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# **POLLUTION IN MAINE:**

## **Suggestions For More Effective Environmental Preservation**

**REPORT OF THE GOVERNOR'S COMMITTEE  
ON POLLUTION ABATEMENT**

**FEBRUARY 1969**

COMMITTEE ON POLLUTION ABATEMENT

September 13, 1968

Chairman, Thomas Griffin, Jr., Member, Water and Air Environmental  
Improvement Commission, Pollution  
Abatement Consultant to Municipalities

Orlando Delogu, Professor of Law, University of Maine

James S. Erwin, Attorney General

Dr. Dean Fisher, Commissioner, Department of Health &  
Welfare

Mrs. Charles McEvoy, League of Women Voters

John Menario, City Manager, City of Portland

Robert Patterson, Architect

George Prentiss, Mill Manager, Oxford Paper Company,  
Rumford, Maine

Senator Carleton D. Reed, State Senator, Woolwich, Maine

Paris Snow, State Representative, Caribou, Maine

Dr. Otis Sproul, Dept. of Civil Engineering, University  
of Maine

Clinton Townsend, Natural Resource Council of Maine

Warren Viessman, Jr., Former Director, Water Resources Center,  
University of Maine

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Membership of the Committee

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Requests for additional copies or reactions to the report should be addressed to:

Peter A. Bradford  
Office of the Federal-State Coordinator  
193 State Street  
McLean House  
Augusta, Maine 04330

## CHAIRMAN'S PREFACE

This report is the result of a request by Governor Kenneth M. Curtis to the members of his Pollution Abatement Committee. In effect, that request was that the Committee seek ways of achieving a more equitable redistribution of the costs of pollution producing processes. These costs are now being paid. They are being paid by those who once derived either income or pleasure from the clean waters of streams now fatal to fish and obnoxious to men. In a large way, they are being paid by shell fishermen, resort owners, and sportsmen who are being deprived of a way of life which they once found rewarding. In a smaller way, they are being paid by every one of us who wrinkles his nostrils while passing near any of the many Maine rivers which would once have evoked an opposite reaction. Oddly, these costs are not being paid by those who impose them, for the bill for pollution always flows downstream.

This report is also the indirect result of certain other trends and events in Maine and elsewhere, among them these:

- On July 9, 1968, residents of Centreville, New Brunswick, a small village on a long border between two large countries, dammed up an international river polluted beyond their endurance by a Maine potato processing plant. Their action clearly violated several laws and treaties of both countries. Whether the pollution of the river, which allegedly hospitalized several people and certainly sickened many, violated any law at all has not yet been decided. The dam builders could clearly be jailed; the polluters, equally clearly, cannot.

No one has yet dammed the Presumpscot, but visitors to Maine have compared the odor where the river meets the interstate highways to that stench which sometimes blankets the northern end of the New Jersey Turnpike.

Speaking at a meeting at which Governor Curtis and Commissioner Keefe of the Department of Economic Development stressed that pollution abatement is not only recreationally desirable but also the only promising road to long-range industrial development, Donaldson Koons, chairman of the Water and Air Environmental Improvement Commission, agreed with them but noted that, if the Kennebec were any more polluted, "the water could be carried away on flatcars."

- The Cuyahoga River, Ohio, is so oil polluted as to have been declared a fire hazard, and fire breaks have been built along it. The citizen on its banks who, seeing flames, cries, "Water", is uttering a warning, not a prescription.

- Algae, fed by nutrients from municipal and industrial wastes, has seriously impaired the recreational potential of Lakes Annabessacook and Cobbosseecontee in Central Maine. Unchecked, it will shortly threaten the water supplies of both Augusta and Gardiner. Similar conditions in Sebasticook Lake are nourished by wastes from Dexter, Corrina and camps around the lake.

- Dissolved oxygen is essential to fish. Some is present even in moderately polluted water. There is no longer any dissolved oxygen whatsoever in the 2,600 square mile heart of Lake Erie. An article describing this condition notes it can support "no desirable life, only lowly creatures such as bloodworms, sludgeworms, sowbugs and bloodsuckers". The article continues "Each pound of phosphate will propagate 700 pounds of algae. Beneath the waters of this great lake, largely hidden from sight, a hideous, cancer-like growth of algae is forming. As algae blooms and dies, it becomes a pollutant itself. It robs the lake of still more oxygen - and it releases the phosphate to grow another crop of algae".

- On June 15 the town of Waldoboro opened a \$750,000 waste treatment plant on the Medomak River. The facility was designed to permit the reopening of the Medomak clam flats closed by contamination five years ago. In mid-October waste from a canning company caused a massive fish kill on the Medomak. This ended all hope of an immediate reopening of the clam flats. The closing of those flats costs clam diggers an estimated \$100,000 per year in uncollectable damages.

- A recent Governor of Alaska has fought a delaying action against Federal officials seeking to protect Alaskan waterways from pollution. His reason is that "High water quality standards may hinder industrial development."

- Senator Gaylord Nelson of Wisconsin has written, "America the affluent is well on the way to destroying America the beautiful...Every major river system in America is seriously polluted, from the Penobscot in Maine to the Columbia in the far Northwest. The rivers once celebrated in poetry and song - the Monongahela, the Cumberland, the Ohio, the Hudson, the Delaware, the Rio Grande - have been blackened with sewage, chemicals, oil, and trash. They are sewers of filth and disease.

"Everywhere I have gone I have found the public willing to pay the cost of saving their waters. In fact, I think the public is far ahead of local, state, and Federal officials in facing up to this crisis. I think that citizens in most communities would support a sharp crackdown on local polluters of every variety. I think they want their states to establish high water quality standards, and then enforce them.

"And I think that the citizens of America now recognize that the destruction of the major river networks of the nation, and the slow ruination of our treasured inland lakes and streams is a calamity of such gigantic proportions as to deserve the urgent attention of all citizens and prompt action by all levels of government".

Maine is not yet confronted by malignant lakes or by rivers which catch fire. It is the hope of this Committee that this report and increasingly effective public sentiment can help to prevent such total distortion of water's natural function and can contribute toward the rehabilitation of that which we have already lost.

## INTRODUCTION

At the Pollution Abatement Committee's first meeting, September 13, 1968, Governor Curtis pointed out that pollution abatement was lagging in the State of Maine because of fragmentation of authority and responsibility. He charged the Committee with the responsibility of reviewing all legislation being prepared for consideration by the 104th Legislature, with eliminating conflicts, with consolidating and improving the control and enforcement agencies, and with suggesting legislation of its own. He indicated that existing statutes should be clarified and strengthened.

Faced with tight deadlines, the Committee began its deliberations by reviewing the various programs and interviewing the administrators of these programs. This report attempts to assemble the Committee's subsequent conclusions and compromises. In cases where unanimity was unattainable, dissents are noted.

The early meetings of the Committee reviewed the present status of pollution abatement, determined the magnitude of the problem, and analyzed the means available to protect the public interest. The general conclusion was that if everything currently termed "pollution" were considered, a decade would be necessary for the Committee's work. Noise, solid wastes, junk cars, non-returnable containers, oversized packages, and virtually indestructible plastic, added to water and air pollution made a broad view of the Committee's task an impossible one. It therefore decided to focus its primary attention on water and air degradation. Since the Water and Air Environmental Improvement Commission (WAEIC) is charged with these aspects of pollution abatement, the Committee quickly narrowed its work to a review of the activities of that Commission.

The Committee was not unaware of the problem imposed by open dumps in the State, nor was it ignoring the eye-sores of automobile junkyards and the general threat to the environment imposed by junk cars. The appalling increase in litter (in spite of the yeoman activities of the "Keep Maine Scenic Committee") was not ignored. The effect on the Sheepscot River of the heated effluent from the Maine Yankee Atomic Plant was not disregarded. The Committee kept in mind as a general objective the statement made by Dr. Athelstan Spilhaus, Chairman of the National Academy of Science's Committee on Waste Management, "Man can no longer throw away his refuse, for there is no more 'away'." As the earth becomes more crowded, one person's trash basket is another's living space.

