

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

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

Augusta, Maine
2011

junction with the Executive Department, State Planning Office and other interested stakeholders, shall work collaboratively to develop a statewide aquatic conservation and restoration strategy plan, referred to in this section as "the plan," designed to maintain and restore the ecological health of the State's aquatic ecosystems and focusing on maintaining and restoring dynamic ecological processes responsible for creating and sustaining habitats over broad landscapes as opposed to individual projects or small watersheds. The plan must improve upon best management practices for public and private roads by including consideration of the Department of Transportation's Waterway and Wildlife Crossing Policy and Design Guide, the Maine Interagency Stream Connectivity Work Group's 2010 final report, Maine's Atlantic salmon recovery plan and any other technical, policy and financial information that may help the process. The plan must include, but not be limited to, using scientific data from stakeholders, establishing active restoration priorities, refining existing and proposing additional best management practices, reviewing statutory exemptions and regulatory standards to inform regulatory decision making, establishing performance measures, proposing funding alternatives for passive and active restoration, identifying gaps and overlaps with other pertinent issues such as climate change and flood management and providing for education and outreach. The Department of Environmental Protection, in cooperation with the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Department of Transportation, shall present the final draft of the plan, which may include suggested legislation, to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than January 31, 2013. The committee may report out a bill to the First Regular Session of the 126th Legislature.

See title page for effective date.

CHAPTER 206

H.P. 1027 - L.D. 1398

**An Act To Amend the Laws
Administered by the
Department of Environmental
Protection**

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

Whereas, this legislation corrects a water quality classification that will enable the United States Army Corps of Engineers to dredge under a permit issued by the Department of Environmental Protection, and the

dredging must be completed prior to the expiration of the 90-day period; 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:

Sec. 1. 5 MRSA §12004-I, sub-§22-B, as enacted by PL 1991, c. 804, Pt. C, §1, is amended to read:

22-B.

Environment:	Pollution	Expenses	38 MRSA
Natural Resources	Prevention and Small Business Assistance Advisory Committee Panel	Only Not Authorized	§343-D

Sec. 2. 32 MRSA §4174, as amended by PL 1989, c. 890, Pt. A, §§4 and 40, is further amended by adding at the end a new paragraph to read:

The Department of Environmental Protection may allow an operator to review with department staff an operator certification test that the operator has completed in order to identify subject areas for which questions were answered incorrectly and further study is advisable.

Sec. 3. 32 MRSA §10010-A, as amended by PL 1997, c. 364, §11, is repealed.

Sec. 4. 38 MRSA §342-B, sub-§4-A is enacted to read:

4-A. Exemption from liability for discharges during approved site investigation work. Notwithstanding subsection 3, paragraph A and subsection 4, paragraph A, a fiduciary or lender is exempt from liability under subsection 2 if the fiduciary or lender causes, contributes to or exacerbates a discharge, release or threat of release while undertaking investigations in accordance with a voluntary response action plan approved by the commissioner under section 343-E.

Sec. 5. 38 MRSA §343-D, as amended by PL 2009, c. 121, §2 is further amended to read:

§343-D. Pollution Prevention and Small Business Assistance Advisory Panel

The Pollution Prevention and Small Business Assistance Advisory ~~Committee~~ Panel, established by Title 5, section 12004-I, subsection 22-B and referred

to in this section as ~~the "committee the panel,"~~ serves as a review body to assess the progress in the reduction of toxics use, toxics release and hazardous waste and implementation of the provisions of chapter 26, the Office of Pollution Prevention and the Technical and Environmental Assistance Program and may render advisory opinions to the commissioner on the effectiveness of each.

1. Appointment; composition. The ~~committee~~ panel consists of 16 voting members.

A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, ~~and 2 representatives of organized labor and 2 representatives from the department.~~

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

~~D. The commissioner shall appoint a designee to represent the department.~~

E. The Senate Minority Leader and the House Minority Leader shall each appoint one member who is an owner or represents an owner of a small business stationary source.

~~F. The Director of the Bureau of Air Quality Control shall appoint a designee to represent the bureau.~~

The Commissioner of Labor and the Director of the Maine Emergency Management Agency serve as ex officio members and do not vote on ~~committee~~ panel matters.

As used in this subsection, unless the context otherwise indicates, a "small business stationary source" means a source that meets the eligibility requirements of 42 United States Code Annotated, Section 7661f.

2. Terms. Except for the commissioner, who ~~shall serve~~ serves a term coincident with that person's appointment as the commissioner, all members are appointed for staggered terms of 4 years. A vacancy must be filled by the same appointing authority that made the original appointment. ~~Appointed members may not serve more than 2, 4 year terms. There is no limit on the number of terms an individual may serve.~~

~~3. Compensation. Members are entitled to compensation for expenses according to Title 5, section 12004-I, subsection 22-B.~~

4. Quorum; actions. A quorum is a majority of the voting members of the ~~committee~~ panel. An affirmative vote of the majority of the members present at a meeting is required for any action. Action may not be considered unless a quorum is present.

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

6. Meetings. The ~~committee~~ panel shall meet at least 4 times per year and at any time at the call of the chair or upon written request to the chair by 4 of the voting members.

