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STATE OF MAINE

AS PASSED BY THE

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PUBLIC LAWS

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1991

CHAPTER 66

S.P. 463 - L.D. 1239

An Act to Remedy Statutory Inconsistencies

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and the confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 38 MRSA §342, sub-§6, as repealed by PL 1989, c. 869, Pt. A, §2 and as affected by c. 890, Pt. A, §40 and amended by Pt. B, §2, is repealed.

Sec. A-2. 38 MRSA §342, sub-§8, as enacted by PL 1989, c. 836, §3 and c. 890, Pt. A, §18 and affected by §40, is repealed and the following enacted in its place:

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.

Sec. A-3. 38 MRSA §342, sub-§13 is enacted to read:

13. Agricultural impacts. The commissioner shall notify and regularly inform the Commissioner of Agriculture, Food and Rural Resources on proposed legislation or rules that may affect agricultural activity.

Sec. A-4. 38 MRSA §353, sub-§2, as amended by PL 1989, c. 874, §4 and affected by c. 890, Pt. A, and amended by Pt. B, §13, is repealed and the following enacted in its place:

2. Processing fee. A processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing the application results in the application being returned to the applicant. The 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 must be refunded, except in the case of nonferrous metal mining applications. If an application for nonferrous metal mining is withdrawn by the applicant within 30 days of the date of filing, 1/2 of the application fee must be refunded.

Sec. A-5. 38 MRSA §353, sub-§3, as amended by PL 1989, c. 874, §5 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §13, is repealed and the following enacted in its place:

3. License fee. A license fee must be paid at the time of filing the application. Failure to pay the license fee at the time of filing results in the application being returned to the applicant. The 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 must be paid prior to the issuance of the license.

The license fees for nonferrous metal mining must be paid annually on the anniversary date of the license for the life of the project, up to and including the period of closure and reclamation.

Sec. A-6. 38 MRSA §414, sub-§3-A, as repealed and replaced by PL 1989, c. 807 and as amended by c. 890, Pt. B, §29, is repealed and the following enacted in its place:

3-A. Inspection of overboard discharges. At least twice each calendar year, the commissioner shall inspect all

licensed overboard discharges operated on a year-round basis. At least once each calendar year, the commissioner shall inspect all licensed overboard discharges operated no more than 6 months of a calendar year. The commissioner shall assess the costs of inspection as an annual license fee payable by the license holder based on the adjusted gross income of the license holder under the federal Internal Revenue Code of 1986, as amended, according to the following schedule:

A. For residential overboard discharges:

(1) License holders with an adjusted gross income equal to or greater than $30,000 annually - $100;

(2) License holders with an adjusted gross income equal to or greater than $15,000 and less than $30,000 annually - $75;

(3) License holders with an adjusted gross income equal to or greater than $7,500 and less than $15,000 annually - $50; and

(4) License holders with an adjusted gross income less than $7,500 - no fee; and

B. For commercial overboard discharge license holders at all income levels - $100.

Sec. A-7. 38 MRSA §414-A, sub-§2, as amended by PL 1989, c. 856, §1 and affected by §7 and c. 890, Pt. A, §40 and as amended by Pt. B, §30, is repealed and the following enacted in its place:

2. Schedules of compliance. The 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, and for compliance with section 420, subsection 2. Schedules must be consistent with the times permitted for compliance with the Federal Water Pollution Control Act, Public Law 92-500, 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 must be as short as possible and based on a consideration of the technological and economic impact of the steps necessary to attain these standards.

Sec. A-8. 38 MRSA §420-A, first ¶, as amended by PL 1989, c. 856, §3 and affected by §7 and c. 890, Pt. A, §40 and amended by Pt. B, §39, is repealed and the following enacted in its place:

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

Sec. A-9. 38 MRSA §420-A, sub-§4, as amended by PL 1989, c. 856, §4 and affected by §7 and c. 890, Pt. A, §40 and amended by Pt. B, §40, is repealed and the following enacted in its place:

4. Report. The commissioner shall report by December 1, 1990, and annually thereafter on December 1st, on the results of the monitoring program to the joint standing committee of the Legislature having jurisdiction over natural resources. The annual report must contain the 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. A-10. 38 MRSA §439-A, sub-§5, as amended by PL 1989, c. 803, §1; c. 838, §2; and c. 878, Pt. G, §7, is repealed and the following enacted in its place:

5. Timber harvesting. Municipal ordinances must regulate timber harvesting within the shoreland area, except surrounding existing forested wetlands or harvested forested wetlands that are not zoned for resource protection. Notwithstanding any provision in a local ordinance to the contrary, standards for timber harvesting activities may not be less restrictive than the following:

A. Selective cutting of no more than 40% of the trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level, in any 10-year period, provided that a well-distributed stand of trees and other natural vegetation remains;

B. Within a shoreland area zoned for resource protection abutting a great pond there may not be timber harvesting within the strip of land extending 75 feet inland from the normal high-water line except to remove safety hazards; and

C. Any site within a shoreland area zoned for resource protection abutting a great pond, beyond the 75-foot strip restricted in paragraph B, where timber is harvested must be reforested within 2 growing seasons after the completion of the harvest, according to guidelines adopted by the board. The board shall adopt guidelines consistent with minimum stocking standards established under Title 12, section 8869.

The board may adopt more restrictive guidelines consistent with the purposes of this subchapter that must then be incorporated into local ordinances.