David M. Gates, Professor of Botany at Washington University in St. Louis and Director of the Missouri Botanical Gardens, put it another way in an article entitled, "Exploitation, Evolution and Ecology" in the December 1968 issue of "Technology Review", "If we have any conscience whatsoever towards the well-being of our children and our children's children, we must take urgent measures soon toward more responsible action." He pointed out

that we are "easily blinded by the abundance of our own manner of living. We bask in opulence and believe that everything will continue forever. Most of us enjoy good health and we believe all people can share it. Our high standard of living is achieved through wanton excesses of careless exploitation and reckless dispoilation. The toll paid in wasted resources is such that future generations will be denied an opportunity to enjoy even a reasonable quality of life. The extravagant cost is clouded by polluted air, contaminated water, cut forests and depleted soils, the changing climate and a noisier environment."

In the same article he quoted Congressman Emilio Q. Dardario of Connecticut as feeling that we had "perhaps thirty to seventy years to reverse the destructive trend which a sprawling, acquisitive humanity has created for itself. After that it will be too late, too late to halt the pollution of the earth; too late for anything except to witness the gradual sinking of our standard of living and the erosion of personal liberty."

Dr. Spilhaus also stated that pollution is a problem in waste management rather than disposal. His committee has urged society to recycle its residues back into productive use, rather than leaving them as a problem for future generations. Our society wants the convenience of not being required to carry bottles back to the store; it wants the attractive, or convenient, or multi-sized packaging that our consumer demand has developed; it wants to be able to turn the faucet on and let the water run. The Committee concluded that the only way that "wastes" can be recycled and "waste" reduced is through the establishment of sufficient economic disincentives to reduce the quantity of water rendered useless. Taxes on the use of water, on motor vehicles, on new cars, on throw-away containers high enough to pay the social costs of careless use or disposal might encourage their profitable reuse.

Just as the traffic engineer is beginning to recognize that banning parking on major streets is no solution to congestion unless concurrent provision of adequate off-street parking is made, so anyone concerned with environmental improvement must realize that establishment of "water quality standards" and enforcement provisions must be coupled with economic incentives adequate to motivate more careful initial use and treatment of water.

The Committee discussed at some length the general decline in environmental quality. Senator Muskie has said, "As we learn more about the dangers of long-term, low-level exposure to some 'new' wastes (i.e.: fungicides, pesticides, herbicides, fertilizers, salts, etc.)---we realize that no waste substance can be written off as harmless in our increasingly crowded society." The Committee felt that much more research into "side-effects" and long-range effects is needed.



However, the Committee concluded that the most pressing environmental problems facing Maine in 1969 were those of water and air pollution. As a result, the Committee focused on these problems. Since the University of Maine now has a contract with the WAEIC to define the size of the air pollution problem and to establish methods, staff, and budget to meet it, and since the University of Maine did not complete its work until late in December, 1968, the Committee deferred consideration of air pollution.<sup>1</sup> A reaction by the Committee to "Air Resources of Maine --- A Preliminary Study" will be issued later. This report therefore concentrates on water pollution.

## II. Interviews

In the first weeks the Committee reviewed the organization of the Water and Air Environmental Improvement Commission and interviewed Professor Donaldson Koons, Chairman of the Commission and Raeburn Macdonald, Chief Engineer. It heard from Mr. Nicholas Garaganis, Deputy Director of the Personnel Department, and from its own members concerning industrial and municipal interests.

### A. WAEIC

Professor Donaldson Koons, Chairman of the Commission, indicated that in his opinion the Commission should be organized like the Highway and Liquor Commissions. These Commissions have a full-time Chairman and two part-time members; hearings are conducted by hearing examiners; there are attorneys on the staff. Professor Koons pointed out that a full-time Chairman could function as the Chief Administrative Officer with responsibility for legislative and executive liaison and with the extensive travel that success in dealing with Federal agencies seems to entail. This organization would free the Chief Engineer for the monumental task of determining where the need lies, reviewing the proposals for eliminating pollution, reviewing of construction plans and specifications and monitoring construction and operation in completed plants.

One of the major faults in the present organization is that the Chief Engineer is so overworked that he must ignore any but the most pressing matters. Consequently, he spends virtually all of his time putting out fires.

### B. Industry

G. E. Prentiss, Mill Manager of the Rumford Mill of Oxford Paper Company and a member of the Committee, told the industry side. Mr. Prentiss pointed out that industry does not enjoy polluting because it, too, is a member of the community; but it must consider economic factors. He stated that millions of dollars have been spent in the Rumford Mill since 1957. He stated that his plant will need about five million dollars

1. One of the authors of this report estimates that 30% of the people of Maine are affected by air pollution. He has been criticized by his co-authors for choosing too low a figure, for he leaves out those affected by open air burning in dumps.

to clean up its share of the Androscoggin river. He did point out that there were several other things that bothered industry. The first is the full amount of money needed. He feels that the need for industrial pollution control approaches one hundred and fifty million dollars. He cited the figure of a hundred and thirty million dollars as the municipal need (Mr. George Gormley, Sanitary Engineer of the WAEIC, indicated that that figure is about five years old and the present municipal need approaches one hundred and seventy million dollars). If Mr. Prentiss is right, two hundred and eighty million dollars will be needed in Maine over and above what has been spent so far. (If Mr. Gormley is right, three hundred and twenty million dollars is needed.) Of this figure, approximately ten percent will be engineering and, at present salaries, Mr. Prentiss said that this will require about 175 full-time engineers for the next eight years. After the plants are constructed and in smooth operation, it will cost about ten percent of construction costs to run the industrial plants each year and about five percent for the municipal. Mr. Prentiss went on to point out that each industry follows a long-range plan that extends over five to ten years for its capital investment. He expressed the industrial view that the State should maintain the laws now on the book until sound experience dictates the need for change.

#### C. WAEIC Chief Engineer

Mr. Raeburn W. Macdonald, Chief Engineer of the WAEIC stated that the State's objectives cannot be accomplished until there is a lot more money for construction. We do have authorization, we do have some Federal aid, but meaningful amounts of money have not been appropriated by Congress.

Another factor has been the inconsistency of the Federal program. The percentage of Federal aid and the rules and regulations governing the use of Federal aid have changed continuously. Any mill manager who, having money to let a contract for the construction of pollution control facilities, learns today that tomorrow he may get Federal aid is going to delay until he can check on what he has heard. Likewise, the Town or City Manager or Mayor would not be doing his financial job properly if he went ahead today, while in Washington increases in aid were being proposed. This vacillation leads toward a crisis of another sort in the next five years, for, when Federal money becomes available or when further procrastination becomes impossible, there will be a scramble for engineering firms competent to draw up plans. This will be reflected in poor jobs, delays, and increased costs.

Mr. Macdonald also discussed the shortage of personnel. He pointed out that the WAEIC was desperately shorthanded. There are four vacancies in an authorization of about 20. Pay scales of the State are about fifteen percent below what they are elsewhere. The State needs a continuous recruitment program even though there may be no specific vacancies at the time advertising takes place. (It is very rare that an engineer is immediately available for work. Usually three to six months is

necessary to look over resumes, complete and check applications, invite for interviews and give notice to present employers.) The present policy of the WAEIC will not allow leaves of absence to attend school. Membership in professional organizations is not paid by the State.

The enforcement program, until Mr. Erwin took over as Attorney General, lagged very badly. Once an investigation was made and data presented, the Attorney General's office usually took three or four months to move. By that time another investigation was frequently necessary. This lowered morale among the personnel of the Commission.

#### D. Personnel

One immediately obvious problem area was the low salary scale and consequently high vacancy rate in the staff of the Commission. Mr. Caraganis testified that State personnel policy ranks the Sanitary Engineers and Engineering Technicians of the Water and Air Environmental Improvement Commission, the Sanitary Engineering Division of the Health and Welfare Department, and the Public Utility Commission evenly with the State Highway Commission and the Bureau of Public Improvements. He said that these are the only places in the State government that professional engineers are employed.

Until June, 1968, Mr. Caraganis had received no request from the WAEIC for special attention. Fairly recently the top Sanitary Engineer jobs have been upgraded from Sanitary Engineer II, with a present pay scale of \$9,698 to \$11,830 to Sanitary Engineer III with a present pay scale of \$11,258 to \$13,702.

Mr. Caraganis showed the Committee copies of a recommended revision to the pay scales which will be submitted to the 104th Legislature. The Committee endorses and supports this pay plan as a step in the right direction - that of upgrading and strengthening the State administration. If adopted, it would ease the personnel problems of water pollution abatement.

