, sub-§4, as amended by PL 1985, c. 746, §35, is further amended to read:

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

Sec. B-269. 38 MRSA §1366, first and last ¶¶, as enacted by PL 1983, c. 569, §1, are amended to read:

Whenever possible and practical, the ~~department~~ commissioner shall make use of resources available under the Superfund program or other federal programs to evaluate and investigate uncontrolled sites and to abate, clean up or mitigate threats or hazards posed or potentially posed by uncontrolled sites.

In the case of a site ~~at which~~ where federal resources are not used, the commissioner shall ~~so~~ notify the Governor in writing. The Governor may authorize the ~~department~~ commissioner to proceed under ~~the provisions of~~ this chapter without those resources. In the event the State proceeds at its own expense with work eligible for federal funding, the ~~Commissioner of Environmental Protection~~ commissioner shall present the United States Environmental Protection Agency with a demand for reimbursement.

Sec. B-270. 38 MRSA §1454, sub-§2, as repealed and replaced by PL 1987, c. 530, §3, is amended to read:

2. Service fee. Except for waste ~~which~~ that is exempt in accordance with subsection 3, the ~~Board of Environmental Protection~~ commissioner shall assess each low-level radioactive waste generator for a service fee on all low-level radioactive waste generated in this State ~~which~~ that is shipped to commercial low-level radioactive waste disposal facilities, stored awaiting disposal at a commercial low-level radioactive waste disposal facility or stored for any other purpose. That service fee ~~shall be~~ is based 50% on the volume and 50% on the radioactivity of the waste generated in the previous calendar year, but each generator shall be assessed an annual fee of at least $300. The ~~Board of Environmental Protection~~ board shall promulgate rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, concerning the calculation of the fee and the exemptions to the fee, consistent with this section. The revenue from this service fee ~~shall be~~ is credited to the fund established in subsection 1 and used to carry out this chapter.

Sec. B-271. 38 MRSA §1466, sub-§§1 and 2, as enacted by PL 1983, c. 381, §9, are amended to read:

1. Notification. Any person planning to construct a facility covered by this section shall notify the ~~Department of Environmental Protection~~ commissioner. The ~~department~~ board shall, by rule, specify the form, content and timing of that notice.

2. Commissioner review. Upon receipt of notice under subsection 1, the ~~department~~ commissioner shall review the proposed facility~~,~~ as closely as possible in accordance with 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:

A. All distributors engaged in the sale or distribution in ~~Maine~~ the State of products covered under subsection 1, shall certify to the ~~Department of Environmental Protection by January 31, 1989,~~ commissioner their compliance with subsection 1.

B. All distributors engaged in the sale or distribution in ~~Maine~~ the State of products covered under subsection 2, shall certify to the ~~Department of Environmental Protection~~ commissioner by July 1, 1990, their compliance or scheduled compliance with subsection 2.

Sec. B-275. 38 MRSA §1705, sub-§§1 and 3, as enacted by PL 1983, c. 820, §2, are repealed.

Sec. B-276. 38 MRSA §1721, sub-§§1 to 6, as enacted by PL 1983, c. 820, §2, are amended to read:

1. Application by municipal officers. The municipal officers of the municipality or municipalities that desire to form a disposal district shall file an application with the Board of Environmental Protection, after notice and hearing in each municipality, on a form or forms to be prepared by ~~that board~~ the commissioner, setting forth the name or names of the municipality or municipalities, and the municipal officers shall furnish such other data as the board may determine necessary and proper. The application ~~shall~~ must 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 "disposal district," a statement showing the existence in that territory of the conditions requisite for the creation of a disposal district, as prescribed in section 1702, and other documents and materials as ~~may be~~ required by the Board of Environmental Protection. The Board of Environmental Protection may ~~make~~ adopt rules under this chapter.

2. Public hearing. Upon receipt of the application, the board shall ~~cause~~ hold a public hearing ~~to be held~~ on the application within 60 days of the date of receipt of the application, at some convenient place within the boundaries of the proposed district. At least 14 days prior to the date of the hearing, the ~~board~~ commissioner shall ~~cause~~ publish notice of the hearing ~~to be published~~ at least once in a newspaper of general circulation in the area encompassed by the proposed district.