Sec. A-11. 38 MRSA §451, 2nd ¶, as amended by PL 1989, c. 878, Pt. B, §39 and c. 890, Pt. B, §50, is repealed and the following enacted in its place:

The department may establish a mixing zone for any discharge at the time of application for a waste discharge license. The department shall attach a description of the mixing zone as a condition of a license issued for that discharge. After opportunity for a hearing in accordance with section 345-A, the department may 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 department shall establish in the manner provided in this paragraph a mixing zone with respect to the discharge sought to be affected.

Sec. A-12. 38 MRSA §464, sub-§4, ¶A, as amended by PL 1989, c. 856, §6 and affected by §7 and c. 890, Pt. A, §40 and amended by Pt. B, §56, is repealed and the following enacted in its place:

A. Notwithstanding section 414-A, the department 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 that were licensed prior to January 1, 1986, 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 that 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 that imparts color, taste, turbidity, toxicity, radioactivity or other properties 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 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; or causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range; and

(6) New discharges of domestic pollutants to the surface waters of the State 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 that was not licensed as of June 1, 1987, except those discharges that were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the department with clear and convincing evidence. For purposes of licensing, the 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. A-13. 38 MRSA §464, sub-§6, ¶A, as amended by PL 1989, c. 878, Pt. B, §40 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §59, is repealed and the following enacted in its place:

A. At any time during the term of a valid wastewater discharge license that was issued prior to the effective date of this article, the board may modify that license in accordance with section 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.

Sec. A-14. 38 MRSA §467, sub-§7, ¶A, as repealed and replaced by PL 1989, c. 764, §7 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §69, is amended by repealing and replacing subparagraph (3) to read:

(3) From the confluence of Cambolasse Stream to the confluence of the Piscataquis River, including all impoundments - Class C.

Sec. A-15. 38 MRSA §467, sub-§15, ¶C, as amended by PL 1989, c. 746 and repealed and replaced by c. 764, §16, is repealed and the following enacted in its place:

C. Aroostook River Drainage.

(1) Aroostook River, main stem.

(a) From the confluence of Millinocket Stream and Munsungan Stream to its confluence with the Machias River - Class AA.

(b) From its confluence with the Machias River to the Sheridan Dam - Class B.

(c) From the Sheridan Dam to its confluence with Presque Isle Stream, including all impoundments - Class B.

(d) From its confluence with Presque Isle Stream to a point located 3.0 miles upstream of the intake of the Caribou water supply, including all impoundments - Class C.

(e) From a point located 3.0 miles upstream of the intake of the Caribou water supply to a point located 100 yards downstream of the intake of the Caribou water supply, including all impoundments - Class B.

(f) From a point located 100 yards downstream of the intake of the Caribou water supply to the international boundary, including all impoundments - Class C.

(2) Aroostook River, tributaries, those waters lying within the State - Class A unless otherwise specified.

(a) All tributaries of the Aroostook River entering below the confluence of the Machias River that are not otherwise classified - Class B.

(b) Little Machias River and its tributaries - Class A.

(c) Little Madawaska River and its tributaries, including Madawaska Lake tributaries above the Route 161 bridge in Stockholm - Class A.

(d) Machias River, from the outlet of Big Machias Lake to the Garfield Plantation-Ashland boundary - Class AA.

(e) Millinocket Stream, from the outlet of Millinocket Lake to its confluence with Munsungan Stream - Class AA.

(f) Munsungan Stream, from the outlet of Little Munsungan Lake to its confluence with Millinocket Stream - Class AA.

(g) Presque Isle Stream and its tributaries above its confluence with, but not including, the North Branch of the Presque Isle Stream - Class A.

(h) St. Croix Stream from its confluence with Hall Brook in T.9, R.5, W.E.L.S. to its confluence with the Aroostook River - Class AA.

(i) Squa Pan Stream and its tributaries above the B&A Railroad bridge - Class A.

(i) The Legislature recognizes that at certain times the waters of Squa Pan Stream may not meet either the antidegradation standards of section 464, subsection 4, paragraph F, or the water quality classification standards of section 465 due to the operation of the Squa Pan Hydro Project as a generator of hydroelectric peaking power. The Legislature further finds that there are currently no available modifications or alterations to the operation of this existing hydro project that would allow water quality standards to be met while allowing the Squa Pan Hydro Project to continue as a source of peaking power or to be altered and otherwise used as a source of power. Accordingly, the board may not consider the impact to the waters of the Squa Pan Stream caused by the operation of Squa Pan Hydro Project in the production of hydroelectric power in determining whether those waters satisfy any designated uses of water quality standards set forth in section 464, subsection 4, paragraph F or section 465. As used in this subdivision, "operation of the Squa Pan Hydro Project" means the actual, established use of that project's operation since January 4, 1965.

Sec. A-16. 38 MRSA §480-H, as amended by PL 1989, c. 814, §2 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §75, is repealed and the following enacted in its place:

§480-H. Rules; performance and use standards

In fulfilling its responsibilities to adopt rules pursuant to section 341-D, subsection 1, the board, to the extent practicable, shall adopt performance and use standards for activities regulated by this article. These standards at a minimum must include:

1. Department of Transportation projects. By February 15, 1991, requirements for projects that are under the direction and supervision of the Department of Transportation that do not affect coastal wetlands or coastal sand dune systems and that involve only maintenance or repair of public transportation facilities or structures or transportation reconstruction or replacement projects.