Salaries, however, are only one factor in the vacancy rate. Working conditions for the WAEIC staff are very bad. The staff is crowded into a rickety wooden building and members of the staff feel that they are illegitimate second cousins subsisting on charity. Part of the problem is the reduced chances for promotion which is a hazard of working in any small organization.

Also important are opportunities for professional advancement, recognition among professional peers, favorable working conditions, areas of challenge, schooling and participation in professional societies.

### III. General Conclusions

As a result of these and other discussions, it became plain that the lack of progress in water pollution abatement to date is largely attributable to a lack of money. Lack of money has resulted in lack of personnel, lack of space, lack of equipment, and most importantly, delay in implementing completed community construction plans. In late December, 1968, staff members of the WAEIC reported to the chairman of the Committee that the Commission had a backlog of some 33 million dollars worth of unfunded eligible projects. Current Federal law allows grants of 50% (with a bonus of 10% in projects that are compatible with a regional plan). Disregarding any bonuses, the Federal share needed is 16.5 million dollars. In the Federal fiscal year 1968-1969, 1.8 million dollars was allocated to Maine. In 1963, a very rough estimate of total municipal needs was made by the WAEIC staff. It was 130 million dollars. In five years perhaps 10 million dollars' worth of sewage treatment facilities have been built. In December, 1968, the Commission staff estimated the total municipal need at one hundred seventy million dollars.

In short, in five years, while we built ten million dollars' worth of sewage treatment facilities, the total need increased by fifty million dollars. Therefore, in 1968 we are forty million dollars farther behind than we were in 1963.

Furthermore, the Federal share of Maine's total need is now \$85 million. The last Federal appropriation was for \$1.7 million. At this rate, and in the inconceivable event that municipal needs do not increase, we will not solve the municipal share of our water pollution problem before the year 2018. In fact, municipal needs seem to be increasing at a rate of \$10 million per year. If this is true, and if the rate of Federal funding remains unchanged, we will be \$570 million dollars away from total abatement by 2018. In addition, many irreplaceable natural resources will by then be lost forever. These figures are the basis for the Committee's recommendation that Maine undertake all possible prefinancing permissible under Federal legislation and consider undertaking its own pollution control program.<sup>2</sup>

The money problem is heightened by the difficulty of municipalities in raising the local share of costs ineligible for Federal funding. The figures cited above are for "eligible" costs. This is not the total. Combined sewers and storm sewers are not eligible. Storm sewerage is necessary, of course, and in the older cities the storm water run-off is usually handled in combined sewers.

2. Another possibility here would be for the State and the municipalities to assume a greater share of each project. Thus, if Maine raised 75% of the cost of each project, the \$1.7 million in Federal funds would generate \$6.8 million worth of construction instead of the \$3.4 million which, in fact, occurred. The increases are geometric, so if Maine raises 80%, \$8.5 million would be available; at 90%, \$17 million. At present \$17 million in State funds are unused because Federal matching money has not been forthcoming.

Sometime ago, the WAEIC attempted to measure the non-eligible costs. They were not successful because of the wide range of variation. The Chairman feels the non-eligible portion of a project in Maine generally runs between 33 and 50 percent of the total. The Twentieth Annual Report of the New England Interstate Water Pollution Control Commission listed some 410 projects approved, under construction or completed during 1967. The total cost of these projects was \$243,699,260. The total Federal grants received for these projects was \$75,117,845 or 30.8% of the total. This would lend credence to the 33% to 50% cited. This means that to finance a one million dollar project, a particularly unfortunate town may have to come up with \$500,000 in non-eligible costs, plus 20% of the balance or a total of \$600,000. For this sum it will receive \$150,000 in State aid and \$250,000 in Federal assistance. In a good many cases, the unused balance available in bonding capacity under the 7½% constitutional debt limit is not sufficient to allow construction of the needed pollution abatement works. Although this limit can sometimes be avoided by formation of a district, this is not always possible. If a district is formed, it must be administered and such administration is costly. The Committee, therefore, felt that a recommendation should be made to raise the 7½% debt limit. Considerable discussion ensued as to a substitute, with figures 15% and 20% being mentioned. No agreement on a precise amount was reached.

#### IV. Sub-committee Reports

After these interviews, sub-committees were formed as follows:

1. Clinton Townsend and Robert Fuller considered the changes in present statutes needed to solve the immediate legislative and legal problems.
2. Orlando Delogu and Robert Patterson developed long-range legislative proposals.
3. Mrs. Mary McEvoy and George Prentiss considered problems in Commission organization, personnel and immediate funding.
4. Paris Snow and Thomas Griffin developed suggestions for construction financing.

#### a) Sub-committee on modifications of existing legislation

Much of the recommendation of the sub-committee on immediate legislation is contained in the report which Robert G. Fuller and Philip Kilmister submitted to the Attorney General in September. A copy of this report is attached, Appendix C.

The sub-committee's first recommendation, however, was not contained in that report. It suggests a streamlining of the entire license hearing procedure and is intended to eliminate most of the unnecessary hearings before the WAEIC. Mr. Macdonald felt that hearings are really necessary only twenty to thirty percent of the time.

Under this recommendation the applicant would be required to furnish substantial information as to the effect of his discharges on the body of water in question. The entire Committee adopted this first recommendation without dissent.

The second recommendation, contained on page three of the Fuller-Kilmister Report, extends the Commission's authority to discharges in salt water as well as fresh. This recommendation is important in that both the Machiasport and Trenton projects would not be subject to licensing under existing law. It was unanimously endorsed.

The third recommendation, found on page four of the Fuller-Kilmister Report, requires a license for any change in character or increase in volume of an existing discharge. This recommendation was approved in principle with dissent from Mr. Prentiss and some reservations from other members.

In dissent, Mr. Prentiss noted that the "grandfather" clause which automatically licenses all firms in operation prior to 1953 at their 1953 level of discharge, is in the legislation for a reason. He stated that this clause embodied legislative recognition of the special problems of the State's older industries, as well as their long existing relationship with Maine. In arguing that "grandfather" firms presented special cases, Mr. Prentiss cited special structural difficulties which they would have in complying with the requirements necessary to obtain a license. He felt that the 1976 deadline was both a guarantee of eventual compliance and a recognition that faster compliance would pose insuperable difficulties. Generally, Mr. Prentiss felt that this recommendation ignores the concept of water classification. He felt that the eventual prospect of conviction for a classification violation was a sufficient inducement to corrective action.

It was pointed out that there may be many firms acting on the assumption that the 1976 deadline will not be enforced. At least one member of the Committee felt that to permit these firms to go unregulated until 1976 would be to guarantee the failure of the deadline. He also noted that past experience indicated it was far easier to proceed against those who violate licensing requirements than against those who may have violated the river classification. As a member of the WAEIC, the Chairman felt that eventual possibility of conviction for classification violations does not move anyone whatsoever to corrective action.

The fourth recommendation of the sub-committee endorsed the concept of performance bonds as set forth on page five of the Fuller-Kilmister Report. This recommendation was adopted with dissent from Mr. Prentiss. There was some uncertainty about general feasibility of bonding and about who would be required to post bond. Possible standards mentioned by the sub-committee for required bonds were:

1. Those who had a prior license violation or
2. Those who had a potential to cause damage to the waters. (This latter standard would require considerable further definition and clarification.)

The fifth recommendation of the sub-committee, that a reclassification of an already classified stream, plus the establishment of a timetable for meeting the reclassification should not be construed to eliminate all possibility of violation of the original classification, is set forth on page six and seven of the Fuller-Kilmister Report. This recommendation was adopted although Mr. Prentiss, Mr. Patterson and Representative Snow abstained from voting because they were unsure as to exactly what measures might be proposed; Representative Snow expressed the feeling of the majority in stating that "this suggested revision could plug a loop-hole which the 103rd Legislature unintentionally opened."

