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STATE OF MAINE
Department of Environmental Protection

PROGRAM EVALUATION REPORT 1998 SUPPLEMENT

Submitted January 8, 1999



Submitted By:
Ned Sullivan, Commissioner



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.
GOVERNOR

EDWARD O. SULLIVAN
COMMISSIONER

January 8, 1999

Senator Sharon Anglin Treat, Senate Chair
Representative John L. Martin, House Chair
Joint Standing Committee on Natural Resources
Rm 437, State House
Augusta, Maine 04333

Dear Senator Treat, Representative Martin and Committee Members:

Enclosed is the Department of Environmental Protection's supplement to its 1997 Program Evaluation Report. This supplement follows up on the Committee's recommendations in its March 13, 1998 letter submitting the Committee's findings to legislative leadership.

Please contact me if you have any questions about this report and I'll be happy to address them. You may reach me directly at 287-2812.

Sincerely,

Edward O. Sullivan

Cc: Deb Garrett, DEP

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The Joint Standing Committee on Natural Resources (the "Committee") completed a review of the Department of Environmental Protection (the "Department") pursuant to 3 MRSA §951, *et seq.* during the Second Regular Session of the 118th Legislature. That review was based on a *Program Evaluation Report* submitted by the Department in November 1997. By letter dated March 13, 1998, the Committee submitted its findings to Legislative leadership.

The Committee's report made recommendations in four areas and requested that the Department respond back to the Committee by January 1, 1999, on progress related to those recommendations. Each of the areas of recommendation is listed below, followed by a discussion of the Department's action on that recommendation.

- 1) *The Legislature and the Department of Environmental Protection should encourage a shift back toward a more stable and appropriate balance of General Fund, dedicated fund and federal fund support of the Department's programs.*

As noted by the Committee in its report, the Department has lost a significant amount of General Funding in recent years, becoming increasingly reliant on fees to support the agency. While the General Fund provided 35.3% of Department funding in FY1990, that proportion had diminished to a low of 11.4% in FY 1997. The Committee found that this shift "has resulted in an uncertain revenue base and an inability to use resources where and when they are most needed."

In the past fiscal year, some improvement in General Fund support was achieved, primarily through support for delegation of the federal wastewater licensing program and a revitalization of the Lakes Program. As a result, 14.1% of the Department's overall budget was from the General Fund in FY1998.

The Department made two efforts to increase its General Fund support in the upcoming biennium. First, in its budget submission it requested increased General Fund support for basic administrative expenses (such as the Commissioner's salary and statewide computer "WAN" charges) as a means of reducing the cost of those expenses to the programs, thereby making more money available to carry out program activities. Second, as a result of a solid waste stakeholder process, a request was made to phase in General Fund support for State solid waste efforts, increasing General Fund dollars over time from the current 0% to approximately 33% by 2004.

Unfortunately, the structural budget shortfall prevented either of these new funding requests from the Department---like nearly all new General Fund requests from other agencies---from being included in the Governor's budget bill. The Department will continue to push to have increased General Fund support included in any changes that may occur as the budget bill progresses.

- 2] *The Department of Environmental Protection should evaluate its regional service capability and identify options for improving delivery of services to all regions of the State. The Department should submit recommendations for improving delivery of services to all regions of the State to the Joint Standing Committee on Natural Resources during the First Regular Session of the 119th Legislature.*

Providing service to the public close to our customers and the resources we are charged with protecting is a key component of making the Department an effective and responsive organization. To that end, the Department has offices in Portland, Augusta, Bangor and Presque Isle. The Committee found that "the Department's current organizational structure may not provide the most effective and efficient delivery of services across the State, and that other options for regional capability should be evaluated."

In the past few years, the Department has grown and strengthened its regional presence. Each of the regional offices has a Director of the office, and all three bureaus have staff in the regions. Our Response Services teams, the folks who respond to spills of oil and hazardous materials, have significant staff and equipment in each of the regions. The full suite of regulatory activities---licensing, inspections and enforcement---are done in all four regions for the land and solid waste programs. The total number of staff assigned to the regional offices has increased in the last three years.

Inspectors for the air and water programs are in each office, but enforcement and licensing is done centrally due to the limited number of positions and the need to ensure consistency. With the advent of the federal NPDES program and the resources that come with it, water licensing will begin to occur in the regions. The hazardous waste program has two inspectors based in Portland and two based in Augusta; all four participate in inspections in the Bangor and Presque Isle regions. The home base of the inspectors reflects the fact that 78% of the regulated hazardous waste universe is in the Portland or Augusta regions. As with many programs, the limited number of hazardous waste inspectors prevents a permanent presence in each region.