3. Approval of application. After the public hearing, on consideration of the evidence received, the board shall, in accordance with section 1702 and rules adopted by the board, make findings of fact and conclusions and a determination of record whether or not the conditions requisite for the creation of a disposal district exist in the territory described in the application. If the board finds that 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, of a date, time and place of a meeting of the representative of the municipality or municipalities involved. The municipal officers shall elect a representative to attend the meeting who may represent the municipality in all matters relating to the formation of the district. 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 determines that the creation of a disposal district in the territory described in the application is not warranted for any reason, it shall make findings of fact and conclusions and enter an order denying its approval. The ~~board~~ commissioner shall give notice of the denial by mailing certified copies of the decision and order to the municipal officers

of the municipality or municipalities involved. No application for the creation of a disposal district, consisting of exactly the same territory, may be entertained within one year after the date of the issuance of an order denying approval of the formation of that disposal district, but this provision ~~shall~~ does not preclude action on an application for the creation of a disposal district embracing all or part of the territory described in the original application, provided that another municipality or fewer municipalities are involved.

5. Joint meeting. The persons selected by the municipal officers, to whom the notice described in subsection 3 is directed, shall meet at the time and place appointed. ~~Where~~ When more than one municipality is involved, they shall organize by electing a ~~chairman~~ chair and a secretary. ~~No~~ An action may not be taken at any such meeting unless, at the time of convening, there are present at least a majority of the total number of municipal representatives eligible to attend and participate at the meeting, other than to report to the ~~Board of Environmental Protection~~ commissioner that a quorum was not present and to request the ~~board~~ commissioner to issue a new notice for another meeting. A quorum ~~shall be~~ is a simple majority of representatives eligible to attend the meeting. The purpose of the meeting ~~shall be~~ is to determine the number of directors, subject to section 1724, to be appointed by and to represent each participating municipality and to determine the duration of terms to be served by the initial directors so that, in ensuing years, 1/3 of the directors and their alternates ~~shall be~~ are appointed or reappointed each year, to serve until their respective successors are duly appointed and qualified. Subject to section 1724, the number of directors to represent each municipality ~~shall~~ must be a subject for negotiation among the municipal representatives. When a decision has been reached on the number of directors and the number to represent each municipality and 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. The vote so reduced to writing and the record of the meeting ~~shall~~ must be signed by the ~~chairman~~ chair, attested by the secretary and filed with the ~~board~~ commissioner. Any agreements among the municipal representatives ~~which are~~ considered essential prerequisites to the formation of the district, whether concerning payments in lieu of taxes to a municipality in which a 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 Environmental Protection~~ commissioner. Subsequent to district formation, the board of directors of the district shall execute ~~any and~~ all documents necessary to give full effect to the agreements reached by the municipal representatives and filed with the ~~Board of Environmental Protection~~ commissioner. ~~Where~~ When 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.

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 found ~~by it~~ to be in order, the ~~board~~ commissioner shall order the question of the formation of the proposed disposal district and other questions relating to the formation to be submitted to the legal voters residing within the municipalities, except as provided in subsection 7, in which case the municipal officers may determine the questions. The order ~~shall be~~ is directed to the municipal officers of the municipality or municipalities ~~which~~ that propose to form the disposal district, directing them 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 in favor of or in opposition to each of the following articles or questions, as they ~~may~~ apply, in substantially the following form:

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 (name) Disposal District;

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 city) to incorporate as a disposal district to be called (name) Disposal District: (legal description of the bounds of the proposed disposal district). At a minimum, the district shall consist of (names of essential municipalities); and

C. To see if the residents of (name of town or city) will vote to approve the total number of directors and the 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 be and the residents of (town or city) shall be entitled to directors. (The number of directors to which each municipality is entitled shall be listed.)

Directors ~~shall be~~ are chosen to represent municipalities in the manner provided in section 1725.