7. Staff support. The commissioner shall provide the ~~committee~~ panel with staff support.

8. Duties; powers. The ~~committee~~ panel may review and may render advisory opinions to the commissioner on the operation and effectiveness of the following programs:

A. Toxics Use, Toxics Release and Hazardous Waste Reduction Program, established in chapter 26. The ~~committee~~ panel may:

(1) Review program priorities for toxics use, toxics release and hazardous waste reduction and may identify user groups as priorities for department technical assistance activities;

(2) Review the criteria for the submission of toxics use, toxics release and hazardous waste reduction plans;

(3) Study and evaluate the practicability of achieving reductions in the use or release of specific substances through the use of substitutes, alternate procedures or processes or other means of achieving toxics use, toxics release and hazardous waste reduction;

(4) Recommend revisions to the department, if appropriate, to toxics use, toxics release and hazardous waste reduction goals and to the Toxics Use, Toxics Release and Hazardous Waste Reduction Program; and

(5) Evaluate existing programs related to chemical production and use, hazardous waste generation, industrial hygiene, worker safety and public exposure to toxics and toxics releases and recommend coordination of information and program changes or development;

B. The Technical and Environmental Assistance Program established under section 343-B. In reviewing that program, the ~~committee~~ panel may:

(1) Review information developed or distributed by the Technical and Environmental As-

sistance Program to ensure that the information is understandable to the general public; and

(2) Prepare periodic reports to the Governor on the compliance status of the Technical and Environmental Assistance Program. The reports must be forwarded to the federal Environmental Protection Agency complying with the requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-511, as amended; the federal Regulatory Flexibility Act, 5 United States Code, Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-481, as amended; and

C. The Office of Pollution Prevention established under section 342, subsection 4, paragraph B.

In conducting its review under paragraphs A to C, the ~~committee panel~~ may submit recommendations for statutory changes to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters.

Sec. 6. 38 MRSA §343-D, as amended by PL 2009, c. 579, Pt. B, §§6 and 7 and affected by §13, is further amended to read:

§343-D. Pollution Prevention and Small Business Assistance Advisory Panel

The Pollution Prevention and Small Business Assistance Advisory ~~Committee~~ Panel, established by Title 5, section 12004-I, subsection 22-B and referred to in this section as ~~the "committee the panel,"~~ serves as a review body to assess the progress in the reduction of toxic chemicals and implementation of the provisions of chapter 27, the Office of Pollution Prevention and the Technical and Environmental Assistance Program and may render advisory opinions to the commissioner on the effectiveness of each.

1. Appointment; composition. The ~~committee panel~~ consists of 16 voting members.

A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, ~~and 2 representatives of organized labor and 2 representatives from the department.~~

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an

owner or represents an owner of a small business stationary source.

~~D. The commissioner shall appoint a designee to represent the department.~~

E. The Senate Minority Leader and the House Minority Leader shall each appoint one member who is an owner or represents an owner of a small business stationary source.

~~F. The Director of the Bureau of Air Quality Control shall appoint a designee to represent the bureau.~~

The Commissioner of Labor and the Director of the Maine Emergency Management Agency serve as ex officio members and do not vote on ~~committee panel~~ matters.

As used in this subsection, unless the context otherwise indicates, a "small business stationary source" means a source that meets the eligibility requirements of 42 United States Code Annotated, Section 7661f.

2. Terms. Except for the commissioner, who ~~shall serve~~ serves a term coincident with that person's appointment as the commissioner, all members are appointed for staggered terms of 4 years. A vacancy must be filled by the same appointing authority that made the original appointment. ~~Appointed members may not serve more than 2, 4 year terms. There is no limit on the number of terms an individual may serve.~~

~~**3. Compensation.** Members are entitled to compensation for expenses according to Title 5, section 12004 I, subsection 22-B.~~

4. Quorum; actions. A quorum is a majority of the voting members of the ~~committee panel~~. An affirmative vote of the majority of the members present at a meeting is required for any action. Action may not be considered unless a quorum is present.

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

6. Meetings. The ~~committee panel~~ shall meet at least 4 times per year and at any time at the call of the chair or upon written request to the chair by 4 of the voting members.

7. Staff support. The commissioner shall provide the ~~committee panel~~ with staff support.

8. Duties; powers. The ~~committee panel~~ may review and may render advisory opinions to the commissioner on the operation and effectiveness of the following:

A-1. The reduction of toxic chemicals pursuant to chapter 27;

B. The Technical and Environmental Assistance Program established under section 343-B. In reviewing that program, the ~~committee panel~~ may:

(1) Review information developed or distributed by the Technical and Environmental Assistance Program to ensure that the information is understandable to the general public; and

(2) Prepare periodic reports to the Governor on the compliance status of the Technical and Environmental Assistance Program. The reports must be forwarded to the federal Environmental Protection Agency complying with the requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-511, as amended; the federal Regulatory Flexibility Act, 5 United States Code, Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-481, as amended; and

C. The Office of Pollution Prevention established under section 342, subsection 4, paragraph B.

In conducting its review under paragraphs A-1 to C, the ~~committee panel~~ may submit recommendations for statutory changes to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters.