The sixth recommendation of the sub-committee is based on the subject matter of pages seven to nine of the Fuller-Kilmister Report. It suggests clarification of the terms "reasonable opportunity for dilution" and "significant segment".<sup>3</sup> The Committee generally felt that these phrases should be given specific meaning in each individual license. Each license might specifically define a mixing zone within which discharge measurements would not take place. Dr. Viessman and Dr. Sproul felt that the phrase "reasonable dilution" was a phrase under which an engineer could operate. Dr. Viessman, however, emphasized that "significant segment" was an unfortunate phrase both because it was difficult to define and because it implies the possibility that some portion of the stream may permissibly be polluted. The Chairman feels that general definition of these phrases should be done by WAEIC regulation.

b) Long-Range Sub-Committee

Ten of the recommendations of the sub-committee on more sweeping changes in water pollution control laws were adopted by the Committee.

1) The recommendation that the WAEIC be given regulatory and emergency powers such as prohibition of discharge, rule making for proceedings before the Commission, granting of limited variances in unusual circumstances, establishing reporting and disclosure systems, and setting up investigatory powers, was adopted unanimously.

3. As used in 38 M.R.S.A. 451, prohibiting any discharge which will violate water classification over "any significant segment of water" after "reasonable opportunity for dilution".

2) All operating plants, municipalities, and individual discharges should be subject to licensing. This provision would terminate all "grandfather" exemptions for industries or municipalities. Messrs. Prentiss and Menario dissented.

3) All licenses should be for a specified period of time and subject to adjustment prior to renewal. Mr. Prentiss dissented.

4) The Committee voted unanimously to recommend that the Attorney General continue to offer legal assistance upon request by the WAEIC to assist in vigorously forwarding the enforcement aspects of the statutes.

5) The third recommendation of the sub-committee was adopted in two parts. First, enforcement should be based on injunction, restraining orders, cease and desist orders and other non-criminal penalties.

Second, enforcement conferences possibly leading to enforcement action, bringing all polluters in a watershed or stream system together should be permitted. Mr. Prentiss dissented.

6) The Commission should be empowered to license waste treatment plant operators. Mr. Prentiss dissented on the grounds that this might require licensing of production employees by an agency that was not competent to judge their qualification.

7) As an extension of the fourth recommendation, the Commission should under a court order, take over and operate plants with a charge to the municipality or industry where this extreme step is necessary. Messrs. Prentiss, Snow, and Menario dissented.

8) The Committee recommends the study of consolidation of all agencies involved with any aspect of environmental control into a single department. Some of these agencies at present are the Water and Air Environmental Improvement Commission, the Wetland Control Board, the Mining Control Board, the Pesticides Control Board, the Wildlands Use Regulation Commission (if created), the State Plumbing Code enforcement machinery, the quality control of potable water, State Zoning or Subdivision Control (if created), controls on off-shore drilling (if created), sea-weed harvesting control (if created), and solid wastes control activities. The Committee felt that such a study would be authorized by the 104th Legislature with report and legislative recommendation to be considered by the 105th Legislature.

9) The seventh recommendation of the Committee was an extension of the sixth. The Committee felt that consideration should be given to the formation of a Natural Resources Agency involving all of the enforcement entities listed in recommendation six above, plus such departments as Sea and Shore Fishery, Inland Fish and Game, Forestry, Parks and Recreation, and Agriculture. Such a super agency, although seemingly desirable, should be established only after extensive future study.



10) The Commission shall order a timetable acceleration whenever it finds that technology and available funds will allow completion of construction before 1976.

This would be a modification of 38 M.R.S.A. Chapter 3 Section 415e the second paragraph of which now reads, "notwithstanding the foregoing timetable, if the Commission shall determine that any municipality, etc. can reasonably complete any or all of the foregoing steps at an earlier date or dates than herein provided, the Commission, after notice and hearing, may order completion of any such steps according to an accelerated schedule." For the word "may" the word "shall" would be substituted. This recommendation was adopted, with the Mr. Prentiss and Mrs. McEvoy opposed.

c) Sub-committee on Reorganization

As a result of the recommendations of a sub-committee on reorganization the full committee considered the following models:

1. A full-time Commission Chairman appointed by the Governor with confirmation by the Executive Council.
2. A strong Executive Director-Administrator, appointed by the Governor with the approval of a part-time Commission.
3. A recommendation that the Governor appoint a smaller size Commission which in turn would appoint a Director.

The Committee recommends:

1) That the WAEIC be revised to replace the present eleven-man Commission, with a five-man Commission. There should be a representative from the interests of public health, conservation, the general public, industry and municipalities.

Members should be appointed for three years, the terms of no more than two members expiring in any one year. Members of this Commission should be compensated for attendance at hearings and meetings at the rate of fifty dollars per day. The staff personnel of the WAEIC should be doubled during this biennium. The doubling should take place following the appointment of an Executive Director by the new Commission. The Executive Director should be knowledgeable in the field of water and air pollution control. He should exercise administrative supervision, and his first duty would be to determine the staff and the organization necessary to carry out water and air pollution abatement. The Committee felt that the job of the Executive Director should be placed in the unclassified State service and salary in the neighborhood of twenty thousand dollars per year would be necessary to secure the services of a truly qualified individual.

2) The Commission should be empowered to authorize the Executive Director to issue licenses in minor cases without hearing. Hearing examiners would conduct hearings in the majority of cases with the transcript therefrom to be studied and acted upon by the Commission in executive session, and members of the Commission itself would be required to be present at hearings only in major cases. In major cases a minimum of two Commissioners should be present. In routine meetings three members should constitute a quorum.

The Executive Director should exercise administrative supervision of Commission pollution control programs and between meetings should have authority to perform in the name of the Commission all functions and duties vested in it by this act except the adoption and promulgation of rules and regulations. He shall specifically have the authority to suspend licenses and to issue, modify or revoke orders.

3) The WAEIC staff should be doubled during the next biennium. The following money will be needed during the year indicated: 1969-70, \$412,000; 1970-71, \$455,000. Of these figures \$375,000 and \$412,000 would be appropriated for water and \$37,000 and \$42,000 would be for air. An eventual tripling of the Commission's staff should be considered. \$375,000, of course, does not double the staff, for \$325,000 is necessary merely to continue the present Commission. It does fund the first step toward that goal. The executive director must determine the people he feels are needed; he must define and describe their job positions, he must obtain a definition of position level and salary range from the Personnel Board, and then he may go out into the marketplace and recruit sanitary engineers.

The air pollution portion of this budget will be supported by two Federal dollars for each State dollar, if the program is funded as promised. Dr. Sproul anticipated that \$111,000 would be needed in the first fiscal year; \$126,000 in the second. He felt that the State share should probably be in the vicinity of \$50,000 for the first year and \$75,000 for the second. Considering the inherent uncertainties in staffing with technical personnel in today's market, the Committee felt that the suggested budget would cover the administration of both air and water pollution abatement programs.

4) Unless adequate space is provided in a new State office building, a new building should be obtained in 1970-71. The Commission staff has laboratory, drafting and plan review responsibilities that would make the need for at least 200 square feet per person highly desirable. As the total size of a building rises, the unit requirement drops somewhat so that for eventual tripling of the staff there should be provided about ten thousand square feet of extra office. Space is not available in any of the existing State buildings; consequently, it is proposed that a new building be provided in the 1970-72 biennium. Such a building could be located near the airport and could be built for about twenty-five dollars per square foot. The total cost would be about \$250,000.

d) Construction Financing Recommendations

The sub-committee on construction financing were divided as to whether to recommend to the full committee that the Legislature be asked to authorize the State to pre-finance the Federal share of construction funds for water pollution abatement facilities. They also held differing views on whether the \$17 million balance of the 1963 bond issue, if released by the 104th Legislature, would be enough to give an adequate start toward meeting the deadline. They agreed only that large sums of money would be needed for the planning and construction.

The sub-committee also asked the Attorney General for an advisory opinion as to whether the 1963 bond issue, if released by the 104th Legislature, could then be used to prepare the construction plans, specifications, and invitations to bid on work needed by any municipality. The chairman reported that a check with the WAEIC in late December, 1968, showed that there was a backlog of some thirty-three million dollars in grant applications from towns that were ready to go as soon as funding was obtained.

The Attorney General's opinion being favorable, the Committee agreed to recommend that the 104th Legislature:

1. Authorize pre-financing of the Federal share of eligible projects.
2. Release the balance of the 1963 water pollution abatement facility bond issue.
3. Recommend for approval by the voters in referendum in 1970 an additional bond issue of fifty million dollars.