As new programs and resources are assigned to the Department, we will continue the trend to increase the strength, effectiveness and services provided by the regional offices.

- 3) *The Department of Environmental Protection and the State Planning Office should jointly study their jurisdiction over solid waste issues and make recommendations regarding roles and responsibilities, including staffing arrangements, to the Joint Standing Committee on Natural Resources during the First Regular Session of the 119th Legislature.*

The Department of Environmental Protection and the State Planning Office share responsibility for the implementation of Maine's state solid waste programs. The Committee raised issues and questions concerning the adequacy of the current State solid waste program and the jurisdictional boundaries between the two agencies. It recommended "that these issues should be studied to evaluate whether statutory or administrative changes are necessary."

Maine's solid waste statutes were comprehensively revised in 1989. The 1989 revisions reflected a new focus on "integrated" solid waste management approaches and an emphasis on the "solid waste management hierarchy", particularly recycling and source reduction. The Maine Solid Waste Management Agency was established as a part of the 1989 legislation, and was charged with certain new program responsibilities including capacity planning, municipal assistance and recycling.

The dissolution of the Maine Solid Waste Management Agency in 1995 resulted in the transfer of certain statutory responsibilities from the former agency to DEP and to SPO, and in the repeal of other statutory responsibilities and program elements. It was anticipated that the State Planning Office would focus on solid waste planning, capacity, financial assistance and recycling matters, while DEP would continue to focus on its environmental regulatory and technical assistance programs.

In 1998, the Department of Environmental Protection and the State Planning Office undertook an evaluation of the state's solid waste management programs and their administration. This evaluation was accomplished through interagency analysis and discussion and also by using input from a group of stakeholders brought together for the larger purpose of generally evaluating the state's solid waste programs and funding. A portion of that discussion centered on the respective roles of SPO and DEP. One central issue which impacts service delivery for both SPO and DEP is unstable solid waste funding, a reality which led to the stakeholder recommendation for more General Fund support noted in item 1 of this report.

The evaluation undertaken by DEP and SPO was multifaceted, and took into consideration the discussions and recommendations of the stakeholder group. First, the agencies conducted a comprehensive review of the solid waste statutes. This review was undertaken to identify statutory authorities for all current programs, identify any areas of possible overlap or conflict between the SPO and DEP program authorities, and to compare the scope of the current program to that which existed prior to the dissolution of the Maine Waste Management Agency.

Secondly, the agencies compiled and analyzed all existing reporting requirements. This exercise was undertaken in order to ensure that no duplication of effort was occurring and that both agencies were gathering necessary data in the most efficient and effective ways.

Finally, the agencies evaluated resources in the context of the programs that each is charged with administering, and also in the broader context of administration of the state's solid waste programs collectively.

As the result of the evaluation, analysis and discussions described above, the Department of Environmental Protection and the State Planning Office reached the following conclusions:

- ✓ The current solid waste program appears to be adequately serving the current needs of the state provided that stakeholder recommendations concerning the scope of SPO's technical assistance program are implemented. The needs of the state in terms of solid waste management support have changed between 1989 and present, in large part due to progress made in certain areas of waste management. For example, tremendous gains in recycling were made in the early and mid nineties through the development of infrastructure and assistance to municipalities in establishing recycling programs.
- ✓ The jurisdictional split between DEP and SPO seems to be quite clear in most areas, with the DEP focus on environmental standards, public health/safety, regulatory issues, remediation and technical assistance. SPO works primarily in the areas of solid waste capacity planning, recycling assistance, and municipal solid waste management assistance. No direct program overlap or duplication exists between the agencies' programs. There are several areas in which cooperative or consultative relationships are appropriate.
- ✓ There were no significant opportunities identified to achieve program gains or economies of scale through sharing or restructuring of staffing resources. The staff and resource analysis that was done indicated that workloads are generally heavy and that there is no duplication of services or support mechanisms.

- ✓ Examination of the question concerning possible merger of the DEP/SPO solid waste programs revealed both advantages and disadvantages. On balance, there appeared to be no compelling reason to recommend such a merger at this time. From a policy perspective there are certain distinct advantages to maintaining the regulatory and the planning/assistance programs separately.

DEP and SPO will continue to establish and maintain appropriate mechanisms for effectively accomplishing program goals in these areas. No statutory changes are required or recommended to implement the conclusions noted above.