A. The Department of Transportation shall meet the following conditions for any project undertaken pursuant to this subsection after February 15, 1991.

(1) All projects must be performed in a manner consistent with this article and in compliance with rules adopted by the board.

(2) The project may not unreasonably harm the protected natural resources covered by this article.

(3) The Department of Transportation and its contractors shall use erosion control measures to prevent sedimentation of any surface waters.

(4) The project may not block any fish passage in any watercourse.

(5) The project may not result in any excessive intrusion of the project into the protected natural resources.

B. Those activities that are exempt from permitting requirements under section 480-Q are not subject to this subsection.

C. The Department of Transportation must notify the commissioner before construction activities begin if the provisions of this subsection are utilized.

Sec. A-17. 38 MRSA §482-A, sub-§2, as amended by PL 1989, c. 680 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §87, is repealed and the following enacted in its place:

2. Consideration of local ordinance. In determining whether a developer has made adequate provision for the control of noise generated by a commercial or industrial development, the department shall consider rules adopted under this section and the quantifiable noise standards of the municipality in which the development is located and of any municipality that may be affected by the noise.

Sec. A-18. 38 MRSA §550, as amended by PL 1989, c. 868, §3 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §116, is repealed and the following enacted in its place:

§550. Enforcement; penalties

Any person who causes or is responsible for a discharge in violation of section 543 is not subject to any fines or civil penalties if that person:

1. Report and remove. Reports within 2 hours and promptly removes the discharge in accordance with the rules and orders of the board or commissioner; and

2. Reimburse. Reimburses the department for any disbursement made from the fund in connection with the discharge pursuant to section 551, subsection 5, paragraph B within 30 days of demand.

Sec. A-19. 38 MRSA §551, sub-§4, ¶A, as amended by PL 1989, c. 868, §4 and affected by §19 and c. 890, Pt. A, §40 and amended by Pt. B, §119, is repealed and the following enacted in its place:

A. License fees are determined on the basis of 4¢ per barrel until February 1, 1991 and 3¢ per barrel after February 1, 1991, of unrefined crude oil and all other refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel, transferred by the licensee during the licensing period and must be paid monthly by the licensee on the basis of records certified to the commissioner. License fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund.

Sec. A-20. 38 MRSA §551, sub-§4, ¶D, as amended by PL 1989, c. 868, §5 and affected by §19 and c. 890, Pt. A, §40 and amended by Pt. B, §120, is repealed and the following enacted in its place:

D. Any person who is required to register with the commissioner pursuant to section 545-B and who first transports oil in Maine shall pay fees that are determined on the basis of 4¢ per barrel until February 1, 1991 and 3¢ per barrel after February 1, 1991, 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 must be paid monthly by the registrant on the basis of records certified to the commissioner. Fees 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 commissioner and the commissioner's authorized representatives all documents relating to the oil transported by the registrant during the period of registration. This paragraph does not apply to waste oil transported into Maine in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and is subject to fees established under section 1319-I.

Sec. A-21. 38 MRSA §551, sub-§6, as repealed and replaced by PL 1989, c. 868, §9 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §122, is repealed and the following enacted in its place:

6. Reimbursements to Maine Coastal and Inland Surface Oil Clean-up Fund. The commissioner shall seek recovery for the use of the fund all disbursements from the fund, for the following purposes including overdrafts and interest computed at 15% a year from the date of expenditure, unless the 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 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, H and I in connection with a prohibited discharge; and

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

Requests for reimbursement to the fund if not paid within 30 days of demand must be turned over to the Attorney General for collection. The commissioner may file claims with appropriate federal agencies to recover for the use of the fund all disbursements from the fund in connection with a prohibited discharge.

Requests for reimbursement to the fund for disbursements pursuant to subsection 5, paragraph B, if not paid within 60 days of demand, are subject to a penalty not to exceed twice the total amount of reimbursement requested. This penalty is in addition to the reimbursement requested and any other fines or civil penalties authorized by this Title.

Sec. A-22. 38 MRSA §563, sub-§2, as amended by PL 1989, c. 865, §3 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §133, is repealed and the following enacted in its place:

2. Information required for registration. The owner or operator of an underground oil storage facility shall provide the commissioner with the following information on a form in triplicate to be developed and provided by the commissioner; one copy to be submitted to the 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. The location of the facility shown on a United States Geological Survey topographic map for facilities located in rural areas or in relation to the nearest intersection for facilities located in urban areas 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 facilities, 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 the form of secondary containment, other forms of leak detection or equipment to be installed pursuant to section 564, subsection 1, paragraph A and, when applicable, the method of retrofitting leak detection pursuant to section 564, subsection 1 or 1-A;

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

I. Expiration date of tank manufacturer's warranty.

The owner or operator shall comply with the requirements of paragraph C by January 1, 1991.

Sec. A-23. 38 MRSA §563, sub-§3, as amended by PL 1989, c. 865, §4 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §134, is repealed and the following enacted in its place:

3. Amended registration required. The owner or operator of an underground oil storage facility shall file an amended registration form with the commissioner immediately upon any change in the information required pursuant to subsection 2, including any modifications to the facility or a change of ownership. The board may establish, by rule, a late registration period not to exceed 10 business days in duration. A fee may not be charged for filing an amended registration.