V. SUMMARY OF RECOMMENDATIONS

The Committee recommends that the 104th Legislature:

1. Amend Title 38, Maine Revised Statutes Annotated to incorporate the relatively minor changes below:
  - a. Any change in character (either quantity or quality) of discharge shall be treated as new discharge.
  - b. Repeal section 414 (Applications for Licenses) and substitute new section covering licenses in classified and unclassified waters and allowing the WAEIC to condition licenses.
  - c. Make clear that a new classification will not exempt anyone from complying with the previous classification.

- d. Extend the WAEIC authority to salt, as well as fresh water.
- e. Adopt certain minor word changes for clarity.
- f. Make certain technical changes in sections 361, 363 and 364.

Text of proposed acts attached, Appendix D.

- 2. Take immediate steps to license by the WAEIC, all waste water treatment plant operators. Also provide for State takeover of ineffectively run plants.
- 3. Allow the WAEIC to trace sources of pollution and recover costs of tracing through civil action.

Text of proposed act attached, Appendix D.

- 4. Reorganize the WAEIC to:
  - a. Replace the present eleven-man Commission, with a five-man Commission, all of whose members will serve three year terms. Membership of the proposed Commission should represent public health, conservation, industry, municipalities, and the general public.
  - b. Compensate members of this Commission at the rate of fifty dollars per meeting instead of the present ten dollars.
  - c. Double the present staff personnel of the WAEIC during this biennium (69/70).
    - (1) This doubling include appointment of an Executive Director by the Commission.
    - (2) This Executive Director be compensated at a rate high enough to attract a talented and experienced individual and be knowledgeable in the field of water and air pollution control. He should exercise administrative supervision; and his

first duty should be to determine the form of organization needed to carry out water and air pollution abatement.

- d. Triple the present staff during the next biennium (71/72).
5. Require performance bonds from potential polluters.
6. Broaden WAEIC emergency powers.
7. Empower the Commission to authorize the staff to issue licenses in minor cases without hearings; allow hearing examiners to conduct hearings in a majority of cases, with the transcript therefrom to be studied and acted upon by the Commission in executive session; require that members of the Commission be present at hearings only in major cases.
8. Consider consolidation of environmental preservation functions into a single agency.
9. Take advantage of all Federal law which allows the State to pre-finance the Federal share of pollution abatement facilities.
10. Release the balance of the 1963 bond issue for immediate obligation.
11. Propose an additional fifty million dollar bond issue for referendum at the earliest possible time.
12. Raise the constitutional debt limit of municipalities above 7½ per cent.
13. Provide 10,000 square foot building (capable of being expanded in size) in or near Augusta for the WAEIC in the 71/72 biennium. Estimated cost \$250,000.

In addition the Committee recommends that the Attorney General continue to make legal assistance available as necessary to the WAEIC.

## APPENDIX A

### MINORITY REPORT

Basically, our position is that Maine now has a sound water pollution law as a result of substantial revisions made by the 103rd Legislature in 1967; that Maine water quality standards have been approved by the Department of the Interior with certain qualifications common to the approval of most State standards.

We note that the report prepared by Assistant Attorneys General Fuller and Kilmister submitted to the Attorney General on September 17, 1968,<sup>1</sup> states, in part, as follows:

" ... We can say from our experience that existing antipollution laws are, for the most part, adequate to protect Maine's waters, if they are vigorously enforced..."

We believe that Maine now has sound, legally enforceable water quality standards. We feel, however, that the present law could be strengthened in the area of administration to assure more efficient operation of the pollution abatement programs and enforcement thereof.

We, therefore, agree with the following recommendations of the majority of the Pollution Task Force.

(1) The Water and Air Environmental Improvement Commission should be reorganized by replacing the present 11-man Commission with a 5-man Commission, all of whose members would serve 3-year terms; membership of the new Commission should represent the interests of Public Health, Conservation, Industry, Municipalities, and the General Public.

(2) The members of the Commission should be compensated at the rate of \$50 per meeting.

(3) The Commission should appoint an executive director knowledgeable in the fields of water and air pollution control.

(4) We believe the Water and Air Environmental Improvement Commission should be provided with adequate staff, as may be necessary to enforce and effectively administer the present law; we do not believe that the staff should be arbitrarily doubled or tripled without reference to actual need.

1. See Appendix C for the complete report.

A II

(5) The Attorney General should be required to furnish such legal assistance to the Commission as is required to enforce the law, keeping in mind the current work loads.

(6) The Commission should be permitted to authorize the staff to issue licenses in minor cases without hearing by the full Board.

(7) The Commission's authority should be extended to salt water, as well as fresh.

(8) We believe that the Commission should be furnished with adequate physical facilities to house its staff, which might be accomplished by the construction of a new building or renovation of an existing structure.

In view of the fact that we believe Maine now has a sound water pollution law, it is felt that the remainder of the recommendations made by the majority of the Task Force are neither necessary nor desirable.

John E. Menario

George E. Prentiss

APPENDIX B

CREATION OF A FEDERAL ENVIRONMENTAL TRUST FUND

(A majority of the Committee felt that the subject matter of the following proposal was beyond the scope of the Committee. The Chairman therefore appends it to the report as his own recommendation.)

SUGGESTED RESOLUTION

WHEREAS, man's abuse of the human ecology threatens to affect his health and welfare irreversibly, and

WHEREAS, responsible leaders of the nation give us not more than a generation or two to stop despoiling our environment, and

WHEREAS, our present living space is fouled by polluted water and contaminated air, and

WHEREAS, man is allowing organic refuse of garbage, sewage and debris to be funneled into rivers and streams, to be washed into the sea, and

WHEREAS, correction of these conditions demands immediate commitment of large sums of money and effort, and

WHEREAS, support of the pollution reduction program funded from the United States General Fund has suffered in comparison to highway construction funded from the "Highway Trust Fund", and

WHEREAS, other needs, politically as pressing as pollution abatement are competing for dollars from the General Fund,

NOW THEREFORE BE IT RESOLVED, by the Senate and House of Representatives of the State of Maine,

1. That the Congress of the United States be urged to establish a dedicated fund to be known as the "Environmental Improvement Trust Fund", and
2. That an annual contribution from the General Fund of the United States, amounting to 1.7 billion dollars be made, and
3. That all depletion allowances be reduced by twenty per cent, and
4. That a Federal Transportation and Fuel Tax be imposed on all hydrocarbon fuels used in internal combustion and jet engines, and



5. That a Federal Water Use Tax be imposed on all water consumers in the United States at the rate of one-half cent per million gallons, and

6. That all proceeds enumerated in paragraphs two through five supra, be paid as they accrue in to the Environmental Improvement Trust Fund to be disbursed therefrom for projects designed to improve the environment of the United States.

#### DISCUSSION

There is an appallingly wide spread between Federal authorization and Federal funding. In 1968 \$4.5 million was authorized, for Maine. \$1.8 million was appropriated. The contrast between financing of water pollution control facilities, dependent on annual act of the Congress, appropriating from the general funds of the United States, and the highway construction program, the money for which comes out of the "highway trust fund" (the dedicated revenue from the Federal gasoline tax) is enlightening. It is therefore suggested that the 104th Legislature pass a joint resolution pointing out that the Federal Government has been completely remiss in meeting its own fiscal commitments for environmental restoration. The Federal Government itself has said that in water pollution abatement it uses "the carrot and stick" approach. Although none of us question that the Federal stick is or can be a potent weapon, it begins to appear that the Federal carrot has been a victim of the soil bank plan.

The resolution should recommend establishment by the Federal Government of an environmental improvement trust fund. Money for this fund should come from four sources:

1. A water use tax, imposed across the board on all fresh water used in the United States.
2. From a one-cent increase in the Federal gasoline tax.
3. By imposition of a tax of 20% of the depletion allowance now granted extractive industries.
4. By an allocation from the General Fund of the United States.

It is estimated (by a research foundation of the National Association of Counties and by others) that precipitation averages about 4300 billion of gallons of water a day in the United States. Some three quarters of

of this or 3100 billion gallons is lost by evaporation and transpiration from plants and animals. Nearly two thirds of the remaining 1200 billion gallons of water is flood water which quickly runs back into the ocean before it can be used.