Sec. B-277. 38 MRSA §1722, as enacted by PL 1983, c. 820, §2, is amended to read:

§1722. Approval and organization

When the residents of the municipality, or each municipality ~~where~~ when more than one is involved, or the municipal officers, as the case may be, have voted upon the formation of a proposed disposal district and all of the other questions submitted, the clerk of each of the municipalities shall make a return to the ~~Board of Environmental Protection~~ commissioner in such form as the ~~board~~ commissioner may determine. If the ~~board~~ commissioner finds from the returns that each of the municipalities involved, and, voting on each of the articles and questions submitted to them, have voted in the affirmative, and that they have appointed the necessary directors, and listed the names ~~thereof~~ of the directors, to represent each municipality and that all other steps in the formation of the proposed disposal district are in order and in conformity with law, the ~~board~~ commissioner shall make

a finding to that effect and record the finding upon ~~its~~ departmental records. ~~Where~~ When 3 or more municipalities are concerned in the voting, and at least 2 have voted to approve each of the articles and questions submitted ~~to them and have~~ , appointed the necessary directors~~,~~ and listed the names ~~thereof,~~ of the directors to represent each municipality, rejection of the proposed disposal district by one or more ~~shall~~ does not defeat the creation of a district composed of the municipalities voting affirmatively on the question, if the board determines and issues an order stating that it is feasible or practical to constitute the district as a geographic unit composed of the municipalities voting affirmatively, unless the vote submitted to the municipalities provided that specific participants or a minimum number of participants ~~shall~~ approve the formation of the district.

The ~~board~~ commissioner shall, immediately after making ~~its~~ findings, issue a certificate of organization in the name of the disposal district in such form as the ~~board may determine~~ commissioner determines. The original certificate ~~shall~~ must be delivered to the directors on the day that they are directed to organize and a copy of 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 the certificate by the ~~board shall be~~ commissioner is conclusive evidence of the lawful organization of the disposal district. The disposal district ~~shall~~ is not ~~be~~ operative until the date set by the directors under section 1726.

Sec. B-278. 38 MRSA §1725, first ¶, as enacted by PL 1983, c. 820, §2, is amended to read:

Directors ~~shall be~~ are appointed by the municipal officers of the municipality ~~which~~ they are to represent. Alternate directors may be appointed by the municipal officers to act in the absence of a director. To the extent possible, the board of directors ~~shall~~ must include a mix of individuals with sufficient managerial, technical, financial or business experience to execute their duties efficiently and effectively. Appointments ~~shall~~ must be by vote of the municipal officers, attested to by the municipal clerk and presented to the clerk of the district. The municipal officers, by majority vote, may remove their appointed representatives during their term for stated reasons, but ~~no~~ directors ~~shall~~ may not be removed except for neglect of duty, misconduct or other acts ~~which~~ that indicate an unfitness to serve. Upon receipt of the names of all the directors, the ~~Board of Environmental Protection~~ commissioner shall set a time, place and date for the first meeting of the directors, notice thereof to be given to the directors by certified or registered mail, return receipt requested, mailed at least 10 days prior to the date set for the meeting.

Sec. B-279. 38 MRSA §1727, as enacted by PL 1983, c. 820, §2, is amended to read:

§1727. Admission of new member municipalities

The board of directors may authorize the inclusion of additional member municipalities in the district upon the terms and conditions as the board, in its sole discretion, ~~shall deem to be~~ determines fair, reasonable and in the best interest of the district, except that on proper application, any municipality ~~which~~ that is host to a waste facility of the district shall be admitted on equal terms with existing members, provided that the new member municipality assumes or becomes responsible for a proportionate share of liabilities of the district in a manner similar to that of existing municipalities. The legislative body of any nonmember municipality ~~which~~ that desires to be admitted to the district shall make application for admission to the board of directors of the district. The directors shall determine the effects and impacts ~~which are~~ likely to occur if the municipality is admitted and shall either grant or deny authority for admission of the petitioning municipality. If the directors grant the authority, they shall also specify any terms and conditions, including, but not limited to, financial obligations upon which the admission is predicated. The petitioning municipality shall comply with the voting procedures specified in section 1721. The vote, if in the affirmative, ~~shall~~ must be certified by the clerk of that municipality to the board of directors and to the ~~Board of Environmental Protection~~ commissioner. Upon satisfactory performance of the terms and conditions of admission, the municipality shall by resolution of the board of directors become and thereafter be a member municipality of the district. The clerk of the district shall promptly certify to the board and the Secretary of State that the municipality ~~has become~~ is a member of the district. The certification ~~shall become~~ becomes conclusive evidence that the municipality is a lawful member of the district. Upon admission of a municipality to a district, the provisions of section 1724 ~~shall~~ determine the number of votes ~~which shall be~~ that are cast by the director or directors representing that municipality.