Sec. 7. 38 MRSA §420-D, sub-§4, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is amended to read:

4. Degraded, sensitive or threatened regions or watersheds. The department shall establish by rule a list of degraded, sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

A. ~~Are~~ Have been degraded or are susceptible to degradation of water quality or fisheries because of the cumulative effect of past or reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and

B. Are not classified as "watersheds of bodies most at risk" under subsection 3.

Sec. 8. 38 MRSA §420-D, sub-§5, as amended by PL 2005, c. 602, §2, is further amended to read:

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; ~~and~~ sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or 1319-X, waste facility licenses. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit

required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.

Sec. 9. 38 MRSA §420-D, sub-§7, ¶F, as enacted by PL 1995, c. 704, Pt. B, §2 and affected by PL 1997, c. 603, §§8 and 9, is repealed.

Sec. 10. 38 MRSA §420-D, sub-§11, as amended by PL 2007, c. 593, §1, is further amended to read:

11. Compensation project or fee. The department may establish a nonpoint source reduction program to allow an applicant to carry out a compensation project or pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subsection ~~H-A~~ 2-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through implementation of a compensation project or payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized

agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than \$25,000 per pound of available phosphorus.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation project must be carried out or a compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the State Planning Office.

(5) Projects carried out or funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid.

~~(6) As an alternative to paying a compensation fee, the department may allow an applicant to meet a municipally required mitigation option if the department determines that the local mitigation option will provide at least as much long term reduction in phosphorus loading to the lake as likely would have occurred under payment of the compensation fee.~~

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through implementation of a compensation project or payment of a compensation fee as provided by rules adopted pursuant to this subsection.

Sec. 11. 38 MRSA §469, as amended by PL 2009, c. 163, §22, is further amended to read:

§469. Classifications of estuarine and marine waters

~~All estuarine and marine waters lying within the boundaries of the State and which are not otherwise classified are Class SB waters.~~

1. Cumberland County. All estuarine and marine waters lying within the boundaries of Cumberland County and that are not otherwise classified are Class SB waters.

A. Cape Elizabeth.

(1) Tidal waters of the Spurwink River system lying north of a line at latitude 43°-33'-44" N. - Class SA.

B. Cumberland.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43°41'-18"N., longitude 70° - 05'-48"W. and running northeasterly to a point located on the Cumberland-Harpswell boundary at approximately latitude 43° - 42'-57"N., longitude 70° - 03'-50" W.; thence running southwesterly along the Cumberland-Harpswell boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running northeasterly along the Cumberland-Portland boundary to point of beginning - Class SA.

C. Falmouth.

(1) Tidal waters of the Town of Falmouth located westerly and northerly, to include the Presumpscot estuary, of a line running from the southernmost point of Mackworth Island; thence running northerly along the western shore of Mackworth Island and the Mackworth Island Causeway to a point located where the causeway joins Mackworth Point - Class SC.

D. Harpswell.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Harpswell boundary at approximately latitude 43° - 42'-57" N., longitude 70° - 03'-50" W. and running northeasterly to a point located at latitude 43° - 43'-08" N., longitude 70° - 03'-36"W.; thence running southeasterly to a point located at latitude 43° - 42'-02" N., longitude 70° - 00'-00" W.; thence running due south to the Harpswell-Portland boundary; thence running northwesterly along the Harpswell-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running north-

westerly along the Cumberland-Harpswell boundary to point of beginning - Class SA.

E. Portland.

(1) Tidal waters located within a line beginning at a point located on the Cumberland-Portland boundary at approximately latitude 43° - 41'-18" N., longitude 70° - 05'-48" W. and running southeasterly along the Cumberland-Portland boundary to a point where the Cumberland, Harpswell and Portland boundaries meet; thence running southeasterly along the Harpswell-Portland boundary to longitude 70° - 00'-00" W.; thence running due south to a point located at latitude 43° - 38'-21" N., longitude 70° - 00'-00" W.; thence running due west to a point located at latitude 43° - 38'-21" N., longitude 70° - 09'-06" W.; thence running northeasterly to point of beginning - Class SA.

(2) Tidal waters of the City of Portland lying northwesterly of a line beginning at Spring Point Light in South Portland to the easternmost point of Fort Gorges Island, thence running northerly to the southernmost point of Mackworth Island - Class SC.

E-1. Scarborough.

(1) Tidal waters of the Scarborough River system lying north of a line running easterly from a point where the old Boston and Maine Railroad line intersects the marsh at latitude 43°-33'-06" N., longitude 70°-20'-58" W. to a point of land north of Black Rock at latitude 43°-33'-06" N., longitude 70°-19'-25" W., excluding those tidal waters of Phillips Brook lying upstream of a point 500 feet south of U.S. Route 1 - Class SA.

(2) Tidal waters of the Spurwink River system lying north of a line extending from Higgins Beach at latitude 43°-33'-44" N. to the town line - Class SA.

F. South Portland.

(1) Tidal waters of the City of South Portland lying westerly of a line beginning at Spring Point Light to the easternmost point of Fort Gorges Island in Portland - Class SC.