Hydrologists estimate that in 1968 the developed, dependable, fresh water supply available in lakes, streams and impoundments is somewhere over 300 billion gallons a day. By 1980 this can be developed into a dependable fresh water supply of some 515 billion gallons a day. This means that a least 100 billion gallons per day must be fresh water that is reused. To be reused, of course, it must be cleansed. This in turn means we must substantially complete our pollution abatement program to clean up our presently polluted waters and to prevent further pollution within the next decade. To do this we must invest between sixty and one hundred billion dollars in ten years. If we use the larger sum for the purpose of estimating, we must come up with ten billion dollars of Federal money per year for a decade. Again assuming all of this is eligible for Federal participation (it is not) the Federal share is between five and five and one half billion dollars per year for ten years.

This five and a half billion dollars Federal share can be financed with minimum impact on the Federal budget as follows:

A water use at the end of the next decade of 600 billion gallons per day means a consumption of 219 trillion gallons per year. A tax of a half cent per million gallons would yield about 1.1 billion dollars per year in 1969 (although this tax would seem to be nearly impossible to administer, in reality it would be quite simple. Metered supplies could be taxed directly. Pumped sources have measures, while virtually every other consumer, if not metered, can be estimated with a high degree of accuracy.)

Extractive industries now enjoy an income tax "rebate" known as the depletion allowance. Concurrently these industries impose high air and water pollution loads. They should therefore be specially taxed to support pollution abatement. Oil production in the United States is currently over ten million barrels per day. Present price of U.S. production is about three dollars per barrel. The gross income to producers from oil is about thirty million dollars per day. Figuring at twenty seven and a half percent of this gross income, the depletion allowance approximates eight and a quarter million dollars per day. Twenty percent of this would yield 1.65 million dollars per day or about six hundred million dollars per year. We can assume (roughly) that all other depletion allowances together would about double this figure. A twenty percent tax on the amount allowed for depletion, in all extractive industries would produce 1.2 billion dollars per year.

Since the internal combustion engine is the major source of air pollution and since it (in automobiles, aircraft and boats) carries millions of people from their homes to other areas imposing loads on waste disposal facilities, it is reasonable to increase the Federal fuel tax to support this program. A one cent increase in the Federal fuel tax would yield about one and one half billion dollars per year.

Total of these three taxes would be about 3.8 billion dollars per year. Needed from the U.S. General Fund would be 1.7 billion. The grand total of 5.5 billion would amount to the Federal share of the water pollution control facilities needed in the U.S.

All of these taxes would be highly progressive. The depletion allowance has been under fire for many years. This tax would reduce that allowance and at the same time encourage the industries involved to use their most productive facilities and would discourage them from use of the stripper wells and other marginal producers and from wasteful exploitation of resources. The increase in the Federal fuel tax would tend to discourage somewhat, individual use of automobiles and, hopefully, encourage use of mass transit facilities in the metropolitan areas. A water-use tax would tend to cut down on the ever proliferating water waste in our wasteful society. The 1.7 billion dollars called for from the General Fund would simply fund at a lower rate the authorization now written in the law.

## APPENDIX C

### REPORT TO THE ATTORNEY GENERAL OF MAINE CONCERNING PROPOSED CHANGES IN THE ANTI-POLLUTION LAWS

#### INTRODUCTION

On July 1, 1967 you assigned us the task of enforcing Maine's anti-pollution statutes. At that time, you instructed us to report to you, prior to the convening of the 104th Legislature, on the effectiveness of these statutes as enforcement tools and to suggest improvements. This is that report.

The fourteen months that we have since spent on anti-pollution law enforcement is concededly a short period of time. Nonetheless, during this period we have brought ten civil actions for pollution law violations, of which five are still pending, the other five having concluded favorably; initiated two administrative enforcement hearings; settled two or three matters by exchange of correspondence; attended several discharge license hearings, and written seven opinions for the Water and Air Environmental Improvement Commission. This activity has, we hope, given us sufficient enforcement experience to lend weight to the recommendations which follow.

We can say from our experience that existing anti-pollution laws are, for the most part, adequate to protect Maine's waters, if they are vigorously enforced. Our problems, as will be seen, arise in areas where existing legislation is ambiguous, is vague, or is inconsistent in its application. The weapons for enforcement exist; but sometimes they are not aimed properly.

Enforcing these statutes is, in every case, plowing new ground in the law. These statutes are just beginning to be tested in our courts. The attorneys who oppose us test every chink in our statutory armor as they have a right to do. These tests consume time, however, and it will be a while before we can accurately judge the results of our enforcement efforts.

We can also say with some confidence that there is enough enforcement work to be done in this State to keep at least two other Assistant Attorneys General occupied. But in order to maintain successful enforcement actions, we must also have adequate technological evidence gathered by the Commission staff. There are presently several vacancies in that staff, and our enforcement efforts are extending it beyond its present capacity. We make this point not as a plea for help, but to indicate the problems we encounter in doing our job. If Maine's people want to make pollution control a priority item of business, we are confident that the help will be forthcoming.

Finally, if there is one thing we have learned during the past fourteen months, it is that environmental control and cleanup will not come quickly or cheaply in Maine. The technological problems of treating certain types of industrial waste are formidable (though by no means insuperable), and pollution control facilities are expensive to build and to operate. To

perserve this State's aesthetic heritage, Maine's industries and municipalities must commit their finances and personnel to maintaining water quality standards; Maine's people must translate their anti-pollution attitudes into action, and Maine's government must constantly seek better laws and more vigorous enforcement. This report to you and our past year's activities represent our efforts thus far.

### PROPOSED CHANGES IN MAINE'S ANTI-POLLUTION LAWS

#### I. Licensing

The licensing statutes have been our most frequently used enforcement tool. At present we have two cases pending which involve unlicensed discharges. Both alleged violators have resisted our complaints and have sought administrative relief. It is too early to predict the outcome of these cases, but we do note that while the litigation is proceeding, both defendants have embarked on cleanup efforts. The message is getting through. Another unlicensed discharge action resulted in rapid voluntary compliance by the alleged offender.

We would add to the licensing statutes the words "and Section 364" at the end of the first sentence of 38 M.R.S.A. § 414 (3). The effect of this addition would be to allow the Commission to put terms and conditions on licenses involving discharges to salt water.

The statutes do not in terms state that any change in character or increase in volume of either a licensed or "grandfathered" discharge must be licensed. Generally such changes or increases make additional demands upon the receiving water. We have authored opinions that such situations should be scrutinized by the Commission, using the licensing procedure. See those opinions dated October 5, 1967 and December 29, 1967. Industries, municipalities and others would have a better idea of their responsibilities with respect to changes and increases in discharges if the statute were more definite. We suggest adding the following after the last sentence of 38 M.R.S.A. § 413 (1964):

"Any change in character or increase in volume of an existing discharge, whether licensed or unlicensed, shall be deemed a new source of pollution for purposes of this section."

We have also found that in many cases licensees, or those having "grandfather" rights, will expand or change their discharges without bothering to apply to the WAEIC for license to do so. Eventually complaints trickle in and we bring an "unlicensed discharge" action. It would be better if the Commission had some degree of supervision over, or knowledge of, new construction of pollution-causing practices or changes in existing processes which increase pollution loads. In this way it could move to effectively control new sources of pollution. (Appropriate legislation has been submitted to the 104th Maine Legislature).

Another means of assuring compliance with classification standards by license applicants would be to require such applicants to post a financial bond conditioned on faithful performance of all the terms and conditions of the license. If the license is later violated and the violation is proven in court, the bond would be subject to forfeiture. Bonding companies do not like judgments against them, and it may be assumed that they would carefully scrutinize the pollution abatement facilities of bond applicants to determine their adequacy.

## II. Classification

The reclassification of surface waters made by the 103rd Legislature was accompanied by a timetable which exempts those discharging into such reclassified waters from prosecution for violation of the reclassification if they meet all the steps of the timetable. The final date for compliance is October 1, 1976.

The reclassifications have caused serious enforcement problems. By enacting a new classification, the Legislature has repealed the old classification. No prosecution can be maintained for violating the new classification as long as there is adherence to the timetable; but in the meantime, since the old classification has been repealed, no prosecution can be maintained for violating it either.