Sec. B-280. 38 MRSA §2002, sub-§1, as amended by PL 1989, c. 106, §2, is further amended to read:

1. Application. The municipal officers of the municipality or municipalities, or portions of the municipality or municipalities, or the residents of unorganized territory who desire to form a watershed district shall file an application with the Board of Environmental Protection on a form or forms to be prepared by the ~~board~~ commissioner, setting forth the name or names of the municipality or municipalities, or portions of the municipality or municipalities~~;~~ or, in the case of residents of unorganized territory, the names of those residents that propose to be included in the district and they shall furnish such other data as the board ~~may determine~~ determines necessary and proper. The application ~~shall~~ must contain, but is not ~~be~~ limited to, a description of the territory of the proposed district, the names of water districts ~~which~~ that utilize water from surface or ground water supplies within the territory of the proposed dis-

trict, the name proposed for the district which ~~shall~~ must include the words "watershed district" or "lake management district" and a statement showing the existence in ~~such~~ that territory of the need for a coordinated approach to lake watershed management as provided in this chapter.

Sec. B-281. 38 MRSA §2002, sub-§§2 and 3, as enacted by PL 1987, c. 711, are amended to read:

2. Application by referendum. Residents of a municipality or municipalities, or portions thereof, that desire to form a watershed district may petition the municipal officers to file an application for a watershed district with the Board of Environmental Protection. The petition ~~shall~~ must contain a description of the territory of the proposed district.

Upon receipt of a written petition signed by at least 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in that proposed district, the municipal 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:

> "Shall the municipal officers representing the proposed watershed district, consisting of (describe the territory of the proposed district), file an application for a watershed district with the Board of Environmental Protection on behalf of the residents of the proposed district?"

If the referendum question is approved by a majority of the legal voters voting at the election, provided that the total number of votes cast for and against the referendum question equals or exceeds 20% of the total number of votes cast in the proposed district in the last gubernatorial election, the municipal officers representing the residents of the proposed watershed district shall file an application for that proposed district in accordance with subsection 1.

3. Public hearing. Upon receipt of the application, the Board of Environmental Protection shall ~~cause~~ hold a public hearing ~~to be held on~~ regarding the application in one of the municipalities within the proposed district or, in the case of an application made solely by residents of unorganized territory, at some convenient place within the boundaries of the proposed district.

Sec. B-282. 38 MRSA §2002, sub-§§4 to 6, as amended by PL 1989, c. 106, §2, are further amended to read:

4. Approval of application. After the public hearing on the evidence received at the hearing, the board shall make findings of fact and conclusions and determine of record whether or not the conditions requisite for the creation of a watershed district exist in the territory described in the application. If the board finds that such 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 participating water districts, the municipal officers within the municipality or municipalities involved and, when unorganized territory is involved, to the persons signing the application ~~mentioned~~ described in subsection 1 and the commissioners of the county in which 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, when unorganized territory is involved, a joint meeting of all the persons signing the application ~~mentioned~~ described in subsection 1 and the commissioners of the county 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~~ described in subsection 1 and, in the case of county commissioners, to the addresses of those commissioners 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.