Sec. A-24. 38 MRSA §563, sub-§5, as repealed and replaced by PL 1989, c. 865, §6 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §135, is repealed and the following enacted in its place:

5. Penalty for failure to submit amended registration. Any person who has not submitted an amended registration form in accordance with subsection 3 shall pay a late fee of $100. This does not preclude the commissioner from seeking civil penalties from any person who fails to register a facility or tank.

Sec. A-25. 38 MRSA §565, sub-§2, ¶B, as repealed by PL 1989, c. 865, §11 and as affected by c. 890, Pt. A, §40 and amended by Pt. B, §143, is repealed.

Sec. A-26. 38 MRSA §565, sub-§2, ¶C, as amended by PL 1989, c. 865, §11 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §144, is repealed and the following enacted in its place:

C. When a monitoring well is installed at an existing facility governed by this section, the owner or operator of the facility 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 commissioner any sampling results showing evidence of a possible leak or discharge of oil.

Sec. A-27. 38 MRSA §566-A, sub-§2, as amended by PL 1989, c. 865, §12 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §145, is repealed and the following enacted in its place:

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 commissioner and the fire department in whose jurisdiction the underground oil facility or tank is located at least 30 days prior to abandonment.

Sec. A-28. 38 MRSA §568, as amended by PL 1989, c. 865, §14 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §146, is repealed and the following enacted in its place:

§568. Cleanup and removal of prohibited discharges

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

2. Restoration of water supplies. The 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 with alternatives the commissioner finds are cost effective, technologically feasible and reliable and that effectively mitigate or minimize damage to and provide 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 commissioner shall consult with the affected party prior to selecting the alternative to be implemented.

3. Issuance of clean-up orders. The 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 that relate or may relate to the discharge under investigation from any person who the commissioner has reason to believe may be a responsible party. If the 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 issue a clean-up order requiring the responsible party to cease the discharge immediately or to take action to prevent further discharge and to mitigate or terminate the threat of human exposure to contamination or to explosive vapors. In addition to other actions, the commissioner may, as part of any clean-up order, require the responsible party to provide temporary drinking water and water treatment systems approved by the commissioner, to sample and analyze wells and to compensate 3rd-party damages resulting from the discharge. The commissioner may also 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 with water supplies the commissioner finds are cost effective, technologically feasible and reliable and that effectively mitigate or minimize damage to, and provide adequate protection of, the public health, welfare and the environment. Clean-up orders may be issued only in compliance with the following procedures.

A. Any orders issued under this section 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 board shall appoint an independent hearing examiner to hold a hearing as soon as possible after receipt of the application. The nature of the hearing must be an appeal. At the hearing, all witnesses must be sworn and the 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 then 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 hearing examiner shall make findings of fact. The board shall vote to accept, reject or modify the findings of the hearing examiner at the next regularly scheduled board meeting and shall continue, revoke or modify the commissioner's 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 is not subject to any fines or penalties for a violation of section 543 for the discharge if that person promptly reports and removes that discharge in accordance with the rules and orders of the department.

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 is not eligible for coverage under the fund pursuant to section 568-A, subsection 1, and 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 in addition to reasonable attorney's fees as a result of failure to take prompt action.

C. Notwithstanding paragraphs A and B, a person who violates any laws or rules administered by the department under this subchapter is subject to the fines and penalties in section 349.

5-A. Land acquisition. Upon approval of the board by 2/3 majority vote, the department may acquire by purchase, lease, condemnation, donation or otherwise, any real property or any interest in real property, to undertake remedial actions in response to a discharge of oil, including, but not limited to:

A. Actions to prevent further discharge and to mitigate or terminate the threat of a discharge of oil;

B. Actions to clean up and remove oil from the site; and

C. Replacement of water supplies contaminated by or at significant risk of contamination by a discharge of oil.

The department may exercise the right of eminent domain in the manner described in Title 35-A, chapter 65, to take and hold real property to provide drinking water supplies to replace those contaminated by a discharge and to undertake soil and ground water remediation to protect water supplies that are at significant risk of contamination. The department may transfer or convey to any person real property or any interest in real property once acquired.

Sec. A-29. 38 MRSA §569, sub-§2-A, as amended by PL 1989, c. 865, §16 and affected by §§24 and 25 and c. 890, Pt. A, §40 and amended by Pt. B, §148, is repealed and the following enacted in its place:

2-A. Third-party damages. Any person claiming to have suffered actual economic damages, including, but not limited to, property damage, loss of income and medical expenses 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 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the commissioner stating the amount of damage alleged to be suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The board, upon petition and for good cause shown, may waive the 2-year limitation for filing damage claims. For claims made on discharges eligible for coverage by the 3rd-party commercial risk pool account, the commissioner shall pay the first $100,000 per claimant out of the 3rd-party commercial risk pool account as long as funds are available. The commissioner shall pay any claims that exceed $100,000 or available money in the 3rd-party commercial risk pool account from the fund.

A. If a claimant is not compensated for 3rd-party damages by the responsible party or the expenses are above the applicant's deductible and the claimant and the commissioner agree as to the amount of the damage claim, the 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 commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 3-A.

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 must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made are deemed waived.

F. Awards from the fund on damage claims may not include any amount 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.

G. It is the intent of the Legislature that the remedies provided for 3rd-party damage claims compensated under this subchapter are nonexclusive. A court awarding damages to a claimant as a result of a discharge of oil to ground water prohibited by section 543 shall reduce damages awarded by any amounts received from the fund to the extent these amounts are duplicative.