EXAMPLE: A stream is classified C as of December 31, 1966. In 1967 the Legislature upgrades it to B-2. Industry A, which was operating prior to August 8, 1953 and thus does not need a discharge license, is discharging to the stream and meeting the C classification. After the reclassification, Industry A triples production, with the result that its discharge load violates both the B-2 and C classifications. Under existing law, Industry A, if it meets the timetable, cannot be prosecuted for violating the new B-2 classification, and cannot be prosecuted for violating the old C classification, since that has been repealed. (Industry A could, on these facts, be prosecuted for increasing its pollution load to the stream without first obtaining a license. However, the prosecutor would have to show that the discharge was greater, in terms of pollution, than that existing on August 8, 1953. It is impossible, in most cases, to determine what an industry was discharging fifteen years ago.)

Legislation to cure this defect has been submitted.

The crux of the problem in enforcing classification standards, however, lies in certain language of the first paragraph of the classification enforcement statute, 38 M.R.S.A. § 451 (Supp. 1967). As this statute now reads, we must show not only that a classification violation exists "after reasonable opportunity for dilution and mixture", but also that the violation occurs in a "significant segment" of the affected waters.

The purpose of this language, apparently, is to permit those discharging wastes into waters to take advantage of the limited ability of water to cleanse itself of pollution by diffusing it. We cannot argue with this purpose, although it is our conviction that maximum attention should be given to removing wastes at their source, rather than diluting them with waters more valuable elsewhere.

We agree that it would be inequitable to prosecute individuals or corporations for classification violations on the basis of one sample taken six feet downstream of the outfall. We take issue, nonetheless, with the looseness of the language of this statute.

A great danger in drafting a regulatory statute is that to define the elements of an offense too narrowly invites potential violators to devise ways to breach the spirit of the statute while adhering to its letter. But it is an equal danger to draft such a statute so vaguely, as has been done here, that reasonable men must guess at its meaning. It is not too much to say that neither water users nor those who prosecute for violations of water use know what their rights and obligations are under this statute. We have no judicial decisions construing what this language means, and indeed a court would be hard pressed to come up with a definition of general application.

As it stands, then, classification enforcement can only proceed on a piecemeal basis, with the definition of what is "reasonable opportunity for dilution and mixture" and pollution of a "significant" water segment in a particular proceeding being left wholly with the judiciary. We doubt that such was the legislative intent.

We submit that, for effective classification enforcement, the tests of "reasonable opportunity for dilution and mixture" and "significant segment" must give way to more precise measurements. The types of measurements best designed to tighten the statute must be developed on the basis of engineering and other expert evidence, and thus we have no specific proposals to make in this regard. We suggest, however, that the area permitted for diffusion should be defined with clarity and perhaps should vary with the classification.

EXAMPLE: A user of B-1 water (a relatively high classification) might be permitted only that water within 100 yards of his outfall for diffusion; a classification violation detected downstream of that point (assuming no classification violator upstream and no intervening discharges between the user's outfall and the point of test) would be actionable. A class C water user (a relatively lower classification) should be permitted less water area for diffusion, since the water quality is already low.

### III. The Philosophy of Pollution Abatement

This memorandum is designed to suggest only changes in existing legislation. We have no mission to critically reexamine the entire water regulatory philosophy of this state, as expressed in Title 38, Sections 361-454. However, for your consideration we pose the following questions, which you may wish to bring up at the Governor's Committee on Pollution Abatement:

Water quality in Maine is regulated by a part-time Commission which meets once a month for, on the average, three hours. Can the Commission accomplish its statutory mission under these circumstances? Is a full-time Commission necessary? If the existing Commission can do its job by meeting more frequently, is \$10.00 a day plus traveling expenses adequate compensation for its members? How well does a part-time Commission formulate coherent abatement policies?

What is the role of the Commission staff? What should it be, especially with regard to collecting evidence in enforcement matters? Are there any due process problems posed by an administrative enforcement procedure where a Commission, on the basis of complaints, orders its staff to investigate; on the basis of the investigation, decides to hold an enforcement hearing; listens to evidence gathered by its own staff, and then issues judgment?

These are all questions which deserve to be thoroughly explored. We in this office have begun to test the limits of our statutes, and the Commission is beginning to test its enforcement powers. Much remains to be learned, but we both know that there are areas where we need help. This help is mostly, as we have tried to show, by way of sharpening existing statutory tools, rather than by forging new ones. Nonetheless, we urge you and the Committee to use your meetings to discuss completely the entire philosophy of pollution abatement in Maine and to determine for yourselves the relevancy of that philosophy to the water use needs in this State.

PHILLIP M. KILMISTER  
Assistant Attorney General

ROBERT G. FULLER, JR.  
Assistant Attorney General



APPENDIX D

AN ACT relating to the Water and Air  
Environmental Improvement Commission

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

Sec. 1. R.S., T. 38, § 361, amended. The first four paragraphs of Title 38, § 361 of the Revised Statutes, as amended by Section 1 of chapter 475 of the Public Laws of 1967, are further amended as follows:

"The Water and Air Environmental Improvement Commission, as heretofore established and hereafter in this subchapter called the "commission", shall consist of 5 members appointed by the Governor with the advice and consent of the Council, The membership of the commission shall reflect the conservation, manufacturing, municipal and public interests of the State. The members appointed by the Governor shall be appointed for a term of 3 years and until their successors are appointed and duly qualified.

The members appointed by the Governor shall receive \$50 per day for their services at meetings or hearings, not to exceed \$1000 in each calendar year, and all members shall receive necessary traveling expenses for attending any meetings of the commission or for any other travel in connection with the official business of the commission and under the specific authority of the commission, which traveling expenses shall be paid out of the General Fund.

Meetings of the commission shall be held at such time and place as shall be determined by the commission but not less than 2 meetings per year shall be held. The commission shall organize in October of each year by electing one of its members as chairman but in his absence any other members of the commission shall be elected to act as chairman. The commission shall at the same time elect a secretary who need not be chosen from among the members of the commission. Three members of the commission shall constitute a quorum.

The commission may employ, subject to the Personnel Law, and prescribe the powers and duties of such employees and obtain the services of consultants on a contractual basis or otherwise as may be necessary to carry out this subchapter. Technical services shall be performed in so far as practicable by personnel of the Department of Health and Welfare and by other state departments, agencies and offices.

The commission may employ a Director, who shall be a person knowledgeable in matters relating to water and air pollution and the abatement thereof, and fix his salary with the approval of the Governor and Council. Such Director shall serve at the pleasure of the commission, and shall carry out such administrative duties as the commission may prescribe.

Sec. 2. The present members of the Water and Air Environmental Improvement Commission shall continue in office until the expiration of their respective terms, or until their office becomes vacant by reason of death, resignation, removal or otherwise, whichever first occurs.

Sec. 3. R.S., T. 38, § 411, sub-§ 1, amended. The second sentence of subsection 1 of section 411 of Title 38 of the Revised Statutes, as repealed and replaced by § 1 of chapter 538 of the Public Laws of 1967, is amended as follows:

"State grant-in-aid participation under this subsection shall be limited to grants for waste treatment facilities, interceptor systems and outfalls."

Sec. 4. R.S., T. 38, § 411, sub-§ 1, amended. The third paragraph of subsection 1 of section 411 of Title 38 of the Revised Statutes, as repealed and replaced by section 1 of chapter 538 of the public laws of 1967, is amended as follows:

"All proceeds of the sale of bonds for the planning, construction and equipment of pollution abatement facilities to be expended under the direction and supervision of the Water and Air Environmental Improvement Commission shall be segregated, apportioned and expended as provided by the Legislature; provided that when the Legislature is not in session, the Governor and Council may authorize the commission to advance planning funds authorized by subsections 2 and 3 of this section, not in excess of \$50,000 to any one municipality or quasi-municipal corporation."

Sec. 5. R.S., T. 38, § 411, sub-§ 2, amended. The first sentence of subsection 2 of section 411 of Title 38 of the Revised Statutes, as repealed and replaced by section 1 of chapter 538 of the Public Laws of 1967, is amended as follows:

"Notwithstanding and in addition to subsections 1 and 3, but subject to the limitation of the last clause of subsection 3, the commission may make payments allocated by the Legislature for municipal or quasi-municipal pollution abatement construction programs which have received federal approval, or for planning such programs, in anticipation of reimbursement from federal programs of said amounts; in which event the commission is further authorized to make additional payments not in excess of 30% of the expense of said programs or the planning thereof."

