

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**

**January 5, 1994 to April 14, 1994**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 14, 1994**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1993**

**Sec. 9. 16 MRSA §623** is enacted to read:

**§623. Attorney General fees**

The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.

**Sec. 10. 22 MRSA §1885, sub-§1**, as enacted by PL 1991, c. 814, §1, is amended to read:

**1. Investigative powers.** The Attorney General, at any time after an application is filed under section 1883, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1883, subsection 4. All documents produced and testimony given to the Attorney General are ~~investigative records under Title 5, section 200-D~~ confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

**Sec. 11. Effect of repeal of Maine Revised Statutes, Title 5, section 200-D.** Reports and records that were created prior to the effective date of this Act that were confidential pursuant to the Maine Revised Statutes, Title 5, section 200-D at the time of their creation continue to be confidential after the effective date of this Act as provided in former Title 5, section 200-D. The confidentiality of intelligence and investigative information contained in reports and records prepared by or at the direction of the Department of the Attorney General after the effective date of this Act is governed by Title 16, section 614.

**Sec. 12. Effective date.** This Act takes effect July 1, 1995, except that that section of this Act that enacts the Maine Revised Statutes, Title 16, section 623 takes effect 90 days after adjournment of the Second Regular Session of the 116th Legislature.

Effective July 1, 1995, unless otherwise indicated.

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**CHAPTER 720**

**H.P. 1080 - L.D. 1446**

**An Act to Establish an Ambient Water Toxics Program**

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

**Sec. 1. 38 MRSA §420-B** is enacted to read:

**§420-B. Surface water ambient toxic monitoring program**

The discharge of pollutants from certain direct and indirect sources into the State's waters introduces toxic substances, as defined under section 420, into the environment. In order to determine the nature, scope and severity of toxic contamination in the surface waters and fisheries of the State, the commissioner shall conduct a scientifically valid monitoring program.

The program must be designed to comprehensively monitor the lakes, rivers and streams and marine and estuarine waters of the State on an ongoing basis. The program must incorporate testing for suspected toxic contamination in biological tissue and sediment, may include testing of the water column and must include biomonitoring and the monitoring of the health of individual organisms that may serve as indicators of toxic contamination. This program must collect data sufficient to support assessment of the risks to human and ecological health posed by the direct and indirect discharge of toxic contaminants.

**1. Development of monitoring plans and work programs.** The commissioner shall:

A. Prepare a plan every 5 years that outlines the monitoring objectives for the following 5 years, resources to be allocated to those objectives and a plan for conducting the monitoring, including methods, scheduling and quality assurance; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

which the commissioner determines, with the assistance of the technical advisory group established under this section, that proven, reliable methods have been established.

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

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

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

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

(c) The uncertainty in observations due to possible systematic and analytical error.

(5) A technical advisory group composed of 11 individuals is established. The commissioner shall appoint 2 members with scientific backgrounds in toxic contamination or monitoring, ecological assessment or public health from each of the following interests: business, municipal, conservation, public health and academic interests. The President of the Senate and the Speaker of the House of Representatives shall jointly appoint as a nonvoting member one Legislator who serves on the joint standing committee of the Legislature having jurisdiction over natural resource matters. The commissioner shall appoint the chair from among the voting members. A quorum of 6 voting members must be present for the conduct of business. Members do not receive compensation or reimbursement for expenses.

The members appointed by the commissioner serve for terms of 3 years except that, for the initial appointments, 2 members serve terms of one year, 4 members serve terms of 2 years and 4 members serve terms of 3 years. The Legislator serves for

the duration of the Legislature to which the Legislator is elected.

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

**2. Data management.** The commissioner shall maintain data collected under this section in a manner consistent with standards established under Title 12, chapter 218 for the State's geographic information system. All data is available to the public.

**3. Coordination of monitoring.** The commissioner shall coordinate the monitoring program established under this section with other toxics monitoring programs conducted by the department, the United States Environmental Protection Agency and other federal agencies or dischargers of wastewater.

**4. Report.** No later than January 1st of each year, the commissioner shall report on the monitoring program to the joint standing committee of the Legislature having jurisdiction over natural resource matters. This report must contain:

- A. At the start of each 5-year period, the 5-year monitoring plan;
- B. The annual work program for the past year and the current year;
- C. The commissioner's conclusions as to the levels of toxic contamination in the State's waters and fisheries; and
- D. Any trends of increasing or decreasing levels of contaminants found.

**Sec. 2. 38 MRSA §551, sub-§1,** as amended by PL 1979, c. 541, Pt. A, §268, is further amended to read:

**1. Research and development.** The Legislature may not allocate not more than \$100,000 ~~\$208,275~~ per annum of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products and their impact on the marine environment. Such allocations shall must be made in accordance with section 555. This subsection is repealed July 1, 1995.

**Sec. 3. 38 MRSA §551, sub-§1-B** is enacted to read:

**1-B. Research and development.** The Legislature may allocate not more than \$100,000 per annum of the amount currently in the fund to be devoted to

research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such allocations must be made in accordance with section 555. This subsection takes effect July 1, 1996.

**Sec. 4. Intent.** It is the intent of the Legislature that the activities undertaken pursuant to this Act fulfill the intent of the Maine Revised Statutes, Title 38, section 551, subsection 1 through the period ending June 30, 1996.

**Sec. 5. Allocation.** The following funds are allocated from the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out the purposes of this Act.

1994-95

**ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

**Water Quality Protection**

All Other	\$208,275
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Provides for the allocation of funds for a portion of the costs of establishing an ambient water toxics program.

See title page for effective date.

**CHAPTER 721**

**H.P. 1100 - L.D. 1487**

**An Act to Improve Environmental Protection and Support Economic Development under the State's Land Use Laws**

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

**PART A**

**Sec. A-1. 30-A MRSA §4314, sub-§2,** as amended by PL 1993, c.73, §1 and c. 166, §4, is repealed and the following enacted in its place:

**2. Zoning ordinances.** Notwithstanding section 4352, subsection 2, any portion of a zoning ordinance that regulates land use beyond that required by Title 38, chapter 3, subchapter I, article 2-B and that is not consistent with a comprehensive plan