- 4) *The Department of Environmental Protection should consult with the other natural resources agencies in evaluating their processes for coordinating on issues that cross-jurisdictional boundaries and whether the current division of responsibilities is working well to serve the public and protect the environment. The department should report its recommendations for improving inter-agency coordination and cooperation to the Joint Standing Committee on Natural Resources during the First Regular Session of the 119th Legislature.*

The Committee was concerned about issues which cross-jurisdictional boundaries, such as non-point source pollution, nutrient management and sludge spreading, pesticides and the relationship between organized and unorganized parts of the State. It found "that there may be a need for increased coordination and cooperation between the Department and other natural resource agencies to address issues that cross jurisdictional lines in order to better serve the public and protect the environment."

As noted on pages 31 and 32 of the November 1997 Department report, there is a tremendous amount of interagency coordination going on through the Natural Resources Sub-cabinet and the Land and Water Resources Council. These two organizations have been more active than ever before and serve to link natural resource agencies together to work on cross cutting projects like mercury reduction strategies and salmon restoration. In addition, the Department's principle infrastructure funding program for wastewater treatment systems coordinates closely with the Departments of Economic and Community Development, Marine Resources, Agriculture, FAME, and the USDA Rural Development Agency. This coordination most effectively puts money into programs that not only make a cleaner environment, but does it in a way that opens shellfish areas, promotes economic development and provides assistance to farmers.

Focusing on the discrete issues raised by the Committee, each is the subject of significant cross jurisdiction efforts. For non-point source pollution, the Maine Watershed Management Committee was created to coordinate non-point source issues and provide recommendations to the Land and Water Resources Council (see attached membership list). In addition to State agencies like Agriculture, Marine Resources and Transportation, the Watershed Committee includes business and environment interests to provide a balanced and fully informed group. In the past year, this group successfully developed the Non-Point Source Priority Watershed Program (see attached Issue Profile).

The desire to coordinate the Department's agronomic utilization of sludge and residuals program and the Department of Agriculture nutrient management program has led to many public meetings between the agencies and statewide meetings with farmers and other affected members of the public. What emerged is a growing understanding of the differences between managing manure generated on the farm, and using residuals generated off the site as soil amendments. The dialog has helped form nutrient management rules and utilization rules that complement each other, eliminating confusion and overlap. The resulting two regulatory programs work together to create a system which allows for the effective use of manure and residuals, while at the same time providing appropriate levels of environmental protection.

In the area of pesticides, the Department has actively been involved with the Pesticide Control Board to review rules and ensure that adequate environmental protections are in place. At the instigation of regional staff in our Presque Isle office, in 1998 the Pesticide Control Board adopted rules regarding the safe distances from surface waters for mixing pesticides and for appropriately securing pesticides when in transit. This puts the issue of surface water protection right into Pesticide Control Board's own rules, thus integrating pesticide regulations with environmental regulations to achieve better environmental protection.

Finally, the area of jurisdictional overlap between organized and unorganized areas. LURC and the Department have historically worked closely to coordinate reviews of projects that need both LURC and Department approval. Since LURC does not have a depth of resources to conduct technical reviews, it has relied on the Department's geologists and engineers and focused LURC's efforts on the land use planning aspects of its authority. LURC is proposing legislation in the coming session that would acknowledge the differences between LURC's resources and mission and the Department's, and would make legislative changes to eliminate overlapping and redundant permitting requirements.

Both the 1997 Evaluation Report and this supplement have been a good opportunity for the Department to take a step back and do a self-evaluation. We look forward to the Committee's continued input into how we are doing.

Maine Watershed Management Committee
Dec 98

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Dec 98

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DEP ISSUE PROFILE

Maine Nonpoint Source Priority Watersheds Program

Revised: Oct. 1998

contact: 207-287-3901

Background. Every time rain falls or snow melts, pollutants such as soil, nutrients, bacteria, oils, and heavy metals are swept from land surfaces and carried through the watershed by runoff water into lakes, coastal waters, rivers and streams. This is nonpoint source pollution, so named because it may occur anywhere in the watershed, as opposed to coming from a single discharge point. Land use activities are the sources of nonpoint source pollution. Developed areas, including roads, parking lots and buildings; farming; and timber harvesting are all potential nonpoint sources that can cause or contribute to water quality problems.