2. Hancock County. All estuarine and marine waters lying within the boundaries of Hancock County and that are not otherwise classified are Class SB waters.

A. Bar Harbor.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 16'-36" N., south-

erly of latitude 44° - 20'-27" N., and westerly of longitude 68° - 09'-28" W. - Class SA.

A-1. Brooksville.

(1) Tidal waters of the Bagaduce River lying southerly of Young's Island - Class SA.

B. Bucksport.

(1) All tidal waters - Class SC.

C. Cranberry Isles.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying within 0.5 mile of the shore of Baker Island - Class SA.

D. Mount Desert.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 16'-36" N. and easterly of longitude 68° - 13'-08" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W., except those waters of Broad Cove lying west of a line running from the point of land immediately south of the cove northerly to Navigation Can #7 and those waters lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA.

(3) Tidal waters of Somes Sound lying within 500 feet of overboard discharges licensed as of January 1, 1999 - Class SA.

E. Orland.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

E-1. Penobscot.

(1) Tidal waters of the Bagaduce River lying southerly of Winslow Island and easterly of the westernmost point of Young's Island - Class SA.

E-2. Sedgewick.

(1) Tidal waters of the Bagaduce River - Class SA.

F. Southwest Harbor.

(1) Tidal waters lying northerly of latitude 44° - 12'-44" N., southerly of latitude 44° -

14'-13" N. and westerly of longitude 68° - 18'-27" W. - Class SA.

(2) Tidal waters of Somes Sound lying northerly of a line beginning at a point located at the Acadia National Park boundary at latitude 44° - 18'-18" N., longitude 68° - 18'-42" W. and running northeasterly to a point located at the Acadia National Park boundary at latitude 44° - 18'-54" N., longitude 68° - 18'-22" W. - Class SA.

G. Tremont.

(1) Tidal waters lying northerly of latitude 44° - 12'-44" -" N., southerly of latitude 44° - 14'-13" N. and easterly of longitude 68° - 20'-30" W. - Class SA.

H. Verona Island.

(1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

I. Winter Harbor.

(1) Tidal waters lying south of a line running west from the northernmost tip of Frazer Point to longitude 68° -05'-00" W. and east of longitude 68° -05'-00" W. - Class SA.

3. Knox County. All estuarine and marine waters lying within the boundaries of Knox County and that are not otherwise classified are Class SB waters.

A. Isle Au Haut.

(1) Tidal waters, except those lying within 500 feet of privately owned shoreline, lying northerly of latitude 44° - 00'-00" N., southerly of latitude 44° - 03'-06" N., easterly of longitude 68° - 41'-00" W. and westerly of longitude 68° - 35'-00" W. - Class SA.

B. Owls Head.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC.

C. Rockland.

(1) Tidal waters lying westerly of a line running between the southernmost point of land on Jameson Point and the northernmost point of land on Battery Point - Class SC.

3-A. Lincoln County. All estuarine and marine waters lying within the boundaries of Lincoln County and that are not otherwise classified are Class SB waters.

A. Boothbay.

(1) Tidal waters lying south of the northernmost point of Damariscove Island and west of longitude 69° -36'-00" W. - Class SA.

4. Penobscot County. All estuarine and marine waters lying within the boundaries of Penobscot County and that are not otherwise classified are Class SB waters.

A. Hampden.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC.

B. Orrington.

(1) Tidal waters lying southerly of a line extended in an east-west direction from the outlet of Reed Brook in the Village of Hampden Highlands - Class SC.

5. Sagadahoc County. All estuarine and marine waters lying within the boundaries of Sagadahoc County and that are not otherwise classified are Class SB waters.

A. Georgetown.

(1) Tidal waters located within a line beginning at a point on the shore located at latitude 43° - 47'-16" N., longitude 69° -43'-09" W. and running due east to longitude 69° -42'-00" W.; thence running due south to latitude 43° - 42'-52" N.; thence running due west to longitude 69° -44' -25" W.; thence running due north to a point on the shore located at latitude 43° - 46'-15" N., longitude 69° -44'-25" W.; thence running northerly along the shore to point of beginning - Class SA.

B. Phippsburg.

(1) ~~Tidal~~ Offshore waters east of longitude 69° -50'-05" W. and west of longitude 69° -47'-00" W., including the tidal waters of the Morse River and the Sprague River, - Class SA.

(2) Tidal waters of The Basin, including The Narrows east of a line drawn between 69° -51'-57" W. and 43° -48'-14" N. - Class SA.

(3) Tidal waters of the Kennebec River in Phippsburg within 500 feet of shore, beginning at a point of land at the head of Atkins Bay located at longitude 69°-48'-14" W. and latitude 43°-44'-40.4" N. and extending along the southeast shore of Atkins Bay to a point 500 feet off Fort Popham located at longitude 69°-47'-00" W. and latitude 43°-45'-23.89" N. - Class SA.

6. Waldo County. All estuarine and marine waters lying within the boundaries of Waldo County and that are not otherwise classified are Class SB waters.

A. Frankfort.

- (1) All tidal waters - Class SC.

B. Prospect.

- (1) All tidal waters - Class SC.