H. Payments from the fund for 3rd-party damage claims may not exceed $200,000 per claimant.

This subsection is repealed December 31, 1999.

Sec. A-30. 38 MRSA §569, sub-§4, as repealed by PL 1989, c. 865, §16 and affected by §§24 and 25 and c. 890, Pt. A, §40 and amended by Pt. B, §149, is repealed.

Sec. A-31. 38 MRSA §569, sub-§6, as amended by PL 1989, c. 865, §16 and affected by §§24 and 25 and c. 890, Pt. A, §40 and amended by Pt. B, §150, is repealed and the following enacted in its place:

6. Reimbursements to the Ground Water Oil Clean-up Fund. The commissioner shall seek recovery for the use of the fund of all sums greater than $1,000,000 per occurrence, expended from the fund pursuant to subsection 5, paragraph I, for an applicant for coverage by the fund found by the commissioner to be eligible under section 568-A,

subsection 1, and all sums expended from the fund when no applicant was found by the commissioner to be eligible under section 568-A, subsection 1, including overdrafts, for the purposes described in subsection 5, paragraphs B, D, E, G and I, 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 commissioner finds the amount involved too small or the likelihood of success too uncertain. If a request for reimbursement to the fund is not paid within 30 days of demand the commissioner shall refer the request to the Attorney General for collection.

This subsection is repealed December 31, 1999.

Sec. A-32. 38 MRSA §570-A, as amended by PL 1989, c. 865, §18 and affected by §§24 and 25 and c. 890, Pt. A, §40 and amended by Pt. B, §151, is repealed and the following enacted in its place:

§570-A. Budget approval

The commissioner shall submit budget recommendations for disbursements from the fund in accordance with section 569, subsection 5, paragraphs A, C, F, G and H for each biennium. The budget must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section 569, subsection 5, paragraphs B, D, E, E-1 and I may be made as authorized by the State Controller following approval by the commissioner.

This section is repealed December 31, 1999.

Sec. A-33. 38 MRSA §570-B, as amended by PL 1989, c. 865, §19 and affected by §§24 and 25 and c. 890, Pt. A, §40 and amended by Pt. B, §152, is repealed and the following enacted in its place:

§570-B. Personnel and equipment

The commissioner shall establish and maintain at appropriate locations employees and equipment necessary to carry out this subchapter. The commissioner, subject to the Civil Service Law, may employ personnel 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 must be paid from the Ground Water Oil Clean-up Fund established by this subchapter.

This section is repealed December 31, 1999.

Sec. A-34. 38 MRSA §608-A, as amended by PL 1989, c. 869, Pt. C, §9 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §176, is repealed and following enacted in its place:

§608-A. Soil decontamination

Any rotary drum mix asphalt plant may process up to 500 cubic yards of soil contaminated by gasoline or #2 fuel oil per year. The 500 cubic yards per year limit may be exceeded with written authorization from the commissioner based on air emissions testing results for volatile organic compounds and particulates. The plant owner or operator shall notify the 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. A-35. 38 MRSA §1310-F, first ¶, as amended by PL 1989,c. 869, Pt. A, §6 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §238, is repealed and the following enacted in its place:

The commissioner shall administer a closure and remediation grants program to assist municipalities and other public entities as provided in subsection 3 in the implementation of the closure and remediation plans. The program is subject to the following provisions.

Sec. A-36. 38 MRSA §1310-F, sub-§3, as enacted by PL 1989, c. 869, Pt. A, §7 and c. 870, §4, is repealed and the following enacted in its place:

3. Sanitary and refuse disposal districts. Any of the following public entities owning a solid waste landfill for which a remediation or closure plan has been adopted is eligible for grants under this section:

A. A sanitary district created under chapter 11 or by special act of the Legislature; or

B. A regional association as defined in section 1303-C, subsection 24.

Sec. A-37. 38 MRSA §1310-F, sub-§4 is enacted to read:

4. Insurance. Notwithstanding subsection 1, the commissioner may not issue a grant under this section to a municipality for the costs of closure unless the municipality demonstrates to the commissioner that each person who performs work to implement the closure plan is self-insured or is covered by a workers' compensation insurance policy in accordance with Title 39.

Sec. A-38. 38 MRSA §1310-U, 2nd ¶, as amended by PL 1989, c. 869, Pt. A, §8 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §251, is repealed and the following enacted in its place:

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 that contain standards the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protec-

tion; and compatibility of the solid waste facility with local zoning and land use controls, provided that the standards are not more strict than those contained in this chapter and in chapter 3, subchapter I, articles 5-A and 6 and the rules adopted under these articles. Municipal ordinances must use definitions consistent with those adopted by the board.

Sec. A-39. 38 MRSA §1319-R, sub-§1, as amended by PL 1989,c. 794, §5 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §263, is repealed and the following enacted in its place:

1. Licenses for hazardous waste facilities. The department shall issue a license for a hazardous waste facility whenever the department finds 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 must be issued under the terms and conditions as the department prescribes and for a term not to exceed 5 years. The department may establish reasonable time schedules for compliance with this subchapter and rules promulgated by the board.

A. The 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;

(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; and

(4) If corrective action required by section 1319-V can not be completed by an applicant prior to issuance of a license, the applicant has the financial capacity to undertake and complete the corrective action.