5. Denial of application. If the board, after that public hearing, determines that the creation of a watershed district in the territory described in the application is not warranted for any reason, it shall make findings of fact and conclusions and enter an order denying its approval. The ~~board~~ commissioner shall give notice of that denial by mailing certified copies of the decision and order to participating water districts, the municipal officers of the municipality or municipalities involved and, when unorganized territory is involved, to the persons signing the application ~~mentioned~~ described in subsection 1 and the commissioners of the county in which the unorganized territory is located. No application for the creation of a watershed district, consisting of exactly the same territory, may be entertained within one year after the date of the issuance of an order denying approval of the formation of that watershed district, but this provision ~~shall~~ does not preclude action on an application for the creation of a watershed district embracing all or part of the territory described in the original application, provided that another municipality or fewer municipalities, or other or fewer sections thereof, are involved or that a different area of unorganized 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 with the resubmitted application.

6. Joint meeting. The persons, other than participating water districts, to whom the notice described in subsection 3 is directed shall meet at the time and place appointed. When more than one municipality or unorganized territory is involved, the persons shall organize by electing a ~~chairman~~ chair and a secretary. ~~No~~ An action may not be taken at any such meeting unless, at the time the meeting is convened, there are present at least 1/2 of the total number of municipal officers eligible to attend

and participate at the meeting and, when the proposed district includes or is composed solely of unorganized territory, at least 2/3 of the persons signing the application ~~mentioned~~ described in subsection 1 and at least 2 commissioners of the county in which the unorganized territory is located, other than to report to the ~~Board of Environmental Protection~~ commissioner that a quorum was not present and to request the ~~board~~ commissioner to issue a new notice for another meeting. The purpose of the meeting ~~shall be~~ is to determine a fair and equitable number of trustees, subject to section 2004, to be elected by and represent each participating municipality or, in the case of unorganized territory, the residents of that 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. When 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 chair and attested by the secretary and filed with the ~~board~~ commissioner. When 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.

Sec. B-283. 38 MRSA §2002, sub-§7, as enacted by PL 1987, c. 711, is amended by amending the first paragraph to read:

7. Submission. When the record of the municipality or the record of the joint meeting, when municipalities are, or unorganized territory is, involved, has been received by the ~~board~~ commissioner and found by ~~it~~ the commissioner to be in order, the ~~board~~ commissioner shall order the question of the formation of the proposed watershed district and other related questions to be submitted to the legal voters residing within that portion of the municipality, municipalities or unorganized territory ~~which~~ that falls within the proposed watershed district. The order ~~shall~~ must be directed to the municipal officers of the municipality or municipalities which propose to form the watershed district and, when the proposed watershed district includes or is composed solely of unorganized territory, to the commissioners of the county in which the unorganized territory is located, directing them to call town meetings, city elections or a meeting of the residents of the unorganized territory within the bounds of the proposed watershed district for the purpose of voting in favor of or in opposition to each of the following articles or questions, as they may apply, in substantially the following form:

Sec. B-284. 38 MRSA §2003, as amended by PL 1989, c. 106, §4, is further amended to read:

§2003. Approval and organization

When the residents of the municipality or each municipality, when more than one is involved, or the unorganized territory within the proposed watershed district have voted upon the formation of a proposed watershed district and all of the other questions submitted therewith, the clerk of each municipality and, when the proposed district includes unorganized territory, the county clerk shall make a return to the ~~Board of Environmental Protection~~ commissioner in such form as the ~~board~~ commissioner determines. If the ~~board~~ commissioner finds from the returns that a majority of the residents within each of the municipalities involved and, when the proposed district includes unorganized territory, that a majority of the residents of the unorganized territory within the proposed watershed district, voting on each of the articles and questions submitted to them, have voted in the affirmative and have elected the necessary trustees and the names of those elected to represent each municipality, or the residents of the unorganized territory within the proposed watershed district, that each participating water district has appointed a trustee as provided by section 2002, subsection 6-A, and that all other steps in the formation of the proposed watershed 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~~ departmental records. The ~~board~~ commissioner shall, immediately after making ~~its~~ findings, issue a certificate of organization in the name of the watershed district in such form as the ~~board~~ commissioner determines. The original certificate ~~shall~~ must be delivered to the trustees on the day that they are directed to organize and a copy of 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 that certificate by the ~~board shall be~~ commissioner is conclusive evidence of the lawful organization of the watershed district. The watershed district ~~shall~~ is not ~~be~~ operative until the date set by the ~~board~~ commissioner under section 2006.