What is the Nonpoint Source Priority Watersheds Program? In 1997, the Maine Legislature enacted a law that authorizes the development of "a comprehensive watershed protection program" (5 MRSA §3331(7)). The program's purpose is to prevent or reduce nonpoint source (NPS) pollutant loadings entering water resources so that beneficial uses of the lakes, rivers, streams, estuaries and groundwater are maintained or restored. The law directs the Maine Land and Water Resources Council (MLWRC), consisting of the commissioners from the State's natural resource agencies, to coordinate the activities of agencies involved in watershed management. The Maine Watershed Management Committee, with representatives from state and federal agencies and private interest groups with a statewide interest in watershed management, serves as staff support to the Council.

Through the Maine NPS Priority Watersheds Program, State and Federal agencies will work with local groups to:

- Promote local support for improving water quality in watersheds,
- Perform watershed field survey assessments of the water resource and surrounding land uses,
- Develop watershed management plans to determine what actions are necessary to achieve an improvement in water quality,
- Implement watershed management plans through the use of best management practices (BMPs) to reduce or eliminate NPS pollution in the water resource.

What is the NPS Priority Watershed List? The law directs the MLWRC to establish priorities for directing resources to the management of water bodies based on:

- The degree of threat or impairment to water quality and aquatic habitat exists due to nonpoint source pollution;
- The value of the water body;
- The likelihood of successfully restoring or protecting water quality; and
- The degree of local public support for watershed management.

Based on these criteria, the Maine Watershed Management Committee proposed a list of priority watersheds. The draft 1998 list includes 181 lakes, 55 rivers and streams, and 17 estuaries. During the winter of 1998, a public notice with a request for comments on the proposed list was published in newspapers, listed on the Internet, and circulated to government agencies, and to local and regional groups known to be interested or involved in watershed management. The Nonpoint Source Priority Watersheds List may be found at:
<http://www.state.me.us/dep/blwq/1&whome2.htm> (Click on "watershed management").

What is the significance of the NPS Priority Watersheds List? State and federal agencies will seek to provide assistance to local groups that are developing or implementing watershed management plans in these

watersheds. The list will also help agencies coordinate activities in priority areas, and to form new partnerships to leverage resources for greater environmental benefit.

What kinds of assistance will be available? Some technical assistance from a variety of state and federal agency staff will be available to help volunteers organize and carry out watershed surveys to determine the sources of water pollution, and to help with the planning, design, and implementation of best management practices to protect water resources from pollution. Since staff typically receive more requests for assistance than can be met, requests for assistance in priority watersheds will generally receive preference over other requests.

What about financial help? Financial assistance for groups developing or implementing watershed management plans and activities will be made available through a grant program administered by the Department of Environmental Protection (DEP). For the past several years, the DEP has awarded approximately \$500,000 per year from Federal Clean Water Act funds to public and not profit entities for projects to reduce nonpoint source pollution. In 1998, that amount will be supplemented by an additional \$500,000, from a bond issue approved by Maine voters this past June. While these funds are not limited to NPS Priority Watersheds, preference will be given to projects in those areas (see 38 MRSA §2013).

Are watersheds on the list ranked in order of priority? No. However highest priority waters for Rivers & Streams and Lakes have been designated.

What if I live in a watershed that is not on the NPS Priority Watersheds List? Does that mean the State is unconcerned about NPS pollution there? No. With 5,800 lakes, 30,000 miles of rivers and streams and 4,500 miles of coastline, there are many water resources that are not on the NPS Priority Watersheds list. Some of these unlisted waters are of very high value, including some that provide public water supplies. Others have already suffered a decline in water quality and are at risk for further decline. Virtually all waters are at some risk due to NPS pollution. The MLWRC encourages local stewardship activities to protect all of these waters, whether or not they are on the list. Local watershed protection groups should continue to form and operate; While limited, grant assistance and technical support from state and federal agency staff may be available for these areas as well.

I've seen other State waterbody lists; does this list supercede them? No. Several other lists have been published which serve different purposes. For instance, under the Stormwater Management Law, there are lists of water bodies designated as "sensitive or threatened" and "most at risk" from new development. These stormwater lists are focused only on impacts from new development. And there is a list of waters that do not or will not meet state water quality standards even after implementation of technology-based controls for both point sources and nonpoint sources of pollution. There is some overlap between these lists. Each list is valid for the purpose for which it was created.

Will the NPS Priority Watersheds list be subject to periodic review and update? Yes. Priorities will change over time as watershed management programs are put into place in some areas, and new information becomes available on water quality values, threats and impairments. The Maine Watershed Management Committee will review the list on an annual basis to determine if revisions should be made, and will report back to the MLWRC with its recommendations.