B. The 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, or the waste facility is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the requirement to have a license under this subchapter;

(2) The owner or operator has within 60 days of first becoming subject to the license requirements of this subchapter:

(a) Notified the commissioner of the location of the facility;

(b) Provided a detailed description of the operation of the facility;

(c) Identified the hazardous waste 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;

(4) The waste facility has a discharge or emission license under section 414 or 591 and the facility is operated in accordance with that license; and

(5) The facility was not previously denied a noninterim hazardous waste license or an interim license has not expired pursuant to paragraph C, subparagraphs (2) to (6).

C. Interim licenses 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 department that the disposition referred to in subparagraph (1) 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;

(4) The date on which the application for a noninterim hazardous waste facility license is due if the person operating under the interim license fails to apply for that noninterim license;

(5) For interim licenses issued prior to November 8, 1984, unless the owner or operator of the facility has filed a complete application with the commissioner before one of the following dates and that application demonstrates compliance with all applicable ground water and financial responsibility requirements:

(a) November 8, 1985, for a land disposal facility;

(b) November 8, 1986, for a hazardous waste incinerator; or

(c) November 8, 1989, for any facility other than a land disposal facility or hazardous waste incinerator; or

(6) Twelve months after the facility first becomes subject to the permit requirements of this subchapter unless the owner or operator of the facility has filed a complete application with the commissioner before that date and that application demonstrates compliance with all applicable ground water and financial responsibility requirements.

Sec. A-40. 38 MRSA §1364, sub-§5, as amended by PL 1989,c. 792, and affected by c. 890, Pt. A, §40 and amended by Pt. B, §267, is repealed and the following enacted in its place:

5. Mitigation. The commissioner may take whatever action 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. When the necessary action includes the installation of a public water supply, the department may pay the costs of operation, maintenance and depreciation of the water supply for a period not exceeding 20 years if funds are available from Other Special Revenue or proceeds from the sale of bonds.

Sec. A-41. 38 MRSA §2157, first ¶, as amended by PL 1989, c. 869, Pt. C, §11 and affected by c. 890, Pt. A, §40 and as amended by Pt. B, §289, is repealed and the following enacted in its place:

Subsequent to the adoption of the state plan, the Department of Environmental Protection 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. An expansion of a solid waste disposal facility owned by a municipality or a regional association or a sanitary district created under chapter 11 or by special act of the Legislature is not subject to subsection 1, paragraph C, subparagraph (2), if the facility was licensed and in existence as of October 1, 1989, and at the time of application for the expansion.

Sec. A-42. PL 1989, c. 868, §19 is repealed.

Sec. A-43. Applicability. Notwithstanding the Maine Revised Statutes, Title 1, section 302, sections 7, 8, 9 and 13 of this Part apply to all license applications pending before the Department of Environmental Protection on or after January 1, 1990.

PART B

Sec. B-1. 38 MRSA §464, sub-§4, ¶F, as amended by PL 1989, c. 764, §1 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §58, is further amended by repealing and replacing sub-¶(3) to read:

(3) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the Federal Water Pollution Control Act, Section 401, Public Law 92-500, as amended, if the standards of classification of the water body and the requirements of this paragraph are met. The department may issue a discharge license or approve water quality certification for a project affecting a water body in which the standards of classification are not met if the project does not cause or contribute to the failure of the water body to meet the standards of classification.

Sec. B-2. 38 MRSA §563-A, sub-§1, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §136 and c. 926, §2, is repealed and the following enacted in its place:

1. Compliance schedule. Except as provided in subsections 1-A and 1-B, a person may not operate, maintain or store oil in a registered underground oil storage facility or tank that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department 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.

Sec. B-3. 38 MRSA §564, sub-§1, as amended by PL 1989, c. 865, §10 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §§137 and 138, is repealed and the following enacted in its place:

1. Design and installation standards for new and replacement facilities. Design and installation standards for new and replacement facilities are as follows.

A. All new and replacement tanks, piping and below ground ancillary equipment must be constructed of fiberglass, cathodically protected steel or other equally noncorrosive material approved by the department. All new and replacement tanks must include secondary containment, monitoring of the interstitial spaces for all piping and below ground ancillary equipment except

for suction piping systems installed in accordance with subsection 1-A. Both tanks and piping must be constructed of materials compatible with the product to be stored. Anchoring is required of tanks when located in a site where the ground water is expected to reach the bottom of the tank or in a 100-year flood plain.

B. All new and replacement facilities must be installed in accordance with the equipment manufacturer's specifications and nationally accepted standards and by an underground oil storage tank installer who has been properly certified pursuant to Title 32, chapter 104-A, and must be registered with the 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. New and replacement impressed current cathodic protection systems must be designed by a corrosion expert.

Sec. B-4. 38 MRSA §564, sub-§2, as amended by PL 1989, c. 865, §10 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §139, is repealed.