C. Searsport.

- (1) Tidal waters located within a line beginning at the southernmost point of land on Kidder Point and running southerly along the western shore of Sears Island to the southernmost point of Sears Island; thence running due south to latitude 44°-25'-25" N.; thence running due west to latitude 44°-25'-25" N., longitude 68°-54'-30" W.; thence running due north to the shore of Mack Point at longitude 68°-54'-30" W.; thence running along the shore in an easterly direction to point of beginning - Class SC.

D. Stockton Springs.

- (1) Tidal waters lying northerly of the southernmost point of land on Verona Island - Class SC.

E. Winterport.

- (1) All tidal waters - Class SC.

7. Washington County. All estuarine and marine waters lying within the boundaries of Washington County and that are not otherwise classified are Class SB waters.

A. Beals.

- (1) Tidal waters lying east of the line extending from the westernmost point of Three Falls Point to the easternmost point of Crumple Island; thence south along longitude 67°-36'-47" W. - Class SA.

- (2) Tidal waters lying south of a line extending from the easternmost point of the southern shore of the Mud Hole; thence extending along latitude 44°-29'-00" N. to the town line - Class SA.

B. Calais.

- (1) Tidal waters of the St. Croix River and its tidal tributaries lying westerly of longitude 67°-14'-28" W. - Class SC.

C. Cutler.

- (1) All tidal waters except those waters in Machias Bay and Little Machias Bay north of a line running from the town line due east to the southernmost point of Cross Island;

thence running northeast to the southeasternmost point of Cape Wash Island; thence running northeast to the westernmost point of Deer Island; thence running due north to the mainland; and those waters lying northwest of a line running from the easternmost point of Western Head to the easternmost point of Eastern Knubble - Class SA.

D. Eastport.

- (1) Tidal waters lying southerly of latitude 44°-54'-50" N., easterly of longitude 67°-02'-00" W. and northerly of latitude 44°-53'-15" N. - Class SC.

E. Edmunds.

- (1) All tidal waters - Class SA.

F. Lubec.

- (1) Tidal waters, except those lying within 500 feet of West Quoddy Head Light, south of a line beginning at a point located on the northern shore of West Quoddy Head at latitude 44°-49'-22" N., longitude 66°-59'-17" W. and running northeast to the international boundary at latitude 44°-49'-45" N., longitude 66°-57'-57" W. - Class SA.

- (2) Tidal waters west of a line running from the easternmost point of Youngs Point to the easternmost point of Leighton Neck in Pembroke - Class SA.

G. Milbridge.

- (1) Tidal waters south of a line running from the Steuben - Milbridge town line along latitude 44°-27'-39" N. to the northernmost point of Currant Island; thence running easterly to a point 1,000 feet from mean high tide on the northernmost point of Pond Island; thence along a line running 1,000 feet from mean high tide along the east side of Pond Island to the southernmost point of the island; thence running due south - Class SA.

H. Pembroke.

- (1) Tidal waters west of a line running from the easternmost point of Leighton Neck to the easternmost point of Youngs Point in Lubec - Class SA.

I. Steuben.

- (1) Tidal waters southeast of a line beginning at Yellow Birch Head at latitude 44°-25'-05" N.; thence running to longitude 67°-55'-00" W.; thence running due south along longitude 67°-55'-00" W. - Class SA.

- (2) Tidal waters southwest of a line beginning at a point located south of Carrying

Place Cove at latitude 44°-26'-18" N., longitude 67°-53'-14" W.; thence running along latitude 44°-26'-18" N. east to the town line - Class SA.

J. Trescott.

(1) All tidal waters - Class SA.

K. Whiting.

(1) Tidal waters of the Orange River - Class SA.

8. York County. All estuarine and marine waters lying within the boundaries of York County and that are not otherwise classified are Class SB waters.

A. Biddeford.

(1) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70°-22'-54" W. - Class SC.

B. Kennebunk.

(1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. - Class SA.

C. Kittery.

(1) Tidal waters of the Piscataqua River and its tidal tributaries lying westerly of longitude 70°-42'-52" W., southerly of Route 103 and easterly of Interstate Route 95 - Class SC.

(2) Tidal waters lying northeast of a line from Sisters Point; thence south along longitude 70°-40'-00" W. to the Maine-New Hampshire border; thence running southeast along the Maine-New Hampshire border to Cedar Ledge beyond the Isles of Shoals, except waters within 500 feet of the Isles of Shoals Research Station - Class SA.

D. Old Orchard Beach.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70°-23'-08" W. - Class SC.

E. Saco.

(1) Tidal waters of Goosefare Brook and its tidal tributaries lying westerly of longitude 70°-23'-08" W. - Class SC.

(2) Tidal waters of the Saco River and its tidal tributaries lying westerly of longitude 70°-22'-54" W. - Class SC.

F. Wells.

(1) Tidal waters of the Little River system lying north of latitude 43°-20'-10" N. - Class SA.

G. York.

(1) Tidal waters lying southwest of a line from Seal Head Point east along latitude 43°-07'-15" N. - Class SA.