Sec. B-285. 38 MRSA §2005, as amended by PL 1989, c. 106, §§6 and 7, is further amended by amending the first paragraph to read:

Except for trustees representing participating water districts, whose selection is governed by section 2002, subsection 6-A, 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. Upon receipt of the names of all the trustees, the ~~Board of Environmental Protection~~ commissioner shall set a time, place and date for the first meeting of the trustees, notice of the meeting 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. Except for trustees representing water districts whose term is set by section 2002, subsection 6-A, the terms ~~shall~~ must be determined by lot in accordance with the following table:

Sec. B-286. 38 MRSA §2006, as enacted by PL 1987, c. 711, is amended to read:

§2006. Operational date of watershed districts

On the date set by the ~~Board of Environmental Protection~~ commissioner as provided in section 2005, the watershed district ~~shall become~~ becomes operative.

Sec. B-287. 38 MRSA §2007, sub-§4, ¶A, as enacted by PL 1987, c. 711, is amended to read:

A. The district has no authority to set a water level regime for a body of water impounded by a dam ~~which~~ that is exempt, under section 840, subsection 1, from the authority of the ~~Board of Environmental Protection~~ commissioner to set water level regimes.

Sec. B-288. 38 MRSA §2103, sub-§1, ¶K, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

K. Direct solid wastes from one public or private waste facility to another facility when an emergency is determined to exist by rule or by the Governor. The agency shall negotiate to provide to the receiving facility fair compensation for the disposal or processing of waste at that facility during the period of emergency. The agency shall consult with the ~~department~~ commissioner in the exercise of this power;

Sec. B-289. 38 MRSA §2157, first ¶, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

Subsequent to the adoption of the state plan, the ~~Board~~ Department of Environmental Protection ~~shall~~ may not approve an application of a new or expanded solid waste disposal facility requiring review under this section until the agency has approved the proposed facility under this section.

Sec. B-290. 38 MRSA §2158, sub-§1, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

1. Previously licensed facility. The facility ~~had~~ has been previously licensed by the ~~Board~~ Department of Environmental Protection prior to the adoption of the state plan; and

Sec. B-291. 38 MRSA §2171, sub-§3, ¶D, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

D. Serve as a liaison between the community and the agency, project developer or the ~~department~~ commissioner to facilitate communications during the development and operation of the facility, and provide residents with updated information about the project, including providing explanations of any technical terms.

Sec. B-292. 38 MRSA §2174, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2174. Local inspection and enforcement

1. Certification. The ~~department~~ commissioner shall establish and conduct a training program to certify host municipality inspectors. This program ~~shall~~ must be made available to persons who have been designated by the municipality. The ~~department~~ commissioner shall offer training programs at least twice a year and shall pay for the host inspection training program. The ~~department~~ commissioner may certify and decertify host municipality inspectors pursuant to rules promulgated by the Board of Environmental Protection.

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 solid waste disposal facility operator, pursuant to Title 1, chapter 13, subchapter I. All information provided under this subsection ~~shall~~ must be made available to the citizen advisory committee and the public by the host municipality.

A. The ~~department~~ commissioner shall provide all of the following information to the municipal officers of the host municipality:

(1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assessments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the ~~department~~ commissioner at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the ~~department~~ commissioner; and

(4) Copies of all ~~departmental~~ analyses of the data under subparagraph (3).

B. The operator of the facility shall provide the host municipality copies of all air, soil and water quality 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.

C. The municipality shall provide all of the following information to the ~~department~~ commissioner:

(1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assessments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the municipality at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the municipality; and

(4) Copies of all analyses of the data under subparagraph (3).

3. Inspection; emergency orders. A certified inspector is authorized to enter property of the agency or any regional association within the inspector's jurisdiction, inspect records 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 the facility that constitutes an immediate threat to public health or safety or to the environment. The inspector shall notify the ~~department~~ commissioner and the municipal officers of the host municipality within 2 hours of issuing such an order.