Sec. B-5. 38 MRSA §564, sub-§2-A is enacted to read:

2-A. Monitoring, maintenance and operating procedures for existing, new and replacement facilities and tanks. The board's rules must 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 must be reported to the commissioner. Annual statistical inventory analysis is not required for double-walled tanks equipped with interstitial space monitors;

C. Voltage readings for cathodically protected systems by a cathodic protection tester 6 months after installation and annually thereafter;

D. Monthly inspections by a cathodic protection tester of the rectifier meter on impressed current systems;

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

F. Proper calibration, operation and maintenance of leak detection devices;

G. 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;

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

(1) Unexplained differences in daily inventory reconciliation values 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 or by other leak detection methods;

(4) Failure of a tank or piping precision test, hydrostatic test or other tank or piping tightness test approved by the department;

(5) Discovery of oil off site on or under abutting properties, including nearby utility conduits, sewer lines, buildings, drinking water supplies and soil; and

(6) Notwithstanding this paragraph, any actual leaks or discharges of oil that occur on the premises, including, but not limited to, spills, overfills and leaks, whether or not cleaned up;

I. Compatibility of the materials from which the facility is constructed and the product to be stored;

J. Owners and operators, upon request by the commissioner, to sample their underground oil tanks, to maintain records of all monitoring and sampling results at the facility or the facility owner's place of business and to furnish records of all monitoring and sampling results to the commissioner or to permit the commissioner or the commissioner's representative to inspect and copy those records; and

K. Owners and operators to permit the commissioner or the commissioner's designated representatives, including contractors, access to all underground oil storage facilities for all purposes connected with administering this subchapter, including, but not limited to, for sampling the contents of underground oil tanks and monitoring wells. This right of access is to be in addition to any other granted by law.

Sec. B-6. 38 MRSA §564, sub-§3, as amended by PL 1989, c. 865, §10 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §140, is repealed and the following enacted in its place:

3. Replacement of tanks at facilities where leaks have been detected. If replacement or removal is required as a result of a 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 that is not constructed of noncorrosive material or is not cathodically protected against corrosion 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 commissioner. If a statistical inventory analysis of the entire facility was performed within 60 days prior to the required replacement, then the results of that analysis may be submitted to the commissioner instead. If the results of the statistical inventory analysis indicate evidence of a leak at the facility or that the inventory data is not available or is not sufficiently reliable to make a determination that the facility is or is not leaking, the commissioner may require that all remaining tanks and piping at the facility be precision tested, except that precision testing is not required when 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 determined necessary by the 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 must be submitted to the commissioner, and all tanks and piping found to be leaking must be removed pursuant to section 566-A, or repaired to the satisfaction of the commissioner.

Sec. B-7. 38 MRSA §564, sub-§4, as amended by PL 1989, c. 865, §10 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §141, is repealed and the following enacted in its place:

4. Sampling of monitoring wells. When a monitoring well is installed at an underground oil storage facility storing motor fuel or used for the marketing and distribution of oil, the owner or operator is required to sample that well at least weekly; to maintain records of all sampling results at the facility or at the facility owner's place of business; and to report to the commissioner any sampling results showing evidence of a possible leak or discharge of oil.

Sec. B-8. 38 MRSA §1721, sub-§§1 to 6, as amended by PL 1989, c. 869, Pt. B, §2 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §276, are repealed and the following enacted in their place:

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 agency, after notice and hearing in each municipality, on a form or forms prepared by the agency, setting forth the name or names of the municipality or municipalities and furnishing such other data as the agency determines necessary and proper. The application must contain, but is not limited to, a description of the territory of the proposed district, the name proposed for the district that includes 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 required by the agency. The agency may adopt rules under this chapter.

2. Public hearing. Upon receipt of the application, the agency shall hold a public hearing 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 agency shall publish notice of the hearing 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 agency shall, in accordance with section 1702 and rules adopted by the agency, make findings of fact 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 agency finds that the 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 agency 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 is evidence of the receipt of notice. The notice must be mailed at least 10 days prior to the date set for the meeting.

4. Denial of application. If the agency 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 enter an order denying its approval. The agency 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. An application for the creation of a disposal district, consisting of exactly the same territory, may not 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 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. When more than one municipality is involved, they shall organize by electing a chair and a secretary. 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 agency that a quorum was not present and to request the agency to issue a new notice for another meeting. A quorum is a simple majority of representatives eligible to attend the meeting. The purpose of the meeting 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 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 is 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 must 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 must be signed by the chair, attested by the secretary and filed with the agency. Any agreements among the municipal representatives that 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, must be in writing and included in the record filed with the agency. Subsequent to district formation, the board of directors of the district shall execute all documents necessary to give full effect to the agreements reached by the municipal representatives and filed with the agency. When a single municipality is involved, a copy of the vote of the municipal officers, duly attested by the clerk of the municipality, must be filed with the agency.

6. Submission. When the record of the municipality, or the record of the joint meeting, when municipalities are involved, is received by the agency and found to be in order, the agency 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 must be directed to the municipal officers of the municipality or municipalities 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 for the purpose of voting in favor of or in opposition to each of the following articles or questions, as applicable, in substantially the following form:

A. Whether 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. Whether 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 must consist of (names of essential municipalities); and

C. Whether 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 is (number of directors) and the residents of (town or city) are entitled to ( ) directors. (The number of directors to which each municipality is entitled must be listed.)

Directors must be chosen to represent municipalities in the manner provided in section 1725.

Sec. B-9. 38 MRSA §1722, as amended by PL 1989, c. 869, Pt. B, §3 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §277, is repealed and the following enacted in its place:

§1722. Approval and organization

When the residents of the municipality, or each municipality 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 agency in such form as the agency may determine. If the agency finds from the returns that each of the municipalities involved, voting on each of the articles and questions submitted to them, has voted in the affirmative, and that the municipalities have appointed the necessary directors and listed the names 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 agency shall make a finding to that effect and record the finding upon its records. 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, appointed the necessary directors and listed the names of the directors to represent each municipality, rejection of the proposed disposal district by one or more does not defeat the creation of a district composed of the municipalities voting affirmatively on the question, if the agency 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 must approve the formation of the district.