Sec. 12. 38 MRSA §542, sub-§6, as amended by PL 1977, c. 375, §2, is further amended to read:

6. Oil. "Oil" means oil, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

Sec. 13. 38 MRSA §562-A, sub-§15, as amended by PL 1995, c. 361, §3, is further amended to read:

15. Oil. "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other nonhazardous waste, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include liquid natural gas.

Sec. 14. 38 MRSA §563, sub-§1, ¶A, as amended by PL 2001, c. 626, §12, is further amended to read:

A. A person may not install, or cause to be installed, a new or replacement underground oil storage facility ~~without first having registered unless the facility with the commissioner is registered in accordance with the requirements of subsection 2, and having paid the registration fee in accordance with the requirements of subsection 4,~~ at least 10 business days but no more than 2 years prior to installation and the registration fee is paid in accordance with subsection 4. If compliance with this time requirement is impossible due to an emergency situation, the owner or operator of the facility at which the new or replacement facility is to be installed shall inform the commissioner as soon as the emergency becomes known.

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

Sec. 15. 38 MRSA §566-A, sub-§2, as repealed and replaced by PL 1991, c. 66, Pt. A, §27, is amended to read:

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

Sec. 16. 38 MRSA §568-A, sub-§1, ¶B-2, as enacted by PL 1997, c. 374, §4, is amended to read:

B-2. An applicant is not eligible for coverage for any discharge discovered or reported to the commissioner after October 1, 1998 if the discharge is from an underground oil storage facility or tank that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department or from an aboveground oil storage facility that has underground piping that is not constructed of fiberglass, cathodically protected steel or other noncorrosive material approved by the department. ~~An applicant who would otherwise not be eligible for coverage pursuant to this paragraph is not subject to this exclusion from coverage for such a discharge discovered or reported to the commissioner on or before October 1, 1999 if the facility or tank was not operated or used to store oil after the applicable compliance date under section 563-A and the applicant. This exclusion from coverage does not apply to a discharge from an aboveground oil storage facility if the facility is used exclusively to store home heating oil, consists of tanks with a capacity of 660 gallons or less and has an aggregate tank capacity of 1,320 gallons or less.~~

~~(1) Can not secure financing to remove the facility or tank as evidenced by letters from 3 financial institutions; or~~

~~(2) Can not obtain the services of a certified underground oil storage tank installer or remover required pursuant to section 566-A as evidenced by letters from 3 certified underground oil storage tank installers or removers.~~

Sec. 17. 38 MRSA §568-A, sub-§2-B is enacted to read:

2-B. Failure to pay deductibles. An order issued under subsection 1, paragraph F-1 may be conditioned on payment of the applicable deductibles. If an applicant fails to pay the deductible amounts as determined under subsection 2 within 180 days of receipt of a bill from the department or within 180 days of a decision by the review board or an appellate court upholding the determination, whichever is later, the commissioner may seek reimbursement from the applicant or any other responsible party of all costs incurred by the State in the removal, abatement and remediation of the discharge for which coverage was sought.

Sec. 18. 38 MRSA §569-C is enacted to read:

§569-C. Limited exemption from liability for state or local governmental entities

1. Limited exemption from liability. Liability under section 570 does not apply to the State or any political subdivision that acquired ownership or con-

trol of an oil storage facility through tax delinquency proceedings pursuant to Title 36, or through any similar statutorily created procedure for the collection of governmental taxes, assessments, expenses or charges, or involuntarily through abandonment, or in circumstances in which the State or political subdivision involuntarily acquired ownership or control by virtue of its function as a sovereign. The exemption from liability provided under this subsection does not apply if:

A. The State or political subdivision causes, contributes to or exacerbates a discharge or threat of discharge from the facility; or

B. After acquiring ownership of the facility and upon obtaining knowledge of a release or threat of release, the State or political subdivision does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a discharge or threat of discharge;

(2) Provide reasonable access to the department and its authorized representatives so that necessary response actions may be conducted; and

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment.

2. Reimbursement for department expenses. Notwithstanding the exemption from liability provided in subsection 1, the State or any political subdivision that acquires or has acquired ownership of property that encompasses an oil storage facility pursuant to any of the proceedings referred to in subsection 1 is liable for any costs incurred by the department pursuant to this chapter during the period in which the State or political subdivision had ownership of the property, up to the amount of the proceeds from the sale or disposition of the property minus any unpaid taxes on the property and the out-of-pocket costs of the sale or disposition.

Sec. 19. 38 MRSA §584-A, as amended by PL 2009, c. 121, §15, is repealed and the following enacted in its place:

§584-A. Ambient air quality standards

For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard established pursuant to Section 109 of the federal Clean Air Act, 42 United States Code, Section 7409, as amended. The department shall implement ambient air quality standards as required by the federal Clean Air Act, 42 United States Code, Section 7409 and regulations promulgated under that section by the United States Environmental Protection Agency. Nothing in this section may be construed to limit the

authority of the department to adopt emission standards designed to achieve and maintain ambient air quality standards.