4. Commissioner inspections. Whenever any host municipality notifies the ~~department~~ commissioner of an order issued pursuant to a local permit requirement under section 2173 and gives the ~~department~~ commissioner reason to believe that any solid waste disposal facility owned by the agency or regional association is in violation of any law or regulation administered by the department, or any order or the condition of any permit issued pursuant ~~thereto~~ to any law or rule administered by the department, the ~~department~~ commissioner shall promptly conduct an inspection of the facility.

If the ~~department~~ commissioner finds that there is insufficient information to believe that there is a violation, the ~~department~~ commissioner shall, within 10 working days of a municipality's request for an inspection, provide to the municipality a written explanation of ~~its~~ the commissioner's decision not to conduct an inspection.

Sec. B-293. 38 MRSA §2177, as enacted by PL 1989, c. 585, Pt. A, §7, is amended to read:

§2177. Water supply monitoring and protection

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~~ analysis conducted of private water supplies used by the requestors for drinking water. The sampling and analysis ~~shall~~ must be conducted in a manner specified by and ~~shall~~ meet criteria developed by the department.

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 of the state drinking water standards as determined by the ~~department~~ commissioner shall restore the affected supply at no cost to the owner or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no cost to the owner.

1. Extent of analysis. Water supplies ~~shall~~ must be analyzed for all parameters or chemical constituents determined by the ~~department~~ commissioner to be indicative of typical contamination from solid waste landfills. The laboratory performing the sampling and analysis shall provide written copies of sample results to the landfill owner, the landowner and to the ~~department~~ commissioner.

2. Additional sampling required. If the analysis indicates possible contamination from a solid waste landfill, the ~~department~~ commissioner shall conduct, or require the landfill operator to have the laboratory conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination. The ~~department~~ commissioner shall, if necessary, require this sampling beyond the boundaries of the contiguous property.

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 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	(1.0)
Personal Services	$34,500
All Other	28,000
TOTAL	$62,500

Provides for a Clerk Typist III position and general operating funds. This appropriation is intended to establish a separate General Fund account for the board.

Administration	
Positions	(-1.0)
Personal Services	($34,500)
All Other	(28,000)
TOTAL	($62,500)

Provides for the transfer of a Clerk Typist III position and operating funds to the Board of Environmental Protection Account.

Department-wide	
All Other	($5,224)

Provides for the deappropriation of funds for anticipated certified mail savings and a reduction in rule-making expenses.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	($5,224)

Sec. B-297. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1990-91
ENVIRONMENTAL PROTECTION, DEPARTMENT OF	
Board of Environmental Protection Fund	
Positions	(1.0)
Personal Services	$52,028
All Other	15,150
Capital Expenditures	9,500

Provides funds for an Executive Director, general operating expenses, additional per diem and rule-making expenses and computer equipment.

DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$76,678

See title page for effective date.

CHAPTER 891

H.P. 1682 - L.D. 2328

An Act to Implement the Recommendations of the Court Jurisdiction Study

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

PART A

Sec. A-1. 4 MRSA §121 is enacted to read:

§121. Justice or Active Retired Justice of Superior Court assigned to sit in District Court or Administrative Court

A Justice or an Active Retired Justice of the Superior Court may be assigned by the Chief Justice of the Supreme Judicial Court to sit in the District Court or the Administrative Court and when so directed the justice has authority and jurisdiction in the District Court or the Administrative Court as if the justice were a regular judge of that court; and whenever the Chief Justice of the Supreme Judicial Court so directs, the justice may hear all matters and issue all orders, notices, decrees and judgments that any Judge of the District Court or the Administrative Court is authorized to hear and issue.

The order of the Chief Justice of the Supreme Judicial Court directing a Justice or an Active Retired Justice of the Superior Court to sit in the District Court or the Administrative Court must be filed with the Executive Clerk of the Supreme Judicial Court, but need not be docketed or otherwise recorded in any case heard by that justice.

Sec. A-2. 4 MRSA §153, first ¶ is amended to read:

The State is divided into ~~31~~ 30 judicial divisions, named and defined as follows, and with places for holding court ~~therein~~ in those divisions as follows:

Sec. A-3. 4 MRSA §153, sub-§7, as amended by PL 1983, c. 654, §1, is repealed.