Sec. 6. R.S., T.38, § 411, sub-§ 3, additional. Section 411 of Title 38 of the Revised Statutes, as repealed and replaced by § 1 of chapter 538 of the Public Laws of 1967, is amended by adding a new subsection 3, to read as follows:

"3. Grants by State for planning. The commission is authorized to pay an amount not in excess of 30% of the expense of a municipality or quasi-municipal corporation incurred by it in planning a pollution abatement construction program. Such amount may be in addition to any amounts previously paid by the commission pursuant to section 412 of this Title, but shall not be paid until the governing body of the municipality or the quasi-municipal corporation duly votes to proceed with a pollution abatement construction program."

Sec. 7. R.S., T. 38, § 413, amended. Section 413 of Title 38 of the Revised Statutes is amended by adding at the end thereof a new paragraph, to read as follows:

"Any change in character or increase in volume of an existing discharge, whether licensed under this section or section 414, shall be deemed a new source of pollution for purposes of this section. In the event that a licensee under this section shall transfer the ownership of the manufacturing, processing or industrial plant which is the source of the discharge mentioned in the last sentence of the previous paragraph of this section, the license granted by this section shall upon such transfer be extinguished and the new owner shall seek license under section 414."

Sec. 8. R.S., T. 38, § 414, repealed. Title 38, section 414 of the Revised Statutes is repealed; and the following is enacted in place thereof:

"§414. Applications for licenses.

1. Classified waters. Applications for licenses shall be submitted to the commission in such form and containing such information as the commission may by regulation require, and shall be signed by the applicant.

The commission may reject applications which are not in accord with applicable law and regulations. In such event, written notice of such rejection shall be given to the applicant within 30 days of receipt of the application, and such notice shall be accompanied by a statement indicating the information deemed necessary by the commission in order for the application to conform to applicable law and regulations. Within 30 days of such notice and statement, or within such other time as the commission may allow, the applicant shall file the required information, otherwise the application shall be deemed withdrawn. Nothing in this section shall be construed to require an applicant to disclose any secret formulae, processes or methods used in any manufacturing operation carried on by him or under his direction.

Applications found to be in order by the commission shall be dealt with as hereinafter provided.

A. Discharge of less than 1000 gallons per day of domestic sanitary sewage. In the event that the applicant proposes to discharge less than 1000 gallons of domestic sanitary sewage per day, the commission may: (1) if it determines as a result of its own investigation that such discharge, either of itself or in combination with existing discharges to the waterway, will not lower the classification of any receiving body of water or tidal waters, issue such license to the applicant upon payment of the sum of \$50 and such determination and issuance may be delegated by the commission to the Director upon such terms and conditions as it shall by regulation prescribe; or (2) hold a public hearing upon the application in the manner hereinafter provided.

B. Other Discharges. In the event that the applicant proposes to discharge other than less than 1000 gallons of domestic sanitary sewage per day, the commission shall set a time and place for hearing on the application, which hearing shall be held within 45 days of receipt by the commission of the application, and shall give notice of the hearing, to the applicant by certified mail, return receipt requested, and by publication in a newspaper circulated in the area of the proposed discharge and in a newspaper having state-wide circulation and distribution in the said area once a week for three successive weeks, the last publication being at least 3 days prior to the date of hearing. The hearing shall be held by not less than 3 members of the commission, and evidence taken and received shall have the same effect as though taken and received by the full commission and shall authorize action by the full commission as though by it taken and received.

If after hearing the commission shall determine that such discharge, either of itself or in combination with existing discharges to the waterway, will not lower the classification of any receiving body of water or tidal waters, it shall issue such license to the applicant upon payment of the sum of \$50.

2. Unclassified waters. In the interim between the first day of September, 1959 and the classification by the legislature of any surface waters or tidal flats or sections thereof, it shall be unlawful for any person, corporation, municipality or other legal entity to dispose of any sewage, industrial or other waste into any unclassified surface waters

or tidal flats, without first obtaining a license from the commission. No license from the commission shall be required of any municipality, sewer district or other quasi-municipal corporation, in existence prior to September 1, 1959 for any discharge as the same existed on that date at its then point of discharge, such license being hereby granted. The commission shall not withhold a license if it shall find that such sewage or waste will not lower the quality of the unclassified waters below the classification which the commission expects to recommend in accordance with section 365. The form of application, commission action thereon, and license fee shall be as provided in subsection 1.

3. General. Any license to so discharge granted by the commission may contain such terms and conditions with respect to the discharge as in the commission's determination will best achieve the standards set forth in sections 363 and 364.

If, on the record of any hearing on an application for license, the commission shall find that a violation of one or more conditions of such license will result in a substantial and immediate violation of the classification of any body of water or tidal waters, the commission may, as a prerequisite to the issuance of such license, require the applicant to give bond to the commission, in such sum (subject to the provisions of this section) and with such sureties as the commission may require, conditioned upon the faithful adherence by the applicant to such condition or conditions in such license.

The amount of any bond required by the commission of any licensee under this section shall not exceed that amount which the commission shall find, upon the record of the hearing on such licensee's application for license, necessary to restore any body of water to its appropriate classification in the event of breach of such licensee of the conditions of his license.

A licensee whom the commission has, pursuant to this section, required to post a bond may, at any time after 90 days from the issuance of his license, petition the commission to reduce the amount of his said bond or to relieve him from liability thereunder. Within 30 days after receipt of such petition, the commission shall conduct a hearing thereon and shall notify the petitioner of the time and place of such hearing at least 10 days prior thereto. At such hearing the petitioner may appear in person or through attorney and present such evidence, including evidence of the completion or of proposed or ongoing construction of waste treatment

facilities, as he believes entitle him to the relief prayed for. The staff of the commission may likewise appear and present evidence touching the issues raised by the petition. After hearing the commission shall make findings of fact and issue such order as the public interest and the equities of the case may require.

A full and complete record shall be kept of all hearings held under this section by the commission and all testimony shall be taken by a stenographer.

The commission may make rules and regulations relating to the conduct of hearings held under this section.

Sec. 9. R. S., T. 38, § 451, sub-§ 1, amended. Subsection 1 of section 451 of Title 38 of the Revised Statutes, as repealed and replaced by section 11 of chapter 475 of the public laws of 1967, is amended as follows:

A. By inserting a new paragraph to follow the present first paragraph, as follows:

"However, a reclassification adopted on or after January 1, 1967 shall not be deemed to exempt any municipality, sewer district, person, firm, corporation or other legal entity from complying with the standards of the last previous classification, and enforcement action may be maintained under this section for non-compliance therewith."

B. By amending the third paragraph as follows:

"After notice to and a hearing with the affected parties, the commission may issue to any municipality, sewer district, person, firm, corporation or other entity, special orders directing such operating results as are necessary to achieve any of the interim goals set out in the above timetable."

C. By amending the fourth paragraph as follows:

"Notwithstanding the foregoing timetable, if the commission shall determine that any municipality, sewer district, person, firm, corporation or other legal entity can reasonably complete any or all of the foregoing steps at an earlier date or dates than herein provided, the commission, after notice and hearing, shall order completion of any such steps according to an accelerated schedule."

Sec. 10. R.S., T. 38, § 451, sub-§ 2, additional. Sub-section 2 of section 451 of Title 38, as repealed and replaced by section 1 of chapter 528 of the public laws of 1967, is amended by adding at the end thereof the following language:

"The presiding member of the commission is empowered to administer oaths and affirmations to witnesses testifying at such hearings."

#### Creating Civil Liability to the State for Pollution of Waters

The following legislation, also endorsed by the Committee, has been submitted separately from the above bill.

R.S., T. 38, § 453, amended. Section 453 of Title 38 of the Revised Statutes is amended by adding at the end, a new paragraph as follows:

Any person, corporation or other legal entity who unlawfully discharges or causes to be discharged pollutants into the waters of this State is liable to the State for the reasonable costs and expenses of the State actually incurred by it in tracing the source of such discharge and in restoring the waters to their former condition, to be recovered by the Attorney General in a civil action brought in the name of the State.