Sec. 20. 38 MRSA §1303-C, sub-§6, ¶E, as enacted by PL 1999, c. 525, §1, is repealed and the following enacted in its place:

E. A solid waste facility owned and controlled by a single entity that:

(1) Generates at least 85% of the solid waste disposed of at a facility, except that the facility may accept from other sources, on a non-profit basis, an amount of solid waste that is no more than 15% of all solid waste accepted on an annual basis; or

(2) Is an owner of a manufacturing facility that has, since January 1, 2006, generated at least 85% of the solid waste disposed of at the solid waste facility, except that one or more integrated industrial processes of the manufacturing facility are no longer in common ownership, and those integrated industrial processes will continue to generate waste that will continue to be disposed of at the solid waste facility. This exemption only applies if the source and type of waste disposed of at the solid waste facility remains the same as that previously disposed of by the single entity.

For the purposes of this paragraph, "single entity" means an individual, partnership, corporation or limited liability corporation that is not engaged primarily in the business of treating or disposing of solid waste or special waste. This paragraph does not apply if an individual partner, shareholder, member or other ownership interest in the single entity disposes of waste in the solid waste facility. A waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph.

For purposes of this paragraph, "integrated industrial processes" means manufacturing processes, equipment or components, including, but not limited to, energy generating facilities, that when used in combination produce one or more manufactured products for sale; or

Sec. 21. 38 MRSA §1393, sub-§1, ¶B, as enacted by PL 2007, c. 569, §6, is amended to read:

B. After September 30, 2008, a person may not install in a wellhead protection zone:

- (1) An aboveground oil storage facility;
- (2) An automobile graveyard as defined in Title 30-A, section 3752, subsection 1 or an

automobile recycling business as defined in Title 30-A, section 3752, subsection 1-A;

(3) An automobile body shop or other ~~commercial~~ automobile maintenance and repair facility;

(4) A dry cleaning facility that uses perchloroethylene;

(5) A metal finishing or plating facility; or

(6) A commercial hazardous waste facility as defined under section 1303-C, subsection 4.

Sec. 22. 38 MRSA §1393, sub-§2, ¶A, as enacted by PL 2007, c. 569, §6, is amended to read:

~~A. A facility in existence or under construction on the effective date of the prohibition established under subsection 1.—As used in this paragraph, "under construction" means that a substantial amount of money or effort has been expended toward completion of the facility as determined by the commissioner. The test of substantiality involves an assessment of the amount of money or effort expended in relation to the amount required to complete the facility;~~

Sec. 23. 38 MRSA §1393, sub-§2, ¶B, as enacted by PL 2007, c. 569, §6, is amended to read:

B. The replacement or expansion of an underground oil storage facility in existence on September 30, 2001 or a facility identified in subsection 1, paragraph B in existence on September 30, 2008 as long as the replacement or expansion occurs on the same property ~~and~~, the facility meets all applicable requirements of law; ~~and, in the case of replacement, the facility owner:~~

(1) Within 30 days after removal of the existing facility, notifies the commissioner and municipal code enforcement officer in writing of the owner's intent to replace the facility; and

(2) Commences construction of the replacement facility within 2 years after removal of the existing facility;

Sec. 24. 38 MRSA §1661-C, sub-§9, ¶A, as amended by PL 2009, c. 501, §22, is further amended to read:

~~A. After June 30 December 31, 2011, a person may not sell or offer to sell or distribute for promotional purposes a mercury-added button cell battery identified in this paragraph or a product that contains a mercury-added button cell battery identified in this paragraph:~~

(1) A zinc-air button cell battery;

(2) An alkaline manganese button cell battery; or

(3) A silver oxide button cell battery stamped with the designation 357, 364, 371, 377, 395, SR44W, SR621SW, SR626SW, SR920SW or SR927SW or a silver oxide button cell battery that is interchangeable with a battery that is stamped with one of those designations; and

Sec. 25. 38 MRSA §1661-C, sub-§11 is enacted to read:

11. Mercuric oxide batteries. A person may not sell, distribute or offer for sale in this State a consumer mercuric oxide button cell battery. The sale and use of all other types of mercuric oxide batteries is subject to the requirements of section 2165.

Sec. 26. 38 MRSA §1661-C, sub-§12 is enacted to read:

12. Alkaline manganese and zinc-carbon batteries. A person may not sell, distribute or offer for sale in this State the following batteries:

A. An alkaline manganese battery that contains any added mercury; or

B. A zinc carbon battery that contains any added mercury.

Sec. 27. 38 MRSA §1665-A, sub-§5, ¶B, as repealed and replaced by PL 2005, c. 561, §9, is amended to read:

B. Pay for each mercury switch brought to the consolidation facilities as partial compensation for the removal, storage and transport of the switches a minimum of \$4 if the vehicle identification number or year, make and model of the source vehicle is provided. If the vehicle identification number or year, make and model of the source vehicle is not provided, no payment is required;

Sec. 28. 38 MRSA §1665-B, sub-§1, ¶D, as enacted by PL 2009, c. 277, §4, is amended to read:

D. "Wholesaler" means a business that the department determines is primarily engaged in the distribution and selling of ~~electrical supplies or large quantities of~~ heating, ventilation and air conditioning components to contractors that install ~~electrical or~~ heating, ventilation and air conditioning components.