The agency shall, immediately after making its findings, issue a certificate of organization in the name of the disposal district in such form as the agency determines. The original certificate 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 executive director of the agency must be filed and recorded in the office of the Secretary of State. The issuance of the certificate by the agency is conclusive evidence of the lawful organization of the disposal district. The disposal district is not operative until the date set by the directors under section 1726.

Sec. B-10. 38 MRSA §1725, first ¶, as amended by PL 1989, c. 869, Pt. B, §4 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §278, is repealed and the following enacted in its place:

Directors are appointed by the municipal officers of the municipality they 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 must include a mix of individuals with sufficient managerial, technical, financial or business experience to execute their duties efficiently and effectively. Appointments 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 directors may not be removed except for neglect of duty, misconduct or other acts that indicate an unfitness to serve. Upon receipt of the names of all the directors, the agency shall set a time, place and date for the first meeting of the directors, notice of the meeting to be given to the directors by certified or registered mail, return receipt requested and mailed at least 10 days prior to the date set for the meeting.

Sec. B-11. 38 MRSA §1727, as amended by PL 1989, c. 869, Pt. B, §5 and affected by c. 890, Pt. A, §40 and amended by Pt. B, §279, is repealed and the following enacted in its place:

§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, determines to be fair, reasonable and in the best interest of the district, except that on proper application any municipality 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 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 that 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, must be certified by the clerk of that municipality to the board of directors and to the agency. 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 agency and the Secretary of State that the municipality has become a member of the district. The certification is 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 determine the number of votes to be cast by the director or directors representing that municipality.

PART C

Sec. C-1. 38 MRSA §569, sub-§§2-B, 4-C and 6-A are enacted to read:

2-B. 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 commissioner stating the amount of damage alleged to be suffered as a result of that discharge. The 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 commissioner are able to agree as to the amount of the damage claim, the 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 commissioner are not able to agree as to the amount of the damage claim, the 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 must be stated in their entirety in one application. Damages omitted from any claim at the time the award is made 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 may not include any amount that 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.

This subsection is effective December 31, 1999.

4-C. 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, is assessed on the transfer of those products by oil terminal facility licensees, as defined in section 542, subsection 7. These fees must be paid monthly by the oil terminal facility licensees on the basis of records certified to the 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, as follows.

A. Sixty-two and one half percent of the excess must be transferred to the Finance Authority of Maine for deposit in the Underground Oil Storage Replacement Fund.

B. Thirty-seven and one half percent of the excess must be transferred to the Maine State Housing Authority for deposit in the Housing Opportunities for Maine Fund to be used initially for loans and grants to finance the costs of removal, disposal, replacement or abandonment of underground oil storage facilities and tanks located on owner-occupied or residential rental property, which facilities and tanks have been identified by the department as leaking or posing an environmental threat or as having been abandoned.

After an aggregate sum of $5,000,000 has been transferred to the Finance Authority of Maine and an aggregate sum of $3,000,000 has been transferred to the Maine State Housing Authority pursuant to this subsection, the per barrel fee assessed pursuant to this subsection must be reduced by 6¢ per barrel.

This subsection is effective December 31, 1999.

6-A. Reimbursements to the Ground Water Oil Clean-up Fund. The 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 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 must be turned over to the Attorney General for collection.

This subsection is effective December 31, 1999.

Sec. C-2. 38 MRSA §§570-I and 570-J are enacted to read:

§570-I. Budget approval

The commissioner shall submit 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 must be submitted in accordance with Title 5, sections 1663 to 1666. The State Controller shall authorize expenditures from the fund as approved by the commissioner. Expenditures pursuant to section 569, subsection 5, paragraphs B, D and E may be made as authorized by the State Controller following approval by the commissioner.

This section is effective December 31, 1999.

§570-J. Personnel and equipment

The commissioner shall establish and maintain at appropriate locations employees and equipment that, in the commissioner's judgment, are necessary to carry out this subchapter. The commissioner, subject to the Civil Service Law, may employ personnel 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 must be paid from the Ground Water Oil Clean-up Fund established by this subchapter.

This section is effective December 31, 1999.

PART D

Legislative intent. The purpose of this Act is to resolve conflicts created by 2 or more chapters of Public Law 1989 that amended or affected the same section, subsection, paragraph or subparagraph without reference to each other. Each conflict is resolved by reading the public law chapters together, consistent with the legislative purpose and intent for each chapter. If any Act of the 115th Legislature amends or affects the same section, subsection, paragraph or subparagraph without reference to this Act, and the statutory provisions can not be read together, it is the intent of the Legislature that the provisions of the other Act be given effect over the provisions of this Act.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective May 1, 1991.

CHAPTER 67

S.P. 260 - L.D. 718

An Act to Protect the Confidentiality of Library Records at Libraries of the University of Maine System

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

27 MRSA §121, first ¶, as enacted by PL 1983, c. 208, is amended to read:

Records maintained by any public municipal library, including the Maine State Library and libraries of the University of Maine System and the Maine Maritime Academy, ~~which~~ that contain information relating to the identity of a