Sec. 29. 38 MRSA §1665-B, sub-§2, ¶A, as amended by PL 2009, c. 277, §6, is further amended to read:

A. Establish and maintain a collection and recycling program for out-of-service mercury-added thermostats. The collection and recycling program must be designed and implemented to ensure that:

(1) A maximum rate of collection of mercury-added thermostats is achieved;

(2) Handling and recycling of mercury-added thermostats are accomplished in a manner that is consistent with section 1663, with other provisions of this chapter and with the universal waste rules adopted by the board pursuant to section 1319-O;

(3) Authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed \$25 to all ~~heating, ventilation and air conditioning supply, electrical supply and plumbing supply distributor or wholesaler~~ locations that sell thermostats and to all retailers and electrical supply wholesalers who volunteer to participate in the program; and

(4) By January 1, 2007, authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed \$25 to municipalities and regions requesting bins for mercury-added thermostat collection at universal waste collection sites or at periodic household hazardous waste collection events, as long as the collection sites or events are approved by the department for mercury-added thermostat collections;

Sec. 30. 38 MRSA §1665-B, sub-§2, ¶E, as enacted by PL 2005, c. 558, §1, is amended to read:

E. Within 3 months after the department develops phase one of the plan required by subsection 4, provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat ~~by a contractor or service technician, with or without a cover,~~ to an established wholesaler recycling collection point;

Sec. 31. 38 MRSA §1665-B, sub-§2, ¶F, as amended by PL 2009, c. 277, §7, is further amended to read:

F. Within 3 months after the department develops phase 2 of the plan required by subsection 4, provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat ~~by a homeowner, with or without a cover,~~ to an established retail recycling collection point;

Sec. 32. 38 MRSA §1665-B, sub-§6, as enacted by PL 2005, c. 558, §1, is amended to read:

6. Report. By March 15, 2007 and annually thereafter, the department shall submit a report on the collection and recycling of mercury-added thermostats in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report due in 2007 must include a description and discussion of the financial incentive plan established under this section and recommendations for

any statutory changes concerning the collection and recycling of mercury-added thermostats. Subsequent reports must include an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. Beginning in 2012, the department may submit this information as part of the product stewardship program report under section 1772.

Sec. 33. 38 MRSA §1771, sub-§6, as enacted by PL 2009, c. 516, §1, is amended to read:

6. Product stewardship program. "Product stewardship program" means a program financed ~~without a visible fee at purchase and~~ either managed or provided by producers ~~and individually or collectively~~ that includes, but is not limited to, the collection, transportation, reuse and recycling or disposal, or both, of unwanted products. "Product stewardship program" includes a program financed through an assessment paid by the producers to a stewardship organization.

Sec. 34. 38 MRSA §1771, sub-§8-A is enacted to read:

8-A. Stewardship organization. "Stewardship organization" means a corporation, nonprofit organization or other legal entity created by a producer or group of producers to implement a product stewardship program.

Sec. 35. 38 MRSA §2165, sub-§6, as amended by PL 2009, c. 86, §2, is repealed.

Sec. 36. 38 MRSA §2165, sub-§8, as corrected by RR 1991, c. 2, §150, is amended to read:

8. Penalty. A violation of subsection 2 is a civil violation for which a forfeiture of not more than \$100 per battery disposed of improperly may be adjudged. A violation of subsection 4 is a civil violation for which a forfeiture of not more than \$100 may be adjudged. ~~A violation of subsection 6 is a civil violation for which a forfeiture of not more than \$100 per battery sold, distributed or offered for sale may be adjudged.~~ Each day that a violation continues or exists constitutes a separate offense.

Sec. 37. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 38, section 343-D, as amended by Public Law 2009, chapter 579, Pt. B, sections 6 and 7 and affected by section 13, takes effect July 1, 2012.

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

Effective June 3, 2011, unless otherwise indicated.

**CHAPTER 207
S.P. 228 - L.D. 736**

An Act To Prohibit Texting while Driving

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

Sec. 1. 29-A MRSA §2119 is enacted to read:

§2119. Text messaging while operating motor vehicle; prohibition

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Cellular telephone" means a device used to access wireless telephone service.

B. "Portable electronic device" means any portable electronic device that is not part of the operating equipment of a motor vehicle, including but not limited to an electronic game, device for sending or receiving e-mail, text messaging device, cellular telephone and computer.

C. "Text messaging" means reading or manually composing electronic communications, including text messages, instant messages and e-mails, using a portable electronic device. "Text messaging" does not include using a global positioning or navigation system.

2. Prohibition. A person may not operate a motor vehicle while engaging in text messaging.

3. Penalty. A person who violates this section commits a traffic infraction for which a fine of not less than \$100 may be adjudged.

See title page for effective date.

**CHAPTER 208
H.P. 94 - L.D. 112**

An Act To Discourage Illegal Dumping in the State

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

Sec. 1. 12 MRSA §10157, sub-§7, ¶D, as enacted by PL 2003, c. 655, Pt. B, §36 and affected by §422, is amended to read:

D. Review and make recommendations regarding programs administered by other agencies. The commissioner shall coordinate all reviews; ~~and~~

Sec. 2. 12 MRSA §10157, sub-§7, ¶E, as enacted by PL 2003, c. 655, Pt. B, §36 and affected by §422, is